(2015) 02 KAR CK 0025

In the Karnataka High Court

Case No : Regular Second Appeal No. 413/2011 (DEC and INJ)

D. Govindappa APPELLANT

Vs

Thimmanna and Others RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Karnataka Co-operative Societies Act, 1959 — Section 105, 118, 118(3), 3
Karnataka Land Revenue Act, 1964 — Section 135

Citation : (2015) 02 KAR CK 0025

Hon'ble Judges : Ravi V. Malimath, J.

Bench : Single Bench

Advocate : B.M. Siddappa, Advocate, for the Appellant; K. Rama Bhat, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ravi V. Malimath, J.—The case of the plaintiffs is that they and defendant No. 5 are brothers and they are the sons of one Thimmaiah @ Amase Thimmaiah who died about 15 years prior to the suit. The plaintiffs and 5th defendant were in possession and enjoyment of the suit schedule properties as co-parceners having inherited the same after death of their father. Since the defendant No. 5 was not cooperating with the plaintiffs he was arrayed as a defendant. That the plaintiffs father Amase Thimmaiah (hereinafter called as Mortgagor) had mortgaged the suit properties in favour of the first defendant Bank, as security for a loan amount of Rs. 3,000/- in the year 1958-59. Certain amounts were repaid to the bank.

2. It is the case of the plaintiff that huge amounts have been re-paid inclusive of interest. That in respect of the non-payment of dues the first defendant filed a dispute before the second defendant Bank and obtained an award. Thereafter the first defendant filed an execution petition against the plaintiff in E.P. No. 9/67-68 before the second defendant, Registrar of Cooperative Societies. The suit

schedule mortgaged property was put up for public auction on 21.8.1968. It was sold to one K Doddaiah, father of defendant No. 4 for Rs. 3,850/-. The sale was confirmed on 24.11.1969. A sale certificate was issued on 9.3.1970. No notice has been issued to the mortgagor either in the dispute or in the execution. That such an award and execution is improper since the entire loan amount was repaid. That the first respondent had an obligation in law to intimate the plaintiff with regard to the dues and the proposed sale. That the alleged arbitration proceedings, execution, confirmation as sale are illegal, concocted and behind the back of the plaintiff/mortgagor. Since the possession was being disturbed by the alleged purchaser, the plaintiff has filed O.S. No. 461/93 for injunction. It is in that suit, the defendants produced all the relevant material. It is only then that the plaintiff came to know about the details of the execution, sale, etc., Hence the suit was dismissed with a liberty to the plaintiff to file a fresh suit and hence the instant suit was filed seeking for a decree that the plaintiffs and defendant No. 5 are the lawful owners in possession of the suit schedule property and to declare the sale deed dated 9.3.1970 executed in favour of the father of the 4th defendant as null and void.

3. On service of summons the defendant entered appearance and denied the suit averments. Defendant No. 1 remained absent. He was placed ex-parte. Defendants 2 and 3, the Assistant Registrar of Cooperative Societies and the Tahsildar have appeared through the District Government Pleader and filed a joint written statement. Defendant No. 4 the purchaser of the property contested the suit. The defendant No. 5 is the brother of the plaintiff. The defendant No. 4 took up a plea that the suit is not maintainable in terms of Section 118 of the Karnataka Cooperative Societies Act, 1959. That he is a bona fide purchaser for a value. That documentation has been completed in accordance with law. That no fault could be placed with the defendant for having purchased the said property. Hence it is pleaded that the suit be dismissed.

4. Based on the pleadings the trial court framed the following issues:

"1. Whether plaintiffs prove that they alongwith defendant No. 5 are the lawful owners of suit properties?

2. Whether plaintiffs prove that, the sale certificate dated 9.3.1970 in E.P. No. 9/67-68 issued in favour of father of defendant No. 4 is illegal and concocted and not binding on themselves and defendants?

3. Whether plaintiffs are entitle for directions to defendant 3 for entering their names and name of defendant No. 5 in all the registers of records pertaining to suit properties by canceling name of defendant 4''s father?

4. Whether the plaintiffs prove that, the mutation of the name of defendant 4''s father in the concerned records is not in accordance with law?

5. Whether the plaintiffs prove their lawful possession over suit properties?

6. Whether the plaintiffs prove that their father was not at all due to pay any

instalments to defendant No. 1 in the year 1967-68?

7. Whether plaintiffs further prove that, the arbitration proceedings, execution proceedings, confirmations of sale, issue of sale certificate are all illegal concocted and without the notice of mortgagor?

8. Whether the plaintiffs prove that the sale certificate issued in favour of Doddaiah dated 9.3.1970 is not enforceable and no right of interest is passed in favour of Doddaiah?

9. Whether the suit is not maintainable for non-issuance to notice under Section 80 of CPC?

10. Whether the suit is not maintainable in view of Section 135 of Karnataka Land Revenue Act?

11. Whether the suit is not maintainable in view of the availability is efficacious remedy under the Karnataka Cooperative Societies Act?

12. Whether the suit is barred by limitation?

13. Whether plaintiffs are entitled for reliefs?

14. What decree or order?"

Issues 1 to 9, 12 and 13 were held in the negative; issue No. 10 was held partly in the affirmative, issue No. 11 was held in the affirmative and the suit was dismissed.

Aggrieved by the same the plaintiff preferred an appeal. The appeal was allowed. The judgment and decree of the trial court was set aside. The suit of the plaintiff was decreed holding the plaintiff and defendant No. 5 as owners and in possession of the suit schedule property. The sale certificate dated 9.3.1970 was held as null and void. It was directed to enter the names of the plaintiffs and defendant No. 5 in the record of rights, etc., Aggrieved by the same, defendant No. 4 has filed this second appeal.

5. The appeal was admitted by the order dated 21.07.2014 to consider the following substantial questions of law:

"1. Whether the first appellate court was right in sitting on judgment over the validity of the arbitral proceedings and the execution proceedings without having jurisdiction on it?

2. Whether the Civil Court had a jurisdiction to entertain a suit questioning the validity of the auction sale conducted in pursuance of the arbitration award which has reached finality?

Both the learned counsels submit that the questions of law requires to be reframed.

6. I have heard the learned counsels with regard to the reframing of the

substantial question of law. Consequently, the same is reframed as follows:

"Whether the suit of the plaintiff is maintainable in view of the bar of Section 118(3) of the Karnataka Cooperative Societies Act, 1959?"

7. Heard the learned counsels on the same.

8. The plea of the plaintiff is one for a declaration that he is the owner in possession of the suit schedule property. His ownership and possession is claimed based on his possession of the suit schedule property and to hold that the sale confirmed in favour of the 4th defendant is null and void. Therefore, what is sought to be contended is that the proceedings as initiated by the second respondent Registrar of Cooperative Societies with regard to the dispute that was raised for the non payment of the loan amount, the consequential sale proceeds and the execution that is taken out are all null and void. Though no notice of the same has been issued to the plaintiff, that in the absence of the plaintiff being made aware of the proceedings of the second defendant all the proceedings should be declared as null and void. Consequently, the declaration of title should be granted. The primary contention of the 4th defendant is one of maintainability of the suit. The trial court framed issue No. 11 as to whether the suit is not maintainable in view of the availability of an efficacious remedy under the Karnataka cooperative Societies Act?.

9. The issue was held against the plaintiff that the suit is not maintainable. As against the said issue the first appellate court framed an issue as to whether the defendants prove that the suit is not maintainable as the award is already passed in respect of the suit properties against the father of the plaintiffs under the Act.

10. The issue was one of maintainability of the suit. The trial court went into the merits of the award. Whether the award was justifiable or whether it was in tune with the law and facts is a secondary question that the court should not have been concerned with. The primary objection of the defendant with regard to maintainability of the suit was required to be reconsidered by the appellate court, in view of the fact that the trial court had held that the suit is not maintainable.

11. Section 118(3) of the Karnataka Cooperative Societies Act reads as follows:

"118. Bar of jurisdiction of Courts.--

(1) xxxxxxxxx

(2) xxxxxxxxx

(3) Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any Court on any ground whatsoever."

The bar as contended therein is clear and cogent. It does not call for any interpretation. It refers to any order whatsoever passed under the Act. Therefore, it engulfs not only the arbitrary proceedings, the sale as well as execution or any other order i.e., passed under the Act. Therefore, in terms of sub Section 3 of Section 118 , the suit by the plaintiff was rightly rejected by the trial court. The first appellate court therefore fell in error in going into the merits of the suit. Whether the award has been passed in respect of the suit properties is not a question for consideration when the suit of the plaintiff itself is not maintainable. Hence I have no hesitation to hold that the first appellate court has committed an error in holding that the suit is maintainable.

12. The learned counsel for the respondent places reliance on the judgment in the case of Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others, with reference to para 48 to contend that the bar as enunciated in a statute would have to be qualified therein. The Hon''ble Supreme Court relying on the earlier Supreme Courts judgment in the case of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, laid down certain principles relating to exclusion of jurisdiction of Civil Courts. The clause therein which would be reliable so far as clause (b) is concerned which would read as follows:

"(b) "Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. xxxxxx"

However, this is not the case of the plaintiff at all. He does not plead that even though there is a bar of jurisdiction in the statute, the adequacy or sufficiency of the remedies provided is not appropriate. It is only when such a plea is taken, notwithstanding the bar in the statute that the remedy sought to be provided under the Act is neither efficacious nor sufficient, it is even then that the civil court may have a jurisdiction to entertain the suit, notwithstanding such a bar. However, that is not the case pleaded by the plaintiff herein.

13. The principles enunciated therein fell for consideration in terms of the interpretation of Section 53 of the Hindu Religious and Charitable Endowments (Tamil Nadu) Recognized Private Schools (Regulation) Act, 1973, in terms of Section 53, which reads as follows:

"53. No civil court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with by any authority or officer mentioned in this Act"

Therefore, Section 53 therein was a qualified bar on the Civil Court to try any dispute as narrated therein. The dispute therein relating to any question which is required to be decided or dealt with by any authority or officer mentioned in the Act. Therefore, it was only for those proceedings that the civil court was barred from trying the suit. There was no bar for the civil court to entertain other matters.

14. Under these circumstances, I''am of the view that the said decision would not come to the aid of the respondent/plaintiff. The bar as contended under Section 118(3) is a clear bar. The first appellate court therefore misguided itself in going

into the merits or demerits or claim of the appellant. Consequently, the substantial question of law is answered by holding that the civil court was barred to try the suit in terms of Section 118(3) of the Karnataka Cooperative Societies Act.

15. The remedy as provided to the plaintiff in terms of the impugned order is as provided in Section 105 of the Karnataka Cooperative Societies Act, 1989. That an appeal should be filed within 60 days. Therefore, the appropriate remedy for the plaintiff is to exercise his right under Section 105 of the Act. Under these circumstances, it is needless to state that as and when such an appeal is filed, the tribunal would necessarily have to take into consideration the pursuit of the plaintiff in all these three forums and accordingly deal with the question of limitation.

16. The appellate court granted an injunction against the defendant No. 4/ appellant from interfering with their peaceful possession of the suit schedule properties. This court by its order dated 25.2.2011 directed status quo for a period of four weeks. In the pecuniary facts and circumstances of the case, I''am of the view that the interim order of status quo granted earlier requires to be continued.

17. Under these circumstances, the order of status quo shall continue till the end of June, 2015. The appeal is allowed with the above observations.

18. Parties to bear their own costs.

