
(1942) 12 MAD CK 0024
In the Madras High Court

K. Satyanarayanappa and Others

APPELLANT

Vs

Rahimatullah Sahib and Others

RESPONDENT

Date of Decision : 07-12-1942

Acts Referred:

Madras Co-operative Societies Act, 1932 — Section 51

Citation : AIR 1943 Mad 560 : (1943) 56 LW 183 : (1943) 1 MLJ 287

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The question in these appeals is whether the suits out of which they arise are maintainable. They were filed in the Court of the District Munsif of Anantapur. The District Munsif held that by reason of Section 51 of the Madras Co-operative Societies Act, 1932, they were not maintainable and this decision was concurred in on appeal by the District Judge of Anantapur. The appeals are from the decrees passed by the District Judge. As we are of the opinion that the suits are maintainable to a limited extent it is necessary to set out the facts.

2. The Plaintiffs in both the suits are the sons of one Venkataramappa, who is now dead. Venkataramappa was a member of the Alamur Co-operative Credit Society. He was indebted to that Society in respect of two loans made by the Society to him. Each loan was secured by a mortgage of Immovable property. The father was joint with his sons and the property mortgaged was family property. The debts were not repaid and the Society was compelled to institute proceedings under the Act for the enforcement of the mortgages. In due course awards were obtained and these were executed by the sale of the mortgaged properties, which were bought by the contesting respondents in these appeals. S. A. No. 910 of 1941 arises out of O.S. No. 183 of 1938 of the Court of the District Munsif of Anantapur and S. A. No. 1167 of 1941 out of O.S. No. 4 of 1938 of that Court. In O.S. No. 183 of 1938 the defendants were the first respondent in S. A. No. 910 of 1941 and the Co-operative Society. In O.S. No. 4

of 1938 the defendants were the three purchasers of the properties sold in execution of the awards; the President of the Co-operative Society; the plaintiffs' father, who died pending the suit and the manager of the Society. In the suit first mentioned the plaintiffs alleged that the sale was illegal because the rules had not been complied with and that the properties had been purchased at prices which were inadequate. They also raised the plea of limitation. They averred that they were in possession of the properties and merely asked that the sales should be set aside. In O.S. No. 4 of 1938 they raised similar pleas and added a plea that their father had contracted the loan for his own immoral purposes. Here they asked for a declaration that the proceedings taken by the Society in which the awards were obtained were not binding upon them, for an order directing the auction purchasers to deliver the properties to them and for an order for mesne profits.

3. Section 51 of the Madras Co-operative Societies Act provides that if a dispute touching the business of a Society arises between a member, past member or person claiming through a member, past member or deceased member and the Society, its Committee, or an officer, agent or servant of the Society, the dispute shall be referred to the Registrar for decision. The father was a member of the Society and it appears that the first and second plaintiffs were also members. The family, as such, was not a member and we do not share the opinion expressed by the Nagpur High Court in AIR 1933 211 (Nagpur) that where the father, who is joint with his sons, is a member of a Co-operative Society, it must be presumed that all the members of the joint family are members of the Society. It is not necessary in this case to decide whether a joint family can be a member of a Co-operative Society, for in this case it is not suggested that this family was a member, and the case must proceed on the basis that the father in obtaining the membership did not represent the family.

4. There is nothing in Section 51 which prevents the plaintiffs who were not members of the Society instituting a suit for a declaration that the sales which took place as the result of the awards obtained by the Society did not pass their interests in the properties to the purchasers. Similarly we consider that the two plaintiffs who are said to be members of the Society could also bring a suit against the auction purchasers for similar relief; but if the first and second plaintiffs are members of the Society they cannot bring a suit against the Society in respect of a dispute touching the business of the Society. It is quite clear that the Society has been wrongly made a defendant in O.S. No. 183 of 1938 and that the same applies with regard to the President and manager made parties in O.S. No. 4 of 1938. So far as the Society and its officers are concerned these suits are not maintainable by the first and second plaintiffs because of the provisions of Section 51. There is nothing to prevent the other plaintiffs joining the Society or its officers as defendants, but manifestly they cannot obtain any relief against them. Therefore the Society must be struck out as a defendant in O.S. No. 183 of 1938 and the names of the fourth and sixth defendants in O.S. No. 4 of 1938 must also be struck out.

5. Subject to these directions the appeals will be allowed and the suits remanded to the District Munsif's Court to be tried on their merits. We will add that the prayer of the plaintiff asking for the setting aside of the sales, cannot be granted to them. So far as the interests of the father in the properties sold are concerned the sales will stand because his interests did pass to the purchasers. Whether the plaintiffs are entitled to relief in respect of their shares is another matter. Here the pious obligation rule may have bearing.

6. The costs of the appeals will be made costs in the suits. The Society and its President and manager will retain the costs. awarded to them by the Courts below.

7. The appellants will be entitled to a refund of the court-fee paid on the memoranda of appeal.