(1975) 07 MAD CK 0033

In the Madras High Court

Case No : Second Appeal No. 1187 of 1973

Krishnaswami Gounder APPELLANT

Vs

A.2190 Jambuthurai Kottai Co-operative Society and others RESPONDENT

Date of Decision : 18-07-1975

Acts Referred:

Co-operative Societies Act, 1961 — Section 100

Citation : (1975) 07 MAD CK 0033

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : Balasubramaniam, for the Appellant; N.S. Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

Mohan, J.—O.S. No. 579 of 1971 was preferred before the file of District Munsif, Madurai, for declaration and mandatory injunction and the plaintiff''s allegations are briefly as follows-

The suit properties originally belonged to F. Malaya Gounder the 3rd defendant. The second defendant had obtained a decree against the 3rd defendant in O.S. 359 of 1968 on the file of the District Munsif Court, Madurai.

The suit properties were attached in execution of his decree in E. P. 85 of 1969 on 8-3-1969 and were brought to sale on 23-2-1970. The plaintiff purchased it for Rupees 1300 subject to the encumbrance and the sale was confirmed on 30-4-1970. E. A. No. 564 of 1970 was filed for delivery of the properties and the same was effected on 6-6-1970, and the delivery was also recorded as on 8-6-1970. Ever since the date he had been in possession and enjoyment of the properties is seen from the patta and kist receipts. While that being so, the first defendant obtained an award decree in A. R. C. 141 of 1968 before the Deputy Registrar of Co-operative Societies and in execution of that award he came to purchase the property on 24-11-1969 itself. When the plaintiff wanted to take delivery of the possession he was obstructed by the first defendant and his men and hence the suit.

2. The first defendant filed a written statement stating as follows. The property has been purchased by this society on 24-11-1969 itself in execution of the award decree obtained against the 3rd defendant and that therefore any subsequent sale in favour of the plaintiff, be it a court sale, will not divest the title of the first defendant and as between the competing titles, the title of the society ought to be preferred it being earlier in point of time. It is a valid sale, by which the property had already been sold and therefore the plaintiff derived no title. The learned District Munsif of Madurai who tried the suit decreed in favour of the plaintiff holding that the court sale ought to be preferred to that for the sale in execution of the award obtained under the Co-operative Societies Act. He also held that the bar u/s 100 of the Co-operative Societies Act, 1961 could not oust jurisdiction of the civil court.

3. On appeal, in A.S. No. 332 of 1972 the learned Subordinate Judge of Madurai reversed the finding and set aside the decree. Against this, the present second appeal has come to be preferred.

4. Mr. Balasubramaniam, learned counsel for the appellant, contends that the finding of the lower appellate court about the bar of jurisdiction u/s 100 is incorrect in view of the later judgments of the Supreme Court and one such is in Shree Raja Kandregula Srinivasa Jagannatha Rao Pantulu Bahadur Garu Vs. State of Andhra Pradesh, . At page 73 their Lordships of the Supreme Court set out the grounds on which the jurisdiction of the civil court should be excluded. The first ground mentioned is :

1. Where the statute gives a finality to the orders of the special tribunal the civil court''s jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

Relying on the above principles, it is contended that the provisions of the Act have not been complied with and therefore the bar u/s 100 of the Co-operative Societies Act cannot be invoked as against the appellant. It is further submitted by the learned counsel that his sale ought to be preferred since the sale by the Society, in favour of itself, is vitiated by fraud and illegality, lastly it is submitted that from the date of purchase, the plaintiff was alone in possession and enjoyment as seen from Exs. A. 15 to A. 18 the patta issued in his favour and Exs. A. 19 to A. 22 the kist receipts.

5. Per contra Mr. N.S. Srinivasan submits that his sale is prior in point of time, namely, 24-11-1969 while that of the plaintiff is later. There is absolutely no evidence to show that the sale is in any way vitiated by fraud or illegality. The bar under Sec. 100 read with R. 69 (7) could be validly invoked in this case.

6. On a careful consideration of the above submissions, I come to the following conclusions:

1. The sale in favour of the Co-operative Society is dated 24-11-1969 while the sale under which the plaintiff got title is dated 30-4-1970. Undoubtedly therefore the prior sale in favour of the Co-operative Society has to prevail. If the civil court had been informed of the earlier sale there would not have been an occasion for the court sale at all because in view of the previous sale in favour of the Co-operative Society the judgment debtor namely 3rd defendant had lost all his rights title and interest in the suit property and therefore the court sale could not convey any right in favour of the plaintiff. So on merits, there is no difficulty in concluding that the first sale has to prevail, irrespective of the fact whether the civil court has jurisdiction or not.

7. Inasmuch as the point relating to the jurisdiction has been elaborately argued I also think it necessary to deal with the same. The reliance placed in Shree Raja Kandregula Srinivasa Jagannatha Rao Pantulu Bahadur Garu Vs. State of Andhra Pradesh, by the learned counsel for the appellant is misconceived. This is not a case in which there is any non-compliance with provisions of rule nor again is this the case where statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. In fact, the first half of the provision extracted above will clearly govern this case. It is stated there-

Where the statute gives a finality to the orders of the special tribunal the civil courts'' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit.

In this connection, I find the reliance placed on Section 100 read with Rule 69 (7) by the learned counsel for the respondent is well founded. Section 100 states as follows-

No order of award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any court.

Rule 69 (7) is to the following effect-

All orders made under the rule shall subject only to the provisions of Section 97 be final and shall not be liable to be questioned in any suit or other legal proceeding.

Apart from there being a finality, there is an ouster of the jurisdiction of the civil court. In a case reported in K. Satyanarayana v. Motu Industries, (P) Ltd., (1963) 1 Andh WR 323, the provisions of the previous Act came up for interpretation. Section 48 of the old Act corresponded to the present Section 100 while Rule 22 was similar to Rule 69. In such a case, after referring to various decisions regarding exclusion of the jurisdiction of the civil court it was held as follows-

It is not open to the plaintiff to challenge the correctness of the award passed by the Deputy Registrar u/s 51 of the Madras Co-operative Societies Act or the sale held pursuant to the said award. The Act has, u/s 57 empowered the Registrar and the State Government to correct the decisions embodied in awards u/s 51. Section 51 (6) expressly bars the jurisdiction of civil and revenue courts to call in question the decision u/s 51. Likewise, Rule 22 of the rules made under the Act provides the procedure to be followed in execution of an award passed u/s 51, and also for setting aside the sales on the ground of material irregularity or fraud. The jurisdiction of the civil courts to set aside the sale is also barred. Therefore, suit for declaration that the sale is void and not binding on the plaintiff and other creditors is barred by the provisions of the Co-operative Societies Act.

It may be noted that the learned Judge who decided the case relied on the decision of this court in Boggrapu Venkatasubbiah and Another Vs. Chenchupalli Peeriah and Others,) wherein Panchapagesa Sastri, J. following the earlier decision in Ramabhakthula Ramayya Vs. Chittoor District Co-operative Deputy Registrar and Liquidator of Co-operative Societies and Others, held-

that a sale in execution of awards of Co-operative Societies cannot be attacked by a suit in a civil court either on the ground of fraud or irregularity in the conduct of the sale or even illegality, and the civil court has no jurisdiction to go into such matters.

I find the court below has relied upon the last of the decisions namely Ramabhakthula Ramayya Vs. Chittoor District Co-operative Deputy Registrar and Liquidator of Co-operative Societies and Others, which is also on point. In this view I have no hesitation in holding that the jurisdiction of the civil court is excluded in the present case. Assuming that the civil court has jurisdiction I find that no evidence whatsoever has been let in on behalf of the plaintiff to prove that the sale in favour of the Co-operative Society was vitiated by fraud, illegality or irregularity. On this aspect of this matter I am in entire agreement with the finding of the lower appellate court which states in paragraph 8 of its judgment:

In the first place I may point out that there is absolutely no evidence worth the name on the side of the plaintiffs to show that the sale was vitiated by any fraud, illegality or irregularity.

Further it is contended by the learned counsel for the appellant that the president of the first defendant Society and the third defendant are close relations and therefore it can easily be inferred that the sale was done in a clandestine way and fraudulent manner. This is too tall a statement and I cannot accept the same. In the absence of evidence regarding fraud, illegality or irregularity it must be held that the sale in favour of the Co-operative Society is valid one.

8. For the above reasons I hold that the second appeal is liable to be dismissed. Accordingly the same is dismissed. There will be no order as to costs. No leave.