

(2002) 01 RAJ CK 0158
In the Rajasthan High Court
Case No : Civil First Appeal No. 14 of 1982

Ladu Ram

APPELLANT

Vs

Dabli Kala Gram Seva Sahakari Samiti Ltd.

RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Rajasthan Co-operative Societies Act, 1965 — Section 137(3)

Citation : (2003) 1 RLW 289 : (2002) 2 WLC 584 : (2002) 2 WLN 604

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : P.C. Solanki and S.G. Ojha, for the Appellant; Sanjeev Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Tatia, J.—Heard learned counsel for the parties. Perused the impugned order.

2. This is an appeal against the order dated 1st August, 1981 passed by the learned Addl. District Judge No. 1. Hanumangarh in Civil Original Suit No. 23/80. By this order the learned trial court allowed the application of the defendant under Order 7 Rule 11 CPC and dismissed the suit of the plaintiff.

3. Brief facts of the case are that plaintiff filed suit for declaration and injunction against the defendant Co-operative Society registered under the Rajasthan Co-operative Societies Act, 1965. The plaintiff alleged that plaintiff was working as the Secretary in the defendant Co-operative Society. The Asst. Registrar of the Co-operative Society, Suratgarh on 24th Dec., 1977 illegally instructed Inspector. Co-operative Society, Rawatsar to enquire u/s 74(1) of the above Act against the plaintiff. The Asst. Registrar gave notice on 21st Feb., 1978 to the plaintiff alleging that plaintiff mis-appropriated Rs. 14672.60/-. Therefore, plaintiff should remain present in the office of Asst. Registrar, Suratgarh and he may furnish his reply. According to plaintiff the Asst. Registrar illegally passed the order dated 7th May, 1979 and according to plaintiff this order of the Asst. Registrar is

absolutely illegal, null and void. The plaintiff in his plaint narrated all the 11 charges against the plaintiff and also challenged the finding on each charge in the plaint. It was also submitted that the Asst. Registrar, Suratgarh passed the order without notice to the plaintiff and it is also alleged that by subsequent order plaintiff was exonerated from charge No. 9 and 10. This subsequent order was passed on 22nd May, 1979. The plaintiff further submitted that the Asst. Registrar initiated the proceedings u/s 74(1) Sub-clause (2) after the expiry of period of limitation. Therefore, also, the order is illegal. On the basis of above allegations, the plaintiff sought relief of declaration that the judgment and decree passed by the Asst. Registrar, Suratgarh dated 7th May, 1978 and 22nd May, 1979 may be declared as wrong, illegal and void and, therefore, the decree may be set aside. The plaintiff also sought relief of injunction against the recovery of the amount of Rs. 14726.84/-.

4. The defendant instead of filing written statement submitted an application under Order 7 Rule 11 CPC and submitted that suit of the plaintiff is barred u/s 137 of the above Act. This application was allowed by the learned Judge, trial court holding that the suit is barred u/s 137 Sub-clause (3) of the Act of 1956 because the subject matter of the suit is an appealable order and Section 137 Sub-clause (3) bars jurisdiction of the Civil court. The trial court, therefore, rejected the suit by impugned order dated 1st August, 1981 against which this appeal has been preferred.

5. It is clear from the submissions made by learned counsel for the parties that a short law point involved in this appeal is whether the suit filed by the plaintiff is barred under Sub-clause (3) of Section 137 of the Act of 1965 or not. According to learned counsel for the appellant when there is a fundamental defect in procedure adopted by the authorities in deciding some matters then the jurisdiction of the Civil Courts is not ousted and the Civil Court is competent to examine the matter. According to learned counsel for the appellant even if a clause of exclusion of Civil Court is provided in the Act itself even then the Civil Court's jurisdiction is not excluded in view of the above circumstances. Learned counsel for the appellant relied upon the judgment of the Hon'ble Apex Court delivered in the case of Dhulabhai Etc. v. State of Madhya Pradesh and Anr. (1), and the judgment of the Hon'ble Apex Court delivered in The Allahabad Dist. Co. Op. Ltd. v. Hanuman Dutt Tewari (2), and Anr. judgment on the point is of this court delivered in the case of Deva Ram v. State (3).

6. It is true that the ouster of the Civil Court's jurisdiction cannot be readily inferred and it is true that in the circumstances elaborated in the above judgments, the Civil Courts' jurisdiction is not ousted, even when there is a bar provided under the Act itself. Therefore, in light of the above decisions, we have to examine the facts of the case whether the plaintiff could have made out his case so as to fall within the parameters, which provides that bar of ouster of jurisdiction of Civil court will not come in the way of plaintiff.

7. According to learned counsel for the appellant the manifest error in the

procedure adopted by the authority concerned, which goes to the root of the matter and made the order absolutely without jurisdiction, are that no sufficient opportunity of hearing was given to the plaintiff-appellant and the proceedings were initiated after the expiry of the period of limitation provided in the proviso to Sub-section (1) of Section 74 of the Act of 1965. According to learned counsel for the appellant since the period of limitation for initiating proceedings u/s 74 is only six years, therefore, initiation of the proceedings after the expiry of limitation of six years makes the order itself without jurisdiction.

8. I perused the facts of the case. It is an admitted case of the plaintiff in the plaint itself that notice dated 21st Feb., 1978 was given to the plaintiff, which was, in fact, received by the plaintiff. The plaintiff submitted the reply to the allegations levelled in the notice and, thereafter, the impugned order dated 7th May, 1979 was passed. The plaintiff also annexed the copy of the notice dated 21st Feb., 1979 in which there are total 11 allegations against the plaintiff, which are sufficiently clear, in fact, with respect to the allegations levelled against the plaintiff. The order dated 7th May, 1979 is also annexed by the plaintiff in the suit wherein there is mention of fact that the plaintiff himself appeared for hearing and made oral submissions also and after considering above, the impugned order dated 7th May, 1979 was passed. Therefore, so far as the contention of the learned counsel for the appellant that no notice or opportunity of hearing was provided to the plaintiff, appears to be not correct in view of the facts mentioned in the plaint and notice dated 21st Feb., 1978 and order dated 7th May, 1979 because while considering the matter under Order 7 Rule 11 CPC the court can look into only plaint allegations and the documents submitted by the plaintiff himself and the court cannot look into the defence of the defendant. Here in this case, when the facts come out from the plaint and the documents submitted by the plaintiff, the court can certainly rely upon the above facts and, therefore, the submission of learned counsel for the appellant that the authority has committed manifest error in deciding the matter, by not providing opportunity of hearing to the plaintiff, cannot be accepted.

9. The other submission of learned counsel for the appellant is that the proceedings were initiated after six years of the alleged commission of offence or default or mis-appropriation by the plaintiff for which it is suffice to say that the authority otherwise having jurisdiction to decide the matter, and decides a matter after the prescribed period of limitation or initiates proceedings after the period of limitation then that may makes the order illegal but this cannot be said to be an order of without jurisdiction. There is a sharp distinction between illegal order or order without jurisdiction. Learned counsel for the appellant could not show how the authority had no jurisdiction to pass the order. Therefore, if the plaintiff-appellant was aggrieved on the ground of illegality of the order then the proper remedy was to prefer appeal against the order and the trial court held that there is a remedy of filing appeal against the impugned order and Sub-clause (3) of Section 137 makes the order final and not liable to be challenged in any Court.

10. In view of the above reasonings, the reasons given by the trial court by rejecting the plaint are in accordance with law and the trial court has not committed any illegality in rejecting the suit of the plaintiff. Therefore, there is no force in this appeal and the same is hereby dismissed. No order to costs.