
(2012) 01 CHH CK 0049
In the Chhattisgarh High Court
Case No : Civil Revision No. 139 of 2007

Kuber Grih Nirman Co-operative Society Ltd.	APPELLANT
Vs	
Radhe Shyam Shukla and Another	RESPONDENT

Date of Decision : 17-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(d), 115

Citation : (2012) 1 CG.L.R.W. 367

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Advocate : B.P. Gupta, for the Appellant; B.P. Sharma, for the Respondent No. 1, for the Respondent

Judgement

Nawal Kishore Agarwal, J.—Instant revision is directed against the order dated 27-8-2007 passed by VIIth Civil Judge Class-II, Raipur, in Civil Suit No. 175-A/07, whereby and whereunder the applicant's/defendant's objection raised under Order VII Rule 11 of CPC regarding maintainability of the suit has been dismissed. The facts in brief, shorn of details, and necessary for the disposal of this revision lie in/a narrow compass. The suit giving rise to this revision was filed by Radhe Shyam Shukla, the plaintiff, wherein the Kuber Grih Nirman Co-operative Society Ltd. (for short "the Society") and Deputy Registrar, Co-operative Society have been impleaded as defendant No. 1 & 2.

2. The Society i.e. defendant No. 1/applicant is a housing society which acquires land and after carving out the plots allots them to its members thereafter they are transferred in their favour for constructing residential buildings.

3. The plaintiff claimed to be the owner of plot No. B-59 in dispute on the basis of a sale deed dated 17-7-2002 executed by defendant No. 1 in his favour, prayed for a decree declaring that he is the owner in possession of the plot in dispute and the defendant has no right either to cancel or challenge the right, title and interest which accrued in his favour pursuant to sale deed. Plaintiff also claimed a prohibitory injunction restraining the defendant society from interfering

in his possession and also from transferring or alienating the plot in dispute in any manner.

4. The defendant, by filing application under Order VII Rule 11 of CPC raised objection regarding maintainability of the suit for want of notice u/s 94 of Chhattisgarh Co-operative Societies Act, 1960 (for short "the Act, 1960").

5. The trial court, finding inter alia, the suit in question has not been filed against the society in respect of any act touching the constitution, management or business of the society, rejected the defendant's objection. Hence this revision.

6. Shri B.P. Gupta, learned counsel appearing for the applicant would submit plaintiff has failed to complete building construction on the plot in accordance with by-laws of the society and as per his affidavit, and therefore, the defendant has cancelled the sale deed and refunded the amount. Above act of cancellation of sale deed is an act touching the constitution, management and business of the society therefore without issuing notice u/s 94 of the Act, 1960, suit cannot be filed and the trial court has acted without jurisdiction in not rejecting the plaint under Order VII Rule 11(d) of CPC.

7. On the contrary, Shri B.P. Sharma, learned counsel appearing for the respondent No. 1 by placing reliance upon the judgment of M.P. High Court in case of Dr. Kusum Verma and Another Vs. Pritam Singh Gulati and Another, vehemently argued the society, ex facie has parted with its interest in the plot in dispute with the execution of sale deed dated 17-7-02 in plaintiff's favour. The transaction of sale of the plot stood completed with the registration of the sale deed. In case, this sale deed was voidable, its effect could only be taken away by avoiding the same and getting it cancelled through a civil court of competent jurisdiction. So long as voidable sale deed is not cancelled, it continues to remain valid and effective, and therefore, dispute in question, raised by the plaintiff cannot by any stretch of imagination be taken to be touching the constitution, management or business of the society and the trial court has rightly dismissed the defendant's objection.

8. I have heard the counsel appearing for the parties and perused the order impugned.

9. Section 94 of the Act, 1960, reads as under:

94. Notice necessary in suit.--No suit shall be instituted against a society or any of its officers in respect of any act touching the constitution, management or 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.

10. Taking into consideration the nature of claim as set forth in the plaint, in the present case, it is obvious that the dispute raised by the plaintiff cannot by any

stretch of imagination be taken to be as touching the constitution management or business of the society. The society had parted with its interest in the plot in dispute with the execution of sale deed dated 17-7-02 in plaintiff's favour. The transaction of sale of the plot stood completed with the registration of the sale deed. In case, this sale deed was voidable, its effect could only be taken away by avoiding the same and getting it cancelled through a civil court of competent jurisdiction. So long as voidable sale deed is not cancelled, it continues to remain valid and effective.

11. The trial court, placing its reliance upon the judgment of M.P. High Court in case of Kusum S. Verma (Supra) has rejected the defendant's prayer. In my opinion, since the dispute in question raised by the plaintiff is not a dispute touching the constitution, management or business of the society, therefore, Section 94 of the Act, 1960, has no application, and for want of notice suit cannot be held to be bad.

12. The Supreme Court in case of Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, while dealing with exceptional power of High Court, has held: the High Court cannot while exercising its jurisdiction u/s 115 of CPC, correct errors of fact, however, gross they may be, or even errors of law. It can only do so when the said errors have relation to the jurisdiction of the court to try the dispute itself. It is only in cases where the subordinate court has exercised jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked.

13. Further, the Supreme Court in case of D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others, has held in para 8 of its judgment as under:

8. The position thus seems to be firmly established that while exercising the jurisdiction u/s 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities

have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power u/s 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision u/s 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.

14. The Supreme Court in case of *The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway*, has held in para 5 of its judgment as under:

5. In our opinion the High Court had no jurisdiction to interfere with the order of the first appellate court. It is not the conclusion of the High Court that the first appellate court had no jurisdiction to make the order that it made. The order of the first appellate court may be right or wrong; may be in accordance with law or may not be in accordance with law; but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction u/s 115 of the Civil Procedure Code: See the decisions of this Court in *Pandurang Dhondi Chougule v. Maruti Hari Jadhav*, *D.L.F. Housing and Construction Company Private Ltd. v. Sarup Singh*.

15. Considering the facts of the case and the ratio of law laid down by the Supreme Court in the cases referred hereinabove, I do not find any jurisdictional illegality in the order impugned warranting interference of this court in exercise of its revisional jurisdiction. For the forgoing, the revision fails and is accordingly dismissed. No order as to costs.