

(1999) 08 MP CK 0071

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1494 of 1995

Manju Shyam Sunder Ramteke and another

APPELLANT

Vs

Manda Vaidya and others

RESPONDENT

Date of Decision : 31-08-1999

Acts Referred:

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

Constitution of India, 1950 — Article 227

Madhya Pradesh Co-operative Societies Act, 1960 — Section 64

Citation : (2000) 1 MPLJ 411

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Prashant Singh, for the Appellant; J.D. Vishwakarma, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.

This is a petition under Article 227 of the Constitution of India challenging the order dated 25-1-1994 of the Court of 8th Additional District Judge, Jabalpur by which the revision u/s 115, CPC filed by the petitioners against order dated 22-1-1993 of 5th Civil Judge Class 1, Jabalpur has been rejected.

Respondent No. 1 Smt. Manda Vaidya filed civil suit No. 140-A of 1993 in the Court of 5th Civil Judge, Class 1, Jabalpur for declaration of title and injunction against the petitioners. It was stated in the plaint that she had purchased plot No. 40 area 1500 Sq.ft. from petitioner No. 2 Dr. Baba Saheb Ambedkar Grih Nirman Sahakari Samiti by registered sale-deed dated 2-4-1987. The Society has sold this plot again to the petitioner No. 1 by registered transfer deed dated 3-9-1993. In this civil suit the petitioners filed an application under Order 7, Rule 11, CPC for rejecting the plaint on the ground that the Civil Court has no jurisdiction to entertain this suit. A copy of that application is Annexure P-13. According to the Defendants this dispute could be decided by the Registrar, Co-

operative Societies u/s 64 of the M.P. Co-operative Societies Act, 1960 and therefore, the jurisdiction of the Civil Court was barred u/s 82 of the Act. No written statement was filed. The Defendants did not disclose how the plot could be sold by the Society to the petitioner No. 1 when it had already been sold to the respondent No. 1 in the year 1987. The Civil Court rejected the said application and a revision filed against that order by the petitioners has been dismissed by the impugned order. Meanwhile the temporary injunction has been granted against the Defendants and that has been confirmed in appeal and revision.

In this petition under Article 227 of the Constitution it has been argued that the proper remedy for the Plaintiffs was to get the "dispute" decided by the Registrar u/s 64 of the Act and therefore the civil suit is barred u/s 82 of the Act. Reliance has been placed on *Sardar Jodh Singh vs. Trilanga Cooperative Housing Society*, 1996 MP LI 43, *Baldeo Kumar Agrawal Vs. Managing Director, M.P. Rajya Laghu Van Upaj Sahkari Sangh Maryadit and Another*, and *Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others*, .

After hearing the learned Counsel for both the sides and perusal of the material on record this Court is of the opinion that in the facts and circumstances of this case the Civil Court has jurisdiction to entertain the suit for declaration of title and injunction. As already stated the Defendants have not filed their written statement and therefore it is not known what is their case. In the application under Order 7, Rule 11, CPC the Defendants have not stated the relevant facts. The case of the Plaintiff in short was that the Society having sold the plot to her in 1987 by a registered sale-deed could not transfer it to the respondent No. 1 in the year 1993. The Plaintiff was not claiming anything as a member of the Society. According to her she had become owner of the plot after its purchase by her. If that sale is legal and valid the Society would have no right to transfer that plot to anyone. The Society would have no right or title over the plot nor even over the air blowing on that plot after its sale to the Plaintiff. The Society had no power, authority or jurisdiction over that plot after its sale to the Plaintiff. Such an unauthorised act of the Society which is a nullity could not be said to be "touching the business of the Society" as it could not be the business of the Society to defraud others. Section 64(2)(iv) includes the "dispute" regarding rights between a housing Society and its members. After the purchase of the plot by registered Sale-deed in the year 1987 the Plaintiff claims to have become owner of that plot. She is no longer claiming any right as a member of the Society after acquisition of title over the plot. She is now challenging a totally unauthorised and illegal act of the Society and therefore this dispute is cognizable by the Civil Court. It does not come within the purview of section 64 and it is not barred by section 82 of the Act. The decisions relied upon by the petitioners are not applicable in the present case as the "dispute" within the meaning of section 64 of the Act does not exist in the suit filed for declaration of title and injunction. Resale of the plot by the Society when it has already been sold to another person cannot be said to be an act of the Society authorised by

the Act, rules or bye-laws. It is de hors the authority and power of the Society. A challenge to such an act of the Society by the prior purchaser is not qua the member of the Society but in his right as title-holder or owner of the plot. In *M.V.G. Nirman Sahakari Sanstha vs. Vasantrao*, 1988 MPU326 AIR 1988 MP 94, the Society had executed a sale-deed of a plot of land in favour of a member. The member in turn sold that plot to another person and executed a sale-deed in his favour in violation of the terms of the sale-deed executed by the Society. The Society filed the civil suit against the member and also the third person for cancellation of such sale-deed executed by the member in favour of third person. It was held that the Civil Court had jurisdiction to try the suit. In the present case the principle involved is the same. Under the general law the exclusion of jurisdiction of Civil Court is not readily inferred. This rule is based on the theory that Civil Courts are Courts of general jurisdiction and the people have a right, unless expressly or impliedly barred, to insist on free access to the Court of general jurisdiction.

A dispute which does not fall within the purview of section 64 cannot be referred to the Registrar and has to be taken to the ordinary Courts for decision. The *Sugauli Sugar Works (Private) Ltd. Vs. The Asstt. Registrar, Co-operative Societies*, . In *Pahad Singh vs. Smt. Rajkumar*, 1966 RN104 (HC) (DB), it has been held that a dispute regarding boundary line between two plot-holders is not covered by the term dispute in section 64 of the Act. The jurisdiction of the Civil Court in such matter is not barred. It does not touch the business of the Society nor is a dispute as members of the Society.

The petitioners have referred to certain proceedings which took place before the Registrar and in appeal and revision against his orders. It does not appear that those proceedings have any relevance as the respondent No. 1 was not a party to those proceedings.

The petition is dismissed. The observations made in this order are only to decide the question of jurisdiction of the Civil Court and would have no bearing with the final decision by the Civil Court on merits.