

(2014) 11 KAR CK 0119

In the Karnataka High Court

Case No : Civil Revision Petition No. 542 of 2013

Deepa House Building Co-Operative Society Limited

APPELLANT

Vs

Vaikuntegowda and Others

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 125

Citation : (2015) 3 AKR 215 : (2015) 1 KarLJ 505 : (2015) 4 KCCR 2983

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : S.P. Kulkarni, Advocates for the Appellant; Sunil Kumar P. Bangari for M. Shivaprakash, Advocates for the Respondent

Judgement

Aravind Kumar, J.—Defendant 7 in O.S. No. 468 of 2012 is challenging the correctness and legality of order passed by II Civil Judge, Judicial Magistrate First Class, Mysore, dated 6-9-2013, whereunder objection raised by defendant 7 regarding maintainability of suit for want of notice issued under Section 125 of the Karnataka Co-operative Societies Act, 1959 (for short, the "Act"), has been rejected and plaintiff has been permitted to proceed with the suit, has been called in question in this revision petition. I have heard the arguments of Sri S.P. Kulkarni, learned Counsel appearing for revision petitioner-defendant 7 and Sri Sunil Kumar P. Bangari, learned Counsel appearing on behalf of Sri M. Shivaprakash, for respondents 1(a) to 1(e). Respondents 2 to 7 are served and unrepresented.

2. Short point that is involved in this revision petition is:

"Whether objection raised by defendant 7 before Trial Court regarding non-maintainability of suit for want of issuance of notice by plaintiff under Section 125 of the Co-operative Societies Act, 1959, was required to be upheld held by Trial Court?"

3. Plaintiff-deceased Sri Vaikuntegowda instituted a suit in O.S. No. 468 of 2012

against defendants for partition and separate possession claiming half share in the suit schedule property i.e., agricultural land bearing Sy. No. 246/4 measuring 32 guntas morefully described in plaint schedule on the ground that it is a joint family property and defendants 1 to 5 could not have sold the said property in favour of defendants 6 and 7 under sale deeds dated 27-8-2005 and 16-5-2009.

4. On service of suit summons, defendant 7 appeared and filed its written statement denying the averments made in plaint and specifically contending that suit against defendant 7 is not maintainable for want of notice under Section 125 of the Karnataka Co-operative Societies Act having not been issued and as such, suit against defendant 7 should not be entertained.

5. Trial Court after considering the rival contentions raised in this regard, has rejected the said plea of defendant 7 and held that suit is maintainable on the ground that relief sought for by plaintiff is for partition and possession and it does not relate to the constitution, management or business of society so as to require the plaintiff to issue a notice under Section 125 of the Act vide order dated 6-9-2013, which is under challenge in this revision petition.

6. It is the contention of Sri S.P. Kulkarni, learned Counsel who is appearing on behalf of Sri K. Srikanth Patil, for revision petitioner with the leave of Court that order passed by Trial Court is erroneous, contrary to statutory provision namely, Section 125 of the Act and ignoring the fact that main business of the society is to form sites to sell/allot to its members and non-consideration of judgment of the Full Bench in the case of The Krishi Mattu Ksheera Utpadaka Vividhoddessa Sahakari Sangh Niyamit Bakkal and Another Vs. Sohanlal, has resulted in an erroneous order being passed and as such, he seeks for setting aside the order passed by Trial Court and prays for dismissal of the suit against defendant 7. In support of his submission he has relied upon the following judgments:

- i. Krishi Mattu Ksheera Utpadaka Vividhoddessa Sahakari Sangh Niyamit's case;
- ii. The Arogyanagar Co-operative Housing Society Ltd. and Another Vs. Fakiragouda and Another, ;
- iii. Sri Bharathi Warehousing Corporation and Polisetty Somasundaram (Firm) Vs. Shreeshyala Co-operative Industrial Estate Ltd., Smt. Shaila Hegde, M.S. Rashme Hegde Gopi and Shreeshyala Builders (P) Ltd. ;
- iv. The Karnataka Handloom Devlpt. Corpn. Ltd. Vs. Mandya Dist. Central Co-op. Bank Ltd.,

7. Per contra, Sri Sunil Kumar P. Bangari, learned Counsel appearing for respondents 1(a) to 1(e) would support the order passed by Trial Court.

8. Since the issue or point formulated hereinabove relates to Section 125 of the Act, same is extracted herein below for convenience. It reads as under:

"125. Notice necessary in suits.--No suit shall be instituted against a co-operative society or any of its officers in respect of any act touching the constitution,

management or the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left".

9. A bare perusal of said section would indicate that no suit can be instituted against a co-operative society or any of its officers in respect of any act touching the constitution, management or business of such society until the expiration of two months next after notice in writing has been issued to the said society. Interpretation of Section 125 of the Act came up for consideration before the Full Bench of this Court in the case of Krishi Mattu Ksheera Utpadaka Vividhoddesh Sahakari Sangh Niyamit's case. Full Bench after considering the arguments advanced by the learned Advocates appearing therein, has held as under:

"In the light of the foregoing dictum of the Supreme Court there can possibly be no doubt at all that the expression "any act" appearing in Section 125 is referable not merely to an illegal omission but also to an omission simpliciter. In the circumstance it behoves on our part to fall in step with the views of the Apex Court as aforesaid and in the light of the same to hold that the expression "any act" referred to in Section 125 is not confined to illegal omissions alone but also covers a mere omission simpliciter. In fine our Answers to the Questions formulated are:

(1)(i) Notice under Section 125 is mandatory, where the act in question is with reference to the society. Such notice is also necessary if the "act" in question is with reference to an officer of the society and the "act" or omission complained of relates to the constitution, management or business of the society.

(ii) Notice is also mandatory where the "act" in question covers both the society and the officer.

(2) The expression "any act" referred to in Section 125 of the Act is not confined to illegal omissions alone but also covers a mere omission simpliciter".

(emphasis supplied)

10. Three (3) other judgments relied upon by Sri S.P. Kulkarni, learned Counsel for defendant 7 is in line with the law laid down by the Full Bench in the case of Krishi Mattu Ksheera Utpadaka Vividhoddesh Sahakari Sangh Niyamit. As such, referring to those judgments would only be repetition and as such, they are not delved upon in this revision petition.

11. Full Bench after analysing the provision of Section 125 of the Act has held that words "any act" appearing in Section 125 of the Act is referable not merely to an illegal omission but also to an omission simpliciter. In other words, it has been held that such omission simpliciter is referable to the act of omission committed by the society and its officer. It has been further held, when such omission is called in question in a Court of law, such suit or proceedings has to

be preceded by issuance of notice as required under Section 125 of the Act. Thus, it will have to be examined on the facts of each case as to whether plea put forward by the plaintiff would relate to "any act" touching the constitution, management or business of the society so as to bring such suit or proceeding within the sweep of Section 125 of the Act and thereby either uphold the plea regarding non-maintainability of suit or reject said plea on the ground that it would fall outside.

12. Keeping the principles laid down by the Full Bench in the case referred to supra in mind, when facts on hand are examined, it would clearly indicate that relief claimed by plaintiff is as under:

- (a) For partition and separate possession of plaintiff's half share by metes and bounds in all the schedule properties;
- (b) Further put the plaintiff's half shares separately into his possession;
- (c) For mesne profits;
- (d) For Court costs; and
- (e) Such other appropriate relief as the Hon'ble Court deems fit to grant in the circumstance of the case, in the interest of justice and equity.

13. Plaintiff is seeking for relief of partition and separate possession in respect of suit schedule property. Incidentally, in the pleading it has been contended by plaintiff that husband of first defendant and father of defendants 2 to 5 late Sri Cheluvegowda during his lifetime had fraudulently and misrepresenting himself as only son of Smt. Honnamma had got the khatha of suit schedule property changed to his name contrary to all norms. There is no plea against defendants 6 and 7 except to the extent of showing that defendants 1 to 5 have sold the suit schedule property in favour of defendant 7 under the sale deed dated 16-5-2009. Thus, it cannot be held that "act" alleged by plaintiff against defendant is either act simpliciter or otherwise touching the constitution, management or business of 7th defendant-society, so as to uphold the contention of 7th defendant-society regarding non-maintainability of suit in question. In fact, Trial Court has also taken note of unreported judgment in the case of The Chairman, Someshwar Farmers Co-operative Spinning Mill Limited, Dharwad v. Sri Gurappa Sankappa Hadapad alias Navi and Others, in W.P. No. 67954 of 2012 (GM-CPC), disposed of on 10-10-2012 to arrive at a conclusion that in a suit for declaration, partition and possession, it would not be the subject-matter touching the constitution, management or business of society, so as to require the plaintiff to issue notice under Section 125 of the Act before filing such suit. In the said judgment it has been observed by the Co-ordinate Bench as under:

"4. The Trial Court having considered the pleadings of the parties and extracting Section 125 of the Act, observed that a suit against any Co-operative Society in respect of any act touching the constitution, management or the business of the Society, mandates the issue of two months prior notice. Since the relief in the

suit did not touch upon either the constitution, management or the business of the Society, the Trial Court held that no notice was necessary under Section 125 of the Act and further observed that there was no necessity to make the Managing Director of the Society to make as party since Chairman of the Society was arraigned as defendant 2 and accordingly by order impugned, rejected the application".

14. Though Sri S.P. Kulkarni, learned Counsel appearing for revision petitioner-defendant 7 would vehemently contend that said order was passed based on the concession or conceding of the plea before the Court by the learned Counsel for plaintiff therein, I am not impressed by the said argument, inasmuch as, Co-ordinate Bench of this Court having examined the plea at paragraph 4, has held that such notice was not required to be issued before the institution of suit. It also incidentally noticed that learned Counsel for plaintiff had accepted the said proposition and as such, order came to be passed by the Co-ordinate Bench of this Court and as such it cannot be construed as an order passed after the learned Counsel had conceded. Hence, this Court is of the considered view that there is no irregularity or illegality committed by the Trial Court in rejecting the plea of defendant 7 with regard to maintainability of suit calling for exercise of revisional jurisdiction by this Court. For reasons aforestated, I proceed to pass the following:

ORDER

(i) Revision petition is hereby dismissed.

(ii) Order passed by II Civil Judge, JMFC, Mysore, dated 6-9-2013, is hereby affirmed.

(iii) No costs.

In view of revision petition having been dismissed, I.A. No. 1 of 2014 does not survive for consideration and same stands dismissed.