

(1992) 02 BOM CK 0044

In the Bombay High Court

Case No : Civil Revision Application No. 296 of 1987

Babruvahan Venkatrao Jadhav

APPELLANT

Vs

Harischandra Rangrao Patil and Others

RESPONDENT

Date of Decision : 12-02-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9, 9A

Citation : (1994) 1 BomCR 535 : (1993) MhLj 798

Hon'ble Judges : A.D. Mane, J

Bench : Single Bench

Advocate : A.H. Joshi and Babhulgaonkar, for the Appellant; Sunil V. Warad, holding for S.C. Bora, for the Respondent

Final Decision : Dismissed

Judgement

A.D. Mane, J.—There involves a short but important question as to whether, a dispute between the liquidator of the society and the members of the same society covers a dispute as contemplated u/s 91 of the Maharashtra Co-operative Societies Act, 1960 (for short, the Act).

2. The respondents filed a suit against the petitioner-defendant No. 1 for declaration and possession. The circumstances in which the suit came to be filed relates back to the bundle of facts but the facts which are relevant for our purpose are these :

There is a Co-operative Housing Society, known as Yeshwant Co-operative Housing Society Ltd., Latur. The society has been duly registered on July 21, 1966 under the Act. The prominent object of the society is to provide housing accommodation to it's members and to construct houses and allot them to it's members or help the individual members to construct individual houses. On account of some dispute between the members of the said society, liquidator came to be appointed. The original petitioner was appointed as liquidator. The respondent No. 7 is the present liquidator.

3. It appears that the society acquired a vast land in Survey No. 208-A of Latur admeasuring East-West 205 feet and South-North 550 feet. The respondent No. 10, who acted as the then Chairman of the said society, except purchasing of the said piece of land took no further steps with a view to convert the said piece of land into pieces for allotting the same to members of the society. On september 15, 1973, he has, however, conveyed General Body Meeting of the members. In the meeting it was resolved to convert the agricultural land for non-agricultural use and to make a lay out thereof. In pursuance of the resolution, the Chairman of the society laid out 22 plots and obtained permission for non-agricultural use. Under the lay out plan open space admeasuring 145" x 80" in the middle was left open for the purpose of using it as a green belt for common good and advantage of all memebtrs of the society. It appears that after sanction of lay out plan, the real dispute has started and it is at that stage the liquidator came to be appointed. It appears that the petitioner distributed the plots amongst all qualified members of the society, but thereafter, the respondent No. 4 in collusion with the petitioner is said to have managed his name as a member and converted the open space meant for green belt in to four plots by correcting suitably the record of the society. That action of the petitioner and his supporters was challenged by the present respondent Nos. 1 to 6 in a suit filed by them being Regular Civil Suit No. 1884 of 1984.

4. Pending the suit the petitioner moved with his application Exhibit 52 inter alia stating that the Civil Court has had no jurisdiction to try and entertain the suit, in view of the provisions contained in section 91 of the Act and, therefore, requested the trial Court to frame a preliminary issue regarding the jurisdiction of the Civil Court. The issue was accordingly framed as preliminary issue and decided by the learned trial Judge and by his order dated December 21, 1985 the learned trial Judge held that the Civil Court has jurisdiction to try and entertain the suit.

5. Shri Joshi, the learned Counsel for the petitioner urged that this is a dispute between members of the society. Therefore, it cannot be said that it is a dispute between the liquidator of the society and it's members, since, according to him the petitioner was the past liquidator. Therefore, the learned Counsel submit that the view taken by the learned trial Judge is not correct. The dispute between the parties is one u/s 91 of the Act. Therefore, the provisions of section 107 of the Act ousts the jurisdiction of the Civil Court.

6. On the other hand Shri Warad, the learned Counsel appearing for the respondent Nos. 4 and 6 urged that Explanation (1) to section 91 clearly lays down that dispute of this nature cannot be referred to the Co-operative Court under the provisions of sub-section (1) of section 91 of the Act. In this context, he has submitted that the respondents have obtained leave of the Assistant Registrar, Co-operative Societies, prior to the date of suit as required u/s 107 of the Act and, therefore, the Civil Court has jurisdiction to try and entertain the suit.

7. There is no quarrel on a proposition that in the event the dispute falls within the purview of sub-section (1) of section 91 of the Act, the Civil Court has no jurisdiction to try and entertain the suit in regard to such dispute. A dispute touching the constitution, elections of the committee or its officers other than election of committee of the specified societies including its officer, conduct of general meetings, management or business of a society is covered under sub-section (1) of section 91 of the Act.

Nevertheless, Explanation 1 to sub-section (1) of section 91 of the Act, provides that,

" A dispute between the Liquidator of a society or an Official Assignee of a de-registered society and the members (including past members, or nominees, heirs or legal representative of deceased members) of the same society shall not be referred to the Co-operative Court under the provisions of sub-section (1)."

In the present case, as seen from the aforesaid facts, here is a dispute between the liquidator of the society on one hand and the members of the society on the other. In that view of the matter, explanation 1 to sub-section (1) of section 91 of the Act is attracted.

8. In this context, it is also relevant to mention that the bar of suit in winding up and dissolution of the society as provided u/s 107 of the Act is also not applicable to the facts and circumstances of the present case. Section 107 of the Act inter alia provides that no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act and when a winding up order has been made no suit or other legal proceeding shall lie or be proceeded with against the society or liquidator except by leave of the Registrar and subject to such terms as he may impose. Shri Warad, the learned Counsel for the respondent has submitted that the respondents have obtained a previous sanction from the Assistant Registrar of the Co-operative Societies u/s 107 of the Act. This fact has not been denied by the learned Counsel for the petitioner. On the other hand, it appears that the said sanction accorded by the Assistant Registrar of the Co-operative Societies, u/s 107 of the Act, was questioned in appeal by the petitioner before the Divisional Joint Registrar, Co-operative Societies, Aurangabad. The appeal was dismissed on March 23, 1980. The petitioner also filed revision before the Government but same has also been dismissed on October 6, 1986. It is in these circumstances of the case, there is no merit in the revision application.

9. The result is that the revision application fails and is rejected. Rule is discharged with costs.