

(1991) 04 KAR CK 0013
In the Karnataka High Court
Case No : R.S.A. No. 64/1991

Baburao and Another

APPELLANT

Vs

Assistant Registrar, Co-operative Societies

RESPONDENT

Date of Decision : 15-04-1991

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 118(3)

Citation : (1992) 1 KarLJ 84

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. This appeal is without any merit whatsoever.
2. Plaintiffs suit for injunction based on possession was decreed by the trial Court despite the plea of the defendant Co-operative Society that it had obtained an award in a dispute raised under Section 70 of the Karnataka Co-operative Societies Act and that the plaintiffs deceased father who was the other party to the award had incurred a debt of over Rs. 48,000/- which was for legal necessity and that the award having become conclusive in terms of Section 101 of the Karnataka Co-operative Act, the notice issued by the Society calling upon the plaintiff to vacate and hand-over possession of the suit schedule lands failing which steps would be initiated to take possession in accordance with law could not have been construed as entitling the plaintiff for an injunction.
3. Despite such clear pleading the learned Munsiff considered that the plaintiff was in lawful possession and the notice issued by the defendant Co-operative Society of which the plaintiff's father a member, who had suffered an award in a dispute between the Society and himself amounted to interference with his peaceful possession and granted injunction.
4. On appeal, the lower appellate Court allowed the appeal of the Society, disallowing an application moved by the counsel for plaintiffs-respondents to amend the suit prayer to include relief of setting aside the award made by the Arbitrator under Section 70 of the Co-operative Societies Act against their father as the award is without jurisdiction supported by only memo of facts filed by the

defendant. That amendment application was dismissed by the lower appellate Court only on the ground of Section 118(3) of the Karnataka Co-operative Societies Act, 1959. Even otherwise, such a relief would change the cause of action and could not have been ordinarily permitted even under Order 6, Rule 17, C.P.C. without reference to ouster of jurisdiction under Section 118 of the Karnataka Co-operative Societies Act.

5. The lower appellate Court also found that the award having been passed and having become final and binding, the successors-in-interest could have prosecuted the remedies provided under the Co-operative Societies Act and not resist legal proceedings by filing a suit. It came to the conclusion, issuance of notice would not amount to interference with their peaceful possession and therefore, respondents plaintiffs were not entitled to the injunction. He allowed the appeal.

6. Having regard to the express and total bar of the Civil Court's jurisdiction under sub-section (3) of Section 118 of the Co-operative Societies Act to go behind an award which is a decree, the trial Court had clearly erred in granting injunction without sufficient examination of the law applicable.

7. I may not fail to notice that apart from reasons given by the learned Civil Judge, under appeal, Section 41(b) of the Specific Relief Act excludes jurisdiction of the Court to issue injunction restraining any person from initiating legal proceedings. Even on that ground, the suit was never maintainable. All that the defendant Co-operative Society attempted by issuing Exhibit P.7 was to tell that they were going to recover possession by initiating legal proceedings.

For the reasons stated above, this second appeal fails and it is dismissed.

Mr. Savanoor, at the conclusion of his arguments, did submit that he will seek instructions of his client and withdraw the suit itself. I do not know how that would help. Further delay of the disposal of the appeal is the only result as notice would have to go to the other side. Having filed this suit and initially obtaining success, the legislative-intent in enacting Co-operative Societies cannot be frustrated by having recourse to such action as withdrawal of the suit when it is found to be inconvenient to prosecute the suit itself.

Appeal stands dismissed subject to the above observation.