

(1967) 06 KL CK 0004
In the High Court Of Kerala
Case No : S.A. No. 1163 of 1963

Multi Purpose Co-operative society Ltd. Vamanapuram	APPELLANT
Vs	
Narayan Nair and another	RESPONDENT

Date of Decision : 15-06-1967

Acts Referred:

Citation : (1967) KLJ 842

Hon'ble Judges : T.C. Raghavan, J

Bench : Single Bench

Advocate : S. Easwara Iyer, L.G. Potti and C.S. Rajan, for the Appellant; K. Velayudhan Nair, N.R.K. Nair and T.V.B. Nair, for the Respondent

Final Decision : Allowed

Judgement

T.C. Raghavan, J.—On both the questions involved in this Second Appeal the lower courts have reached divergent conclusions. The trial court has held that the suit is maintainable, while the lower appellate court has held that it is not: the trial court has held that Exx. P-1 and P-3 have to be set aside, while the lower appellate court has held that they are not liable to be set aside. Ex. P-1 is a gift deed executed by the second defendant, who was the president of the appellant (a multi-purpose co-operative society), in favor of the first defendant's father, S J. Nair, conveying the suit property in favor of the latter for conducting a school. Ex. P-2 is an agreement of the same date executed by S.J. Nair in favor of the second defendant undertaking to conduct the school and if he failed to start the school within two years, agreeing to give back the property to the appellant. Ex. P-2 contains some other provisions as well. The suit has been brought by the co-operative society for recovery of possession of the property alleging that the second defendant had no authority to make a gift of the same; and even if he had authority by reason of an authorization by the co-operative society, still, the conveyance was void, as written sanction for the conveyance was not taken from the Registrar of Co-operative Societies. The defense of the first defendant was that the suit was not maintainable, as the dispute was one

which should have been referred to arbitration by the Registrar; and that Ex. P-1 was valid, as it was within the competence of the co-operative society. The two questions already indicated by me have been considered and decided by the lower courts as indicated above.

2. The first question for me to consider is whether the suit is not maintainable. That depends on the question whether the transaction under Ex. P-1, which has given rise to the dispute, was one touching the business of the co-operative society. The Subordinate Judge says that under bye-law 2(9) (Ex. C-1 is a copy of the bye-laws) one of the purposes of the co-operative society was to conduct a school as well. The said bye-law states that one of the purposes of the society was to do everything for the commercial, economical, moral and social advancement of the members of the society. The reasoning of the Subordinate Judge is that starting and conducting a school is for the moral and social advancement of the members of the society, so that the starting of a school was also one of the purposes for which the co-operative society was started. I am afraid that this reasoning cannot be accepted. The other sub-clauses of bye-law 2 enumerate several purposes like giving credit to the members of the society, procuring good types of seeds, manure, and agricultural implements for the use of the members, helping the members in hand-loom and coir small scale or village industries, etc. Clause 9 of this bye-law, in my opinion, is difficult of an interpretation that starting and conducting a school was also one of the purposes of the co-operative society.

3. In this connection, I may refer to the decision in Coir Industrial Co-operative Society, Chingoli v. Govindan (1962 KLT 400), wherein I. had occasion to consider the meaning of the expression "touching the business" of a co-operative society. Therein I considered some decisions and laid down that a distinction should be made between a transaction "for the purpose of the business" and one "touching the business" of a society. I also gave illustrations in the said decision, where an act might be "for the purpose of the business of the society", still might not "touch its business". If starting and conducting a school is not a business of the society, the present dispute, though S.J. Nair was a member of the society, will not come within the mischief of the provision of the Co-operative Societies Act, which requires that such disputes should be left for arbitration by the Registrar of Co-operative Societies. It follows that the decision of the Subordinate Judge on this question is erroneous: and the suit is maintainable.

4. The next question is whether Exx. P-1 and P-3 are liable to be set aside Ex. P-3 is a gift deed executed by S, J. Nair in favor of his son, the first defendant. The main argument of the counsel of the appellant is that for transferring an item of immovable property belonging to the co-operative society (Ex. P-1) previous express sanction of the Registrar of Co-operative Societies was essential under R. XXIV of the rules framed under the Act. (The Act applicable to the present case is the Travancore Co-operative Societies Act of 1112).

5. I may at the outset dispose of one argument advanced by the counsel of the

first respondent (the first defendant) that R. XXIV is ultra vires the rule-making powers of the Government u/s 74 of the Act. I do not think that this contention has any substance; and I may also point out that under sub-section 4 of section 74 all rules made under the section shall have effect as if enacted in the Act itself. Thus R. XXIV has become part of the statute itself.

6. The next question is whether this rule is a bar for executing a document like Ex. P-I. The co-operative society is a statutory body; and its powers must be confined to those conferred by the statute creating it, i.e., its bye-laws, Ex. C-I is a copy of the bye-laws; and no bye-law has been brought to my notice conferring authority on the society to convey immovable property belonging to it to a third party, and that without any consideration. I find from bye-law 16(f) that the society can constitute a common benefit fund or a common welfare fund

and collect contributions to the said fund from its members. The bye-law further provides that such collections should be kept as fixed deposits with the society and the society should pay 6 per cent interest thereon. Again, I find under bye-law 54(5) dealing with the distribution of the annual profits of the society that the society has power to add to the common benefit fund a portion of the profits. But no bye-law has been brought to my notice to show as to how moneys from the common benefit fund should be drawn and utilized-whether the society has power to utilize moneys drawn from the said fund. To such cases R. XXIV must obviously apply, since every act which is not expressly provided for by the bye-laws must get the previous express sanction of the Registrar for its validity. If so, even for drawing moneys from the common benefit fund and utilizing them express sanction from the Registrar should be taken, since there is no bye-law conferring power on the society to draw moneys therefrom.

7. It might then be argued that even the purchase of the suit property was without the sanction of the Registrar. May be: but does not mean that such property purchased without authority can be disposed of without the sanction of the Registrar?

8. The obvious answer is that even if the purchase was without authority, that does not give the society any right to dispose of the property without the sanction of the Registrar. It must therefore follow that the action of the second defendant in conveying the property to S.J. Nair was void and not binding on the society.

9. There was some dispute before the lower courts whether there was a resolution by the society authorizing the second defendant to execute Ex. P-1. In the view I have taken, that question pales into insignificance, because even if there was a resolution, no action could have been taken in pursuance of the resolution if the action required the express sanction of the Registrar.

10. The counsel of the first respondent (the first defendant) then argues that since the first respondent has been in possession of the property and has also been conducting a school there for several years, it must be presumed that the

society had authority to convey the property under Ex. P-1. It is also argued that since the Registrar did not take any objection to the said conveyance during the said several years, it should be held that the action was valid. Obviously, the inaction of the Registrar or the lapse of time (unless there is a question of limitation) cannot validate an invalid or void act.

11. In the unnecessarily long judgment of the Subordinate Judge containing numerous repetitions short sentences and ill-arranged ideas some surprising propositions and reasons are seen, for example: "If sanction was not necessary for purchase (of the property), it cannot be said that the (?) sanction was necessary for disposal of the property", because "the ownership of property includes the right to dispose it of (sic)"; "the Co-operative Societies Act does not empower a registered society to manage a school", still the Subordinate Judge finds that under bye-law 2(9) one of the purposes of the co-operative society was to start and conduct a school; "Sri S.J. Nair was a lawyer: he would not have accepted Ex. P-1 executed by the President and executed Ex. P-2 in favor of the President unless he was aware that the President was competent under the bye-laws to execute documents on behalf of the society"; and "the society and the community at large had no reason to think that S J, Nair an influential man of the locality and a member of the society trespassed upon the plaint property and started the construction of a building". Again, the Subordinate Judge relies on Section 23 of the Act, which enacts that the registration of a co-operative society renders it a body corporate by the name under which it is registered with perpetual succession, etc. with power to hold property, to enter into contracts, to institute and defend suits, etc. Does it follow that if the society is a body corporate capable of holding property, of suing and being sued, it can dispose of its properties by way of gifts as under Ex. P-1? Obviously not. The utmost that can be urged by the first respondent is that what was constituted under Ex. P-1 was something in the nature of a trust, under which S.J. Nair had to start and conduct a school as contemplated by the agreement under Ex. P-2. If so, there will be the further complication whether the gift by S.J. Nair under Ex. P-3 in favor of the first respondent would be valid at any rate, the first respondent has no such case: his case has been that under Ex. P-1 S.J. Nair obtained absolute right over the property and he made a gift of it to the first respondent, so that the latter also obtained absolute right. The result of this contention, if accepted, will be that the first respondent can stop the school and appropriate the property for his private use. (The counsel of the first respondent makes no secret of this, when I put a question to him.) This could never have been in the contemplation of the parties at the time of Ex. P-1: and if this was what was contemplated, the transfer of the property to S J. Nair could not have been valid and binding on the society either. The second appeal is ultimately allowed; the decision of the lower appellate court is set aside; and the decision of the trial court is restored. I direct the first respondent to pay the costs of the appellant in this Court; and in the lower appellate court. However, I retain the direction of the trial court regarding costs.