
(1998) 11 CAL CK 0036

In the Calcutta High Court

Case No : Civil Revisional Jurisdiction C.O. No. 25 of 1997

Mahamayatala Housing Co-operative Society Ltd.

APPELLANT

Vs

Charu Chandra Banerjee and Others

RESPONDENT

Date of Decision : 19-11-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 9, Order 22 Rule 10, 115, 47
Co-operative Societies Act, 1973 — Section 3(3)
West Bengal Co-operative Societies Act, 1983 — Section 11, 2(13), 23
West Bengal Co-operative Societies Rules, 1987 — Rule 130, 131

Citation : (1999) 1 CALLT 450

Hon'ble Judges : Samaresh Banerjea, J

Bench : Single Bench

Advocate : Mr. Anupam Chatterjee and Mr. Kamalesh Bhattacharjee, for the Appellant; Mr. M.K. Basu, Mr. D.K. Haldar, Mr. Arabinda Sen and Mr. S.K. Rakshit, for the Respondent

Judgement

S.Banerjea, J.—The present revisional application u/s 115 of the CPC is directed against an order dated October 10, 1996 passed in Misc. Appeal No. 172/1991 by the learned Additional District Judge, Alipore, South 24-Parganas dismissing the appeal and affirming the order dated 28th March, 1991, passed in Misc. Case No. 27 of 1990 by the learned Assistant District Judge, First Court Alipore, rejecting the application of the petitioner under Order 22 Rule 10 of the Code of Civil Procedure.

2. Admittedly, the petitioner herein is not a Co-operative Society registered under the West Bengal Co-operative Societies Act, but is a proposed Co-operative Society (hereinafter referred to as the said society). The said society made an application under Order 22 Rule 10 of the CPC before the Executive Court in a proceeding u/s 47 of the CPC being Misc. Case No. 27/90 arising out of Title Executive Case No. 18/81, Inter alia on the contention that on 1st of May, 1987 by an un-reglstered agreement entered into between the judgment debtor and the said society, the judgment debtor agreed to sell the Impugned land

under certain terms and conditions indicating in the said agreement and pursuant to such agreement a part of the consideration has already been advanced and possession of the land has also been handed over to the said society.

3. Admittedly the suit (being suit No. 83/62) was filed by the decree holder against the judgment debtor for specific performance of contract which was decreed on 13th June, 1967 which was finally upheld by the High Court in 2nd Appeal No. 1584/69 by judgment and decree dated 9th June, 1978. The said decree was executed and the decree holder being the opposite party herein got a sale deed registered through the court.

4. Thereafter in the proceeding u/s 47 read with under Order 21 and Rule 9 of the CPC on 13th February, 1987 such sale deed was set aside by the court with liberty to file fresh application for execution by the decree holder. The decree holder having moved the High Court in Civil Rule No. 1288/87, the High Court directed the executing court to proceed with the execution case from the stage before execution and registration of the sale deed, by an order dated 14th December, 1989.

5. Thus, the aforesaid agreement was entered into between the said society and the judgment debtor on 1st of May, 1987 when the aforesaid execution case was set aside on 13th February, 1987 and it was not stayed by the High Court in the aforesaid Civil Revision case as yet as the rule and stay was Issued on 18th May, 1987.

6. Easing on such fact the contention of the society before the said Executing Court was that such agreement therefore, having created a right, title and Interest of the society on the impugned land and the society also having put in possession thereof the Interest of the judgment debtor devolved upon the society and the application of the said society under Order 22 Rule 10 is liable to be allowed.

7. The Executing Court has rejected the application firstly on the ground that as the said agreement was entered into by the judgment debtor after passing of the decree in the suit for specific performance even though the execution case was set aside with liberty to the decree holder to apply for fresh execution, the judgment debtor had no title to the property after passing of the decree and therefore, such agreement was void and in any view of the matter an agreement of sale does not create any title in the property. The Executing Court also expressed doubt as to the genuineness of the said agreement on the ground that it was hard to believe that an unregistered Co-operative Society will advance Rs. 40,000/- on the basis of a simple unregistered document. The Executing Court also rejected the prayer of the petitioner as the society was an unregistered Co-operative society. It also held relying on a decision of the Andhra Pradesh High Court reported in Evuru Venkata Subbayya Vs. Srishti Veerayya and Others, that a provision of Order 22 Rule 10 of the CPC does not apply to the execution

proceedings.

8. The appeal court has affirmed the order of the trial court firstly on the ground that on 1st May, 1987 the agreement was entered into between the said society and judgment debtor when the decree was very much in existence and setting aside the execution case in the manner aforesaid cannot revive the right, title and Interest of the judgment debtor. The appeal court has also rejected the aforesaid application of the said society relying on a Division Bench decision of the Gujarat High Court reported in Ramji Mandir Narsinhji and Others Vs. Narsinh Nagar Co-operative Housing Society Ltd. and Others, that a Co-operative Society as a legal person can enter into contract only after it is registered and in such view of the matter such proposed society would be deemed to be non-existent in law and members of such society also cannot be individually added as parties.

9. Although there has been some debate amongst the learned counsels of both the parties as to whether the provisions of Order 22 Rule 10 can at all apply in an executing proceedings. It appears to this court such question is no more res Integra in view of a Division Bench judgment of this Hon"ble Court in the case of Indrajit Choubey and Another Vs. Sitaram Agarwalla and Others, where Justice P.N. Mookherjee speaking for the bench held the provision under Order 22 Rule 10 will apply to execution proceedings.

10. It is true as submitted by Mr. Moloy Kr. Basil, the learned counsel appearing for the opposite party that an earlier Division Bench judgment of this Hon"ble Court in the case of Hem Chandra Banerji Vs. Annapurna Debi, expressed its doubt on such question. But the Division Bench in the case of Indrajit Chobey v. Sitaram Agarwal after taking note of the aforesaid decision in the case of Hem Chandra Banerjee v. Nareshchandra, reported in 37 Cal. Weekly Notes 494 as also the decision of the Bombay High Court in the case of Krishnaji Ramchandra Koshti v. Vikchand Ramkaran Maroadi reported in AIR 1942 Bombay 82: the decision of Allahabad High Court in the case of Manmohan v. Kailash Nath reported in AIR 1947 Allahabad page 647, the decision of Orissa High Court in the case of Mahimuddin Vs. Panu Sahani and Others, and also the decision of Patna High Court in the case of Ayodhyalal Mahaseth v. Mahanath Brtjkishore reported in AIR 1940 Patna page 615 held that the decision in the case of Hem Chandra Banerjee v. Annapurna cannot be approved in view of the aforesaid preponderance of judicial authority.

11. It is, therefore, not for me, that too sitting singly to reopen such question.

12. More important is the question as to whether the lower Appellate Court has committed any error of Jurisdiction in rejecting the application of the petitioner under Order 22 Rule 10 as the said society was not registered Co-operative Society.

13. Mr. Anupam Chatterjee, the learned counsel appearing for the petitioner has strenuously argued that the registration of a Co-operative Society under the West Bengal Co-operative Society Act is not compulsory but optional and,

therefore, simply because the said society is not registered under the said Act, it cannot be said that it cannot apply under Order 22 Rule 10 of the CPC or cannot maintain such a petition.

14. Mr. Chatterjee has relied on a Division Bench decision of the Bombay High Court reported in *Manohar Vs. State of Maharashtra and Others*, where it has been held, *inter alia* that the expression may be "registered" u/s 4 of the Maharashtra Co-operative Societies Act, 1961, indicates that the registration is not compulsory but voluntary.

15. It has been submitted by Mr. Chatterjee that although the aforesaid decision was rendered under the said Maharashtra Co-operative Societies Act, the same should also apply under the West Bengal Co-operative Societies Act in view of the fact relevant section under the West Bengal Act, section 11 is *pari materia* with section 4 of the Maharashtra Act.

16. It is not really necessary for this court to go into the question whether registration of a Co-operative Society is compulsory under the West Bengal Registration Act or not inasmuch as the relevant question in the instant case is whether an un-registered Co-operative Society can at all enter into an agreement or can hold property and consequently can apply under Order 22 Rule 10 claiming devolution of interest from the judgment debtor on the basis of an agreement entered into with him.

17. The answer to such question. In my view, must be in the negative and I find after considering all aspects of the matter that lower appellate court has not committed any error of Jurisdiction in refusing the prayer of the petitioner under Order 22 Rule 10 warranting interference by this court u/s 115 of the Code of Civil Procedure.

18. A Co-operative Society has been defined u/s 2(13) of the West Bengal Co-operative Societies Act, 1983 (which has repealed Cooperative Societies Act, 1973), which provides that "Co-operative Society means a Co-operative Society registered or deemed to be registered under the said Act". Section 3(3) of the said Co-operative Societies Act, Indicates that a Co-operative Society which was already registered under the previous Act at the time of commencement of the Co-operative Societies Act, 1983 will be deemed to be a Co-operative Society under the 1983 Act.

19. Section 23 of the Co-operative Societies Act, 1983 clearly Indicates that the Co-operative Society becomes a body corporate with the power to acquire, hold and dispose of property, to enter into contract, to institute and defend suit and other legal proceedings and to do all things necessary for the purpose for which it is constituted only when it is registered and thereby becomes a body corporate having a perpetual succession and a common seal.

20. It has, therefore, rightly been held by the lower appeal court that unless the Society is registered. It is not a legal person having power to enter into contract.

A Division Bench of the Gujarat High Court while interpreting section 37 of Gujarat Co-operative Societies Act, which is similar to the said provision of the West Bengal Act has held, it is after registration of the society that it can enter into contract.

21. The reason is obvious.

22. A group of persons intending to form a Co-operative Society, but not yet registered under the Co-operative Societies Act, is neither a body corporate nor a Juristic person and therefore, cannot in the name of the society enter into any contract or acquire or hold property or sue or be sued in the name of society. It is only when a group of persons become a body corporate and, therefore, a juristic person that it can acquire or hold property or enter into contract or sue or be sued in the name of the society. Under the provision of West Bengal Co-operative Society Act the same is only possible when it is registered and thereby becomes a body corporate with a perpetual succession and a common seal. The petitioner society, therefore cannot be a body corporate or a juristic person, same not being registered, and therefore neither can enter into an agreement in the name of the society nor can it acquire, hold or dispose a property nor can it sue or be sued.

23. Assuming, therefore, the judgment debtor had any right, title or interest subsisting even after passing of the decree in the said suit which could have been assigned, such assignment cannot be made in favour of the group of persons Jointly which is not a body corporate nor the interest of the judgment debtor can devolve upon such group of persons.

24. Mr. Chatterjee has drawn the attention of the court to the provisions of Rule 130 and Rule 131 of the West Bengal Co-operative Society Rule, 1987, contained in Chapter IX of the said Rules which lays down special provisions for Co-operative Housing Societies. It will appear from the said provisions relating to the formation of the Co-operative Housing Society that for the purpose of registration of the Society all the promoters intending to file application for registration shall hold meeting, inter alia, for adoption of name of the proposed society and of its bye laws, election of the chief promoter and the first board including the Chairman, the Vice-Chairman and the Treasurer with powers and functions as laid down in the Rules. Rule 131 of the said Rule empowers the Chief Promoter of a Co-operative Housing Society to take steps under the provisions of the Act and Chapter it of the Rules to get the society registered and for that purpose to open a bank account to be operated jointly with others and to negotiate with the approval of the Chairman to purchase or get land, building or tenant.

25. Relying on the aforesaid provisions it has been sought to be contended that it will appear therefrom that even before registration during the formation stage the Chief Promoter, the Chairman and the Vice-chairman etc. are vested with all powers to take steps under the Act and also to make negotiation and to enter

into agreement with an approval of the Chairman to purchase a land.

26. It has been submitted accordingly the petitioner society certainly could have been entered into the aforesaid agreement.

27. I am, however, unable to accept such contention of Mr. Chatterjee. The provisions of the said Rule which is a piece of delegated legislation cannot override the provisions of the Act.

28. As pointed out hereinbefore the aforesaid section 23 of the Act specifically provides that after registration the society becomes a body corporate and will have the power to enter into contract. The provision of the said Rule, therefore, cannot override such provisions of the Act. In fact, however, the provision of Rules 130 and 131 do not override the aforesaid provisions of the Act at all.

29. It will appear from the provision of Rule 130 of the said Rules that special provisions have been made for Co-operative Housing Society for formation of the same and its registration, and for taking necessary and requisite steps for its registration before it is actually registered. As it will appear from Rule 130 that the same empowers the promoters to elect the Chief Promoter, the Chairman and Vice-Chairman and the Treasurer and to vest them with powers and functions as laid down in the Rules. Rule 131 empowers the Chief Promoter to take all steps under the provisions of the Act and Chapter II of the Rule for the purpose of getting the society registered including opening of a bank account and to negotiate with the approval of the Chairman to purchase or got land or building etc. The Chief Promoter, therefore, before registration of the society although can make negotiation for purchase of land has no power in the name of the society to enter into agreement before its registration.

30. Similarly under Rule 130(a) the promoters may hold meeting for consideration and the approval of the agreement to be entered into with the vendor or lessor of the land, but in such a meeting they cannot empower the Chief Promoter to actually enter into a contract in the name of the society before the same has become a body corporate after registration.

31. In any view of the matter section 2(13) of the Co-operative Societies Act, 1983 leaves no manner of doubts that the said Act has not contemplated any other Co-operative Society other than a Co-operative Society which is registered or deemed to be registered under the Act.

32. Lastly, I am also of the view that the courts below were correct in their views that as when the agreement was entered into between the judgment debtor and the said society, admittedly the decree passed in the suit was very much subsisting the judgment debtor had no right, title and interest in the property and an unregistered agreement for sale does not create any interest in the immovable property.

33. Mr. Chatterjee relying on the decision of Andhra Pradesh High Court in the case of Alluri Venkata Narasimha Raju and Another Vs. Katteboyina Yellamanda

and Others, . has submitted although an agreement of sale by Itself may not create an interest in the Immovable properly but the party, put in possession of the said property under the agreement it must be held that subsequent creation of interest directing the provision of Order 22 Rule 10.

34. The aforesaid decision of the Andhra Pradesh High Court, however, cannot come to the aid of the petitioner society in view of the fact that the said society not being registered and, therefore, not being a body corporate or a juristic person, having no power to acquire hold property in the name of the society or to enter into contract in the name of society for the same reason, merely remains a group of persons which could not have been put in possession of the property in the name of the society. That apart there could not have been any such assignment legally by the judgment debtors after passing of the decree in favour of the decree holder in the suit for specific performance and during subsistence of such decree.

35. I am also of the view that no jurisdictional error has been committed by the court below in passing the impugned order. Even assuming the order of the court below is erroneous in law, there being no jurisdictional error no interference is called for by this court u/s 115 of the Code of Civil Procedure.

36. For the reasons stated above, no interference is called for by this court with the Impugned order in its revisional jurisdiction u/s 115 of the Code of Civil Procedure.

37. The application, therefore, fails the same is, therefore, dismissed. All interim order stands vacated. There will be no order as to costs. The Lower Court records of the case if any be sent down forthwith.

Certified copy/certified xerox copy if applied to be granted as expeditiously as possible.

38. Application dismissed