
(1992) 01 MP CK 0037
In the Madhya Pradesh High Court
Case No : M.P. No. 126 of 1989

Moolchand

APPELLANT

Vs

Shri N.K. Satsangi and Others

RESPONDENT

Date of Decision : 31-01-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 14 Rule 2, Order 6 Rule 17
Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Co-operative Societies Act, 1960 — Section 64, 82, 82(1)

Citation : (1992) J LJ 340

Hon'ble Judges : S.D. Jha, J; R.K. Varum, J

Bench : Division Bench

Advocate : K.G. Maheshwari, for the Appellant; K.L. Sethi and A.K. Sethi for Respondent No. 3 and Samvatsar, for Respondent Nos. 4, 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

R.K. Varma, J.—By this petition under Articles 226 and 227 of the Constitution of India, the Petitioner has sought, inter alia, quashing of the Order (Annexure-5) dated 7-11- 87 passed by Respondent No. 1 Civil Judge Class II, Indore in Civil Suit No. 87/87, directing return of the plaint and the order Annexure-6 dated 4.5.1988 passed in Civil Appeal No. 68/87 by First Additional District Judge, Indore, dismissing the Plaintiff's appeal against the Order (Annexure-5). By amendment of the petition, the Petitioner has joined the Deputy Registrar and the Joint Registrar, Co-operative Societies, Indore in the array of Respondents and has also sought quashing of the orders dated 12.10.88 and 3.3.89 passed by them respectively and annexed to the Return of Respondent No. 7.

2. The facts giving rise to this petition, briefly stated, are as follows:

The Petitioner, being a member of the Indore Textile Employees Co-operative Housing Society, Respondent No. 3, purchased a plot No. 201 in Textile Clerk Colony, Pardeshipura, Indore from Respondent No. 3. The Respondents No. 4 to

7 designedly attempted to forcibly encroach upon the disputed plot No. 201. As such, the Petitioner filed Civil Suit No. 87-A/87 on 2.2.87 for declaration of title and permanent injunction in respect of plot No. 201 in the Court of Civil Judge, Respondent No. 1. An application for temporary injunction was also filed and the Court directed maintenance of status quo.

3. The Respondents No. 3 to 6 did not file written statement and the counsel for the Respondent No. 3 filed an application u/s 82(1)(c) and Section 64 of the M.P. Co-operative Societies Act (hereinafter referred to as "the Act") praying for dismissal of the suit on the contention that the controversy in the suit is a dispute within the meaning of Section 64 of the Act and was required to be referred to the Registrar and as such, the Civil Court's jurisdiction was barred u/s 82(1)(c) of the Act.

4. The learned Civil Judge Class II, Indore after hearing the parties on the aforesaid application of Respondent No. 3 came to the conclusion that the averments made in the Petitioner's plaint constituted a dispute within the meaning of Section 64 of the Act, and therefore, the suit was barred, in view of Section 82 of the Act. Accordingly, the learned Civil Judge allowed the application of Respondent No. 3 by Order dated 7.11.87 (Annexure- 5 to the petition) directing return of the plaint to the Plaintiff for presentation in proper Court. Being aggrieved by the Order the Petitioner filed an appeal (M.A. No. 68/87) in the Court of First Additional District Judge, Indore, but the learned lower Appellate Court concurred with the view taken by the Civil Judge and dismissed the appeal by Order dated 4.5.1988 (Annexure- 6 to the petition).

5. The Petitioner then presented the plaint alongwith the application for temporary injunction before the Deputy Registrar, Co-operative Societies, Indore. The learned Deputy Registrar while deciding the application for temporary injunction held that since the Petitioner-Plaintiff had not filed the same plaint, which was returned by the Civil Judge for presentation to proper Court, the suit was not maintainable and as such, he dismissed the application for temporary injunction as well as the suit by order dated 12.10.1988 in Case No. 1295/87 (Annexure P/4) The Petitioner filed an appeal No. 88/1988 before the Joint Registrar Co-operative Societies, Indore.

6. The Petitioner also filed this petition on 12.1.89. After hearing the Petitioner who appeared in person, this Court directed issue of notice to the Respondents to show cause against admission. When the Respondents appeared in response to the notice to show cause against the admission of this petition they in their reply filed on 2.5.89 raised a preliminary objection alleging material suppression on the part of the Petitioner who suppressed the fact that a dispute as contemplated by Section 64 of the Act was still pending before the Deputy Registrar, Co-operative Societies, Indore and as such, the present petition could not be filed by the Petitioner. The said preliminary objection was over-ruled by this Court by Order passed on 11.1.90. It was found that on 2.5.89 when the reply raising the preliminary objection was filed by the Respondents, no suit, appeal or revision

was pending before the authorities under the Co-operative Societies Act. It was held that the non-disclosure of fact on the part of the Petitioner was not with a view to mislead the Court so as to render the petition liable to be thrown without hearing the Petitioner on merits.

7. By this petition the Petitioner has challenged the order dated 4.5.88 passed by the Ist Addl. District and Sessions Judge, Indore in Civil Misc. Appeal No. 68/87, thereby confirming the order dated 7.11.87 passed by the IInd Civil Judge, Class II, Indore in Civil Original Suit No. 87-A/87, returning the plaint to the Petitioner for proper presentation and has also challenged the orders of the Co-operative Authorities Respondents No. 8 and 9.

8. The Petitioner's suit was for declaration of his title and injunction, seeking to restrain the Respondents No. 4 to 7 from forcibly dispossessing the Petitioner from plot No. 201, situated in Textile Clerk Colony, Pardeshipura, Indore. There has been no decision on merits in the suit. The Petitioner was directed by the Civil Court to go to the Co-operative Authorities holding that the Civil Court had no jurisdiction. The Petitioner has in this petition made a grievance against the Civil Court not entertaining his suit on the ground that the Civil Courts' jurisdiction was barred as the controversy in suit was a dispute covered u/s 64 of the Act. The objection as regards maintainability of the suit was considered at the stage of considering the application for interim injunction without the Defendants having filed the written-statement contrary to the decision of this Court in Naresh Saxena v. President, Aadarsh Nagarik Sahakari Bank 1986 MPLI SN-6, which holds that an objection as regards maintainability of the suit must be raised in the written-statement and the suit cannot be dismissed at the stage of considering the application for interim injunction as has been done in this case. It is a pure question of law going to the root of the matter on the basis of which this petition was admitted for hearing by Order dated 11.1.90.

9. The relevant facts to bring out the controversy and grievance of the Petitioner may now be stated here.

10. It is not disputed that the Petitioner and another member of the co-operative housing society viz., Shankarlal Choudhary, the deceased husband of Respondent No. 4 had entered into two agreements on 1.3.1979. By one agreement the Petitioner agreed to sell his plot No. 201, Textile Colony, Indore for Rs. 9,705/- to Shankarlal, who agreed to pay the price within three years and till such payment the plot was to remain in possession of the Petitioner. By another agreement Shankarlal agreed to sell his house to the Petitioner for a sum of Rs. 32,000/-. The Petitioner and Shankarlal also made an application to the Chairman of the Co-operative Housing Society Respondent No. 3 on 1.3.79 for permission to allow exchange of plot No. 201 belonging to the Petitioner with plot No. 252 allotted by the Society to Shankarlal and also to allow registration of the house with plot No. 252 in the name of the Petitioner. The Society by its resolution dated 27.9.1979 accorded permission to the proposed exchange and the names of the Petitioner and Shankarlal were respectively entered against the house with plot No. 252

and plot No. 201 respectively. Subsequently, on 30.11.1980 Shankarlal died and was survived by his nominee widow Smt. Kamlesh Choudhary Respondent No. 4.

11. The Petitioner having paid the entire consideration in respect of the house with plot No. 252, the registration of the sale in favour of the Petitioner was effected on 1.10.1980.

12. As regards the plot No. 201 which the Petitioner had agreed to sell to Shankarlal, the latter did not pay the consideration within the stipulated period of three years and as such, the Petitioner continued to be the owner in possession of plot No. 201. It appears that the Petitioner by letter dated 13.1.85 informed the Respondent No. 3 Society that since Shankar Lal Choudhary had not paid the consideration of the plot No. 201 to the Petitioner as per the terms of the agreement of sale of the plot, the Petitioner had cancelled the proposed transfer. It also appears that the Petitioner requested the Society Respondent No. 3 for registering the plot No. 201 in his name vide his letter dated 4.8.85 (Annexure 1-A). But in the meantime Respondent No. 4, widow of Shankarlal and her two sons seem to have entered into an agreement of sale of plot No. 201 with Respondent No. 7 for a sum of Rs. 40,000/- (vide Annexure R-III/8) even without having paid the price of the plot to the Petitioner and without getting the plot registered in her favour.

13. It appears that the Respondent No. 3 allowed transfer of plot No. 252 alongwith a house standing thereon by the deceased member Shankarlal Choudhary to the Petitioner in exchange of the transfer of the plot No. 201 by the Petitioner to the deceased Shankarlal Choudhary. It also appears that the transfer of the plot No. 252 with the house standing thereon was completed in payment of full consideration by the Petitioner and that transfer was effected by completed registered sale-deed as per the agreement of sale between the parties and with permission of Respondent No. 3. But as regards the proposed transfer of plot No. 201, since the deceased Shankarlal Choudhary and after his death his nominee widow Respondent No. 4 did not pay the agreed consideration amount of Rs. 9705/- to the Petitioner as per the agreement dated 1.3.79 entered into between deceased Shankarlal Choudhary and the Petitioner, the Respondent No. 4 and her sons Respondent Nos. 5 and 6 did not acquire any title to the plot.

14. The learned Counsel for the Petitioner has submitted that the contemplated transfer of the plot No. 201 in exchange of the transfer of plot No. 252 with house thereon, thus carried with it, the condition of payment of consideration in respect of plot No. 201 by the deceased Shankarlal Choudhary at a future date for completion of the transfer of plot No. 201. It has been submitted that such condition was permissible under Clause 15 of the Bye-law No. 8 of the Bye laws applicable to the Society, Respondent 3.

15. The deceased Shankarlal Choudhary could not pay the amount of consideration of plot No. 201 as per agreement dated 1.3.79 and as such, no registered deed of sale could be effected in favour of deceased Shankarlal

Choudhary. The deceased Shankarlal Choudhary died on 30.11.80 and after his death his legal representatives i.e. the widow and two sons, Respondent No. 4, 5 and 6 did not pay the consideration amount to the Petitioner so as to be entitled to get a registered deed transferring title in plot No. 201 in their favour.

16. In the situation after expiry of 3 years from the date of agreement dated 1.3.79, the Petitioner has been insisting on Respondent No. 3 society to register the transfer of plot No. 201 in favour of the Petitioner himself since he had paid its price to the Respondent No. 3 and the deceased Shankarlal Choudhary and after his death his legal representatives had failed to pay the consideration amount to the Petitioner for effecting the completed exchange as per the terms of the agreement between the parties, with permission of Respondent No. 3 as aforesaid.

17. It appears that consequent upon the Respondent No. 3 having accorded permission to the Petitioner and the deceased Shankarlal Choudhary on their joint application for exchange of plot No. 201 with house and plot No. 252, the society Respondent No. 3 allotted plot No. 201 in the name of deceased Shankarlal Choudhary and allotted the plot No. 252 with house thereon in the name of the Petitioner and also permitted registration of the transfer since the Petitioner had paid full consideration in respect of plot No. 252 and the house thereon. However, plot No. 201 could not be registered in favour of the deceased Shankarlal Choudhary or his legal representatives, apparently, on account of failure on their part to pay the agreed amount of consideration to the Petitioner. The Society, Respondent No. 3 seems to be giving legal recognition to the condition relating to payment of consideration as agreed to between the parties for exchange of Plot No. 201 with plot No. 252 alongwith house thereon, presumably because clause 15 of the bye-law No. 8 of the Society's bye-laws permits exchange with condition as may be agreed between the parties.

18. Learned Counsel for the Petitioner has submitted that the legal representatives of the deceased Shankarlal Choudhary have entered into an agreement of sale of plot No. 201 with one Rajendrakumar Respondent No. 7 on 7.2.85 and the Respondent No. 7 is wanting to forcibly dispossess the Petitioner from plot No. 201. It has been submitted that on account of non-payment of consideration in respect of plot No. 201 to the Petitioner by the deceased Shankarlal Choudhary or his legal representatives in accordance with agreement dated 1.3.1979, the Respondent No. 4, 5 and 6, the legal representatives of the deceased Shankarlal Choudhary, as well as the transferee from them i.e. Respondent No. 7 cannot acquire any title to plot No. 201 and the title still vests in the Petitioner, who has been seeking to get a deed of transfer from the society in respect of that plot, he having already paid the entire consideration initially in respect thereof.

19. Apart from the foregoing submissions relating to the merits of the Petitioner's case, learned Counsel for the Petitioner has submitted that the Order dated 7.11.1987 (Annexure-5) passed by the Respondent No. 1 Civil Judge Class

II, Indore, in Civil Suit No. 87-A of 1987, directing return of the plaint for presentation in proper Court and the Order (Annexure-6) dated 4.5.1988 passed in Civil Appeal No. 68/87 by Ist Additional District Judge, Indore affirming the said order of the Civil Judge Class II and dismissing the Plaintiff's appeal are illegal and deserve to be quashed. It has been submitted that by these orders the Civil Courts have wrongly held that the controversy in suit falls within the definition of dispute as defined in Section 64 of the Act and as such, the Civil Court's jurisdiction is barred u/s 82(1)(c) of the Act.

20. It has been submitted on behalf of the Petitioner that in the suit filed by the Petitioner he claimed reliefs of declaration of title, and permanent injunction in respect of plot No. 201 and that he had moved an application under Order 1, Rule 10 CPC read with Order 6, Rule 17 CPC on 9.7.87 for joining Respondent No. 7 Rajendra Kumar as Defendant No. 5 on receiving information that other Defendants had transferred plot No. 201 to Rajendrakumar but before passing any order on the said application the learned Civil Judge passed the Order dated 7.11.87 allowing the objection of the Defendants that the Civil Court has no jurisdiction in view of Section 64 and Section 82(1)(c) of the Act, as aforesaid and returned the plaint for presentation to proper Court under the Act.

21. It is the contention of the learned Counsel for the Petitioner that the Civil Court's jurisdiction cannot be held barred since the controversy in the instant suit is not covered by the definition of "dispute" u/s 64 of the Act and also because having regard to the reliefs of declaration and injunction sought, the remedy of Civil Suit is the only proper remedy. Further it is the contention of the Petitioner that Respondent No. 7 Rajendra Kumar who is sought to be added as Defendant No. 5 for reliefs of declaration and injunction against him, is a stranger who is said to have purchased the Petitioner's plot No. 201 from the Defendants, legal representatives of the deceased Defendant Shankarlal Choudhary, who himself had not acquired title, having not purchased the same from the Petitioner. The learned Counsel appearing for the Respondent No. 3 Society has, however, submitted that Rajendra Kumar Respondent No. 7 claims through other Defendants, legal representatives of deceased Shankar Lal Choudhary, who was a member of the Respondent Society and as such, can be said to be a party to the dispute u/s 64(1)(c) of the Act and the Petitioner can get remedy before the Registrar u/s 64 of the Act as against the Respondent No. 7.

22. In the instant case the question whether the Civil Court had jurisdiction to try the suit filed by the Petitioner, has been decided by the Trial Court even before filing of the written- statement by the Defendants and the plaint was returned to the Petitioner-Plaintiff for presentation to the proper Court and the order directing maintenance of status quo passed on the Plaintiffs application for temporary injunction earlier on 5.2.87 was vacated.

23. A Division Bench of this Court in a case similar to the present one viz., Naresh Saxena v. President Adarsh Nagrik Sahakari Banki F.A. No. 6 of 1979 (G)

decided on 7.12.83 and reported in 1986 MPLJ Note-6, has held that on the matter of merits of the question of jurisdiction of the Civil Court, it would be decided only after the written-statement of the Defendant was filed as the procedure provided in the CPC is that after the notice to the Defendant of a suit, the Defendant had to file a written-statement and in that he was at liberty to raise a question of jurisdiction which if the Court thinks necessary and is required to do so by law it should decide that question by framing a preliminary issue. The Trial Court did not follow this prescribed procedure. The impugned order in so far as it related to the question of jurisdiction of the Civil Court to try the suit, had to be set- aside and was set-aside accordingly and matter remanded to the trial Court with a direction that after the written-statement is filed by the Defendant, if the trial Court is of opinion, bearing in mind the provisions of Order 14, Rule 2 CPC and the decided cases of the Court on the point that without recording any evidence the matter of jurisdiction can be decided, it may as it thinks fit, decide it as a preliminary issue.

24. We find ourselves in agreement with the view taken in the case of Naresh Saxena (supra). The decision arrived at by the learned Civil Judge on the preliminary question of jurisdiction of the Civil Court and consequent return of the plaint without the Defendant filing the written-statement and raising a question of jurisdiction therein is, in our opinion, not warranted by law and, therefore, all subsequent proceedings and orders in pursuance of the return of the plaint and subsequent orders made by the Respondents No. 2, 8 and 9 are liable to be set-aside and the matter must be relegated to the position as it obtained before passing of the order dated 7.11.87 by the learned Civil Judge holding the suit not maintainable and directing return of the plaint.

25. In the result this petition is allowed. The order passed by the learned Civil Judge dated 7.11.87 (Annexure-6) and the Appellate Order dated 4.5.88 (Annexure-5) and the proceedings before the Respondents No. 7 and 8 are quashed. The case is remanded for trial of the suit in accordance with law in the light of the observations made hereinabove.

26. The parties are directed to appear before the Court of Civil Judge Class II, Indore on 26th February, 1992. The security deposit, if any, be refunded to the Petitioner. There shall, however, be no order as to costs.

P.S.

Before parting with this case we must record our appreciation for the assistance readily made available to us by Shri K.G. Maheshwari, Advocate who acted as amicus curie at our request and presented the case on behalf of the Petitioner with relevance which the Petitioner as a lay man was unable to do.