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(1951) 11 KAR CK 0007

In the Karnataka High Court

Case No : Regular Appeal No. 12/1948-49

Byappanahalli Muniamma APPELLANT

Vs

Arale Chikkaveeranna and Another RESPONDENT

Date of Decision : 26-11-1951

Acts Referred:

Mysore Co-operative Societies Act, 1948 — Section 43 A, 43 C
Mysore Land Revenue Code, 1888 — Section 221 (c)

Citation : AIR 1952 Kar 105

Hon'ble Judges : Medapa, C.J;Vasudevamurthy, J

Bench : Division Bench

Advocate : A.R. Somanatha Iyer, for Guhu Sreenivasa Rao, for the Appellant; E. Kanakasabhapathi, for the Respondent

Judgement

Vasudevamurthy, J.—The Plaintiff, whose suit for a declaration, that a sale held by the Revenue authorities of the plaint schedule properties was a nullity, has been dismissed, has preferred this appeal. Her case is, that out of the four items set out in the plaint schedule, she bought item 4 and other properties from their previous owner one Subbarama Rao on 29-11-1935 subject to payment of a debt of Rs. 2,000/- due by the latter.

In order to discharge that debt, she and her husband who is, however, said to have no interest in those properties mortgaged them without possession in favour of defendant 1 which is a Co-operative Society. Subsequently, some payments were made towards that debt and to recover the balance defendant 1 instituted proceedings before the Registrar of Cooperative Societies and obtained a decree in R. C. S. Dispute No. 7/40-41 for Rs. 2,844/-. The said decree was put in execution before the Revenue authorities and the plaint schedule items were brought to sale. At that sale item 4 was knocked down in the name of defendant 4 for Rs. 4,100/- and the other items were purchased by the Society itself.

That sale is said to be a nullity for several reasons alleged in the plaint, the chief one among them and which is seriously pressed before this Court being that it

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was held by the Revenue authorities after an order of stay was passed by the Registrar of Co-operative Societies. The defendants denied that a stay order had at all been passed by the Registrar, and they pleaded that even if it were so the same would not be binding on the Revenue authorities; that the sale was duly held and confirmed and that the plaintiff could not question the same in a Civil Court in view of the terms of Section 221(c) of the Mysore Land Revenue Code.

The defendants further pleaded that the suit was barred by time. The learned Subordinate Judge held that there were no irregularities whatsoever affecting the sale in question, and the plaintiff had not established any fraud in the conduct of the sale and, therefore, the suit was barred u/s 221(c) of the Mysore Land Revenue Code. He held that the suit was to be governed by Article 95 of the Limitation Act and as it had been brought more than 3 years after the sale, the suit was clearly barred by time. He, therefore, dismissed the suit.

2. In this Court, it is contended for the Appellant that the findings of the learned Subordinate Judge are not correct. It is urged that the Registrar of Co-operative Societies did as a matter of fact stay the sale and that the effect of such stay would be to render null and void any sale which may have been held by the Revenue authorities who were merely in the position of an executing Court so far as the decree passed by the Registrar was concerned. The argument is, that the Registrar who corresponded with the Court which passed the decree having stayed the sale, the Revenue authorities had no jurisdiction at all to hold1 . the sale which must, therefore, be held to be of no legal effect. (His Lordship considered the order of the Registrar and the evidence and concluded :)

3. We, therefore, agree with the learned Subordinate Judge that the sale was not actually at all stayed by the Registrar.

4. It is contended for the Appellant that the legal effect of the stay would be to nullify the subsequent sale. That question would not really arise in this case in the light of the finding of fact. But as the matter has been argued, we may, however, deal with the argument briefly. This same argument was advanced before the Government, and reliance was also placed upon an earlier Government Order of 4th April 1940 which was to the effect that in such cases the Registrar was in the position of a Court passing a decree ''vis-avis'' the Revenue authorities who were executing it and that the latter cannot refuse to stay execution if the decree-holder wants them to do so. The Government rightly observed that in the present case no Such request had been made by the decree-holder and that the Registrar''s order showed that the decree-holder was to be consulted before granting time to the debtor.

The Registrar does not, we think, really occupy the position of a Court passing a decree, nor do the Revenue authorities of an executing Court as contemplated by the Code of Civil Procedure. u/s 43-A of the Mysore Co-operative Societies Act, VII (7) of 1918 as amended by Regulation VI (6) of 1933 any dispute touching the business of a society between it and its members shall be referred to the

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Registrar for decision. He may decide the dispute himself or transfer it for disposal to any person who has been invested by the Government with powers in this behalf or refer it for disposal to an arbitrator or arbitrators or refer the parties to a Civil Court.

Under Section 43-C, every order passed by the Registrar or his nominee or arbitrator on disputes referred to him or them u/s 43-A shall be executed on a certificate signed by the Registrar by any Civil Court in the same manner as a decree of such Court or according to the law and under the rules for the time being in force for the recovery of arrears of land revenue on an application to the Deputy Commissioner accompanied by a certificate signed by the Registrar or by the Assistant Registrar.

The Act nowhere provides for the Registrar passing orders subsequent to his granting the certificate with a view to control or govern the subsequent proceedings which may be taken in the Civil Court under the provisions of the CPC or of the Revenue authorities under the Mysore Land Revenue Code. Section 43-B and similar provisions in the Co-operative Societies Act refer to his powers to order attachment in the nature of attachment before judgment to summon and examine witnesses in the same manner as in a Civil Court and other powers; but nowhere has power been conferred on the Registrar to control proceedings before the Civil Court or the Revenue authorities subsequent to the same passing under their ambit. That the execution of an award passed under the Co-operative Societies Act on a certificate granted by the Registrar does not stand in the same position as the execution of a decree of a Civil Court for all purposes is supported by the decisions of this Court in ''CITY CO-OPERATIVE BANK LTD., MYSORE v. M. NARASIMHIAH'' 17 Mys. L. J. 470 and ''SHIMOGA CO-OPERATIVE BANK LTD. V. VEENA PUTTA JOIS'' 21 Mys. L. J. 38.

5. It has been contended by Mr. Kanaka Sabapathy that the sale heM by the Revenue authorities subsequent to the order of stay would not be a nullity. He has relied on a case reported in ''JATISH CHANDRA v. KHI-RODE KUMAR'' ILR (1943) 1 Cal 274 which has been followed in ''VYANKATRAO v. SHAMRAO'' ILR (1950) Nag 942. In the latter case, it has been held that an order passed by a Court, or an act done by it, in contravention of an order by the appellate Court, staying the proceedings is irregular, and may even be illegal, but it is only an order passed or an act done in the illegal exercise of its jurisdiction and is not, therefore, a nullity. Unless it is set aside by appropriate proceedings, it cannot be ignored in another suit or other independent proceedings though it can be reviewed by the Court itself as it ought to when it is later on apprised of the stay order, or be set aside in appeal by the appellate Court which issued the stay order. We think there is considerable force in this contention.

6. The Court below has held that the suit is barred by limitation as well as Section 221 (c) of the Land Revenue Code. It is, however, contended by Mr. Somanath Iyer, learned Counsel for the Appellant, that the present suit is brought not for the cancellation of the Revenue sale but only for a declaration

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that the Revenue sale was null and void. ''39 Mys. HCR 547'', is, however, clearly against him, and it has been held in that case that the bar contained in Section 221 (c) of the Land Revenue Code could not be removed merely by changing the phraseology of the section in the relief portion of the plaint in the civil suit.

7. We, therefore, see no grounds to interfere with the decision of the Court below. This appeal fails and is dismissed with costs.

8. Appeal dismissed.

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