

(1995) 04 MAD CK 0014

In the Madras High Court

Case No : S.A./Nos. 1329 and 1330 of 1993

P. Sathyanarayanan and another

APPELLANT

Vs

Tamil Nadu Electricity Board Employees Cooperative House
Construction Society, C. Challiah and C. Shanmuga
Sundaram

RESPONDENT

Date of Decision : 05-04-1995

Acts Referred:

Specific Relief Act, 1963 — Section 19, 19(a), 19(b), 19(d)

Tamil Nadu Co-operative Societies Act, 1983 — Section 19, 75, 90, 90(1)

Citation : (1995) 04 MAD CK 0014

Hon'ble Judges : Abdul Hadi, J

Bench : Single Bench

Advocate : C. Latha for Mr. A. Sankarasubramanian, for the Appellant; Sivaji, for the Respondent

Final Decision : Allowed

Judgement

Abdul Hadi, J.—These two Second Appeals are taken up together for disposal since the point involved in both the matters is same. No

doubt these appeals are filed by two different person, who are respectively the plaintiff in O.S.No.1224 of 1988 and O.S.No.1223 of 1988 both

on the file of the District Munsif, Valliyoor. The Ist defendant in both the suits is same. It is Tamil Nadu Electricity Board Employees Cooperative

House Construction Society Valliyoor and is the Ist respondent in these two Second Appeals. According to the plaintiff in each of the two suits,

the Ist defendant society is a registered society, which was registered pursuant to G.O.No.1193 dt. 31-7-1986. Prior to coming into existence of

the said registered society, the said society was art unregistered body. While the said society was such an unregistered body, the respective

plaintiffs became its members in 1980 and in the same year, the said society offered to sell two different house sites, viz., Plot Nos. 39 and 37

respectively, the former, to the plaintiff in O.S.No.1224 of 1988 and the latter in favour of the plaintiff in O.S.No.1223 of 1988 and thereafter by

letter dated 7-2-1982, the said Society informed the respective plaintiff that it has allotted to them the said plots in the proposed housing colony

and that the probable date of registration of the sale deed in favour of the plaintiffs would be intimated separately. But, it did not so intimate. But,

finally on 1-7-1987 by which time, the old unregistered society became a registered society which is the 1st defendant, it refused to register the sale

deed on the footing that the abovesaid plaintiffs were not employees of the Tamil Nadu Electricity Board and as per the Rules and Regulations of

the 1st defendant registered society and also as per C.O.No. 11193, allotment of house sites belonging to the 1st defendant could be made only to

employees of the Electricity Board. Hence the said suits were filed and since the 1st defendant has alleged; that the above referred to Plot No.39

was allotted by the 1st defendant Society in favour of the 2nd defendant in O.S.No.1224 of 1988, he was impleaded as 2nd defendant in the said

suit. Likewise since the 1st defendant alleged that the Plot No.37 was allotted by the 1st defendant-society in favour of the 2nd defendant in

O.S.No.1223 of 1988, he was impleaded as 2nd defendant in the said suit. The said 2nd defendant in each of the said suits is respectively the 2nd

respondent in these Second Appeals.

2. Both the abovesaid suits were dismissed and the appeals therefrom by the plaintiff respectively in A.S.No.118 of 1992 and A.S.No.119 of

1992 both on the file of the Principal Subordinate Judge, Tirunelveli were also dismissed. The judgments both at the trial stage and at the first

appeal stage were not common judgments and they were delivered separately. The respondents in both the appeals are represented by the same

counsel.

3. In the light of the arguments on either side, only two questions have to be gone into in these two Second Appeals. The first, arises out of the

finding of the court below accepting the case of the defendants that since the Rules and Regulations of the 1st defendant registered society and also

the above referred to Government Order do not permit non employees as Tamil

Nadu Electricity Board getting allotment of house sites from the

Ist defendant society, the respective plaintiff cannot claim against the first defendant, the above referred to specific performance of the sale

agreements they entered into is 1980 with the erstwhile unregistered society. In this regard, the Learned Counsel for the appellants contends that

the courts below erred in coming to the abovesaid conclusion despite section 19(b) of the Specific Relief Act. On the other hand, the Learned

Counsel for the respondents contends that the judgments concurrently rendered by the courts below are correct.

4. The second question arises out of the submission made by the Learned Counsel for the respondents stating that the civil court has no jurisdiction

to take up the dispute raised herein in view of S.19 of the Tamil Nadu Cooperative Societies Act, 1983 (Act 30 of 1983). This jurisdiction

question was also raised in the written statement. On the other hand, the Learned Counsel for the respondents argues that the said Section 90

would not apply at all to the present dispute.

5. I have considered the rival submissions.

6. I shall first take up the above referred to first question. The relevant portion of section 19 of the Specific Relief Act runs as follows:-

19. Relief against parties and persons claiming under them by subsequent title..- Except as provided by this chapter specific performance of a

contract may be enforced against:-

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in

good faith and without notice of the original contract;

Thus, the Section is clear that even a person, who claims through the original person who agreed to sell subject, of course, to the above referred to

excepted category, is bound to specifically perform the original agreement entered into by the abovesaid predecessor. In other words, the

abovesaid plaintiffs would be entitled to claim specific performance even against the successor to the original vendor, viz., the unregistered society

when there is no plea that the Ist defendant comes within the aforesaid excepted category. It is not in dispute that the Ist defendant registered

society has taken over completely the original unregistered society with all its assets and liabilities. The obligation that was cast on the original unregistered society with all its assets and liabilities. The obligation that was cast on the original unregistered society pursuant to the agreement to sell, entered into by it with the respective plaintiff for selling the above referred to respective plot would, therefore, now be cast on the new registered society, which is the Ist defendant ever since it got registered pursuant to the above G.O. dt. 31.7.1986. It is more so when it is found by both the courts below that the sale consideration paid by the original unregistered society, in its scheme to purchase the abovesaid housing colony sites of which the aforesaid portions were allotted to the respective plaintiffs, when the Ist defendant Society has taken all the assets and liabilities of the original unregistered society, it should necessarily fulfil all the obligations of the original Society. Once it has taken over all the obligations also from the erstwhile unregistered society, it cannot later on contend that the Rules and Regulations by which it is governed. subsequent to its formation, prohibit allotment of house sites to non employees of Tamil Nadu Electricity Board and refuse to honour the obligations which it had taken over from the erstwhile society. Even assuming there are such Rules and Regulations the plaintiffs who are not members of the Ist defendant society are not bound by them.

6A. There are also other similar clauses in section 19 of the Specific Relief Act. viz., (e) (d) and (c) and in Indian Bank Vs. K. Usha and Others, this Court has also applied the same principle found in Section 19(a) of the Specific Relief Act in case where there was amalgamation of the company which entered into the agreement in question with another company. In that context the Division Bench observed thus:-

Section 19(d) of the Specific Relief Act made the said contractual obligations of the Bank of Thanjavur Ltd., binding on (sic) appellant-bank and enforceable against it.""

Therefore the court below has erred in (sic) applying Section 19(b) of the Specific Relief Act, to the present case and decreeing the suit.

7. Then, coming to the above referred in second submission relating to jurisdiction, I find that the relevant portions of Section 90(1) of the Tamil Nadu Cooperative Societies Act, 1983 run as follows:-

90. Disputes: (1) If any dispute touching the constitution of the Board or the management or the business of a registered society (other than a dispute upgrading disciplinary action taken by the competent authority constituted under suit section (3) of Section 75 or the Registrar of the society or its board against a paid servant of the society) arises.

(a) among members, past members and persons claiming through a member, past members and deceased members, on

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its Board or any

officer, agent or servant of the society, or

(c) between the society or its board and any past Board, any officer, against or servant, or any past officer, past agent or past servant or the

nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the society; or

(d) between the society and any other registered society such dispute shall be referred to the Registrar for decision".

From a reading of the said Section 90 (1). it is clear that to the present facts, the said section will not apply at all. First of all the dispute in the

present case will not come under clauses (a) (b) (c) or (d) above mentioned. That apart, the present dispute cannot be said to be a dispute

touching the business of a registered society, as contended by the Learned Counsel for the respondents. According to the said Learned Counsel,

allotment of house sites is a business of the Ist defendant-society. But, I should state that the Ist defendant society is asked now only to honour the

obligation which it has taken over at the time when it took over the assets and liabilities of the erstwhile society and registered itself as society.

Honouring such an obligation cannot be termed its business. Actually its business, if at all, should come in only after it is formed. But, here, if the Ist

defendant society is to allot the above referred to respective house side Plot to the respective plaintiff, it only honours the obligation it took over

from the erstwhile unregistered society. That cannot be termed as its business.

8. The decision relied on by the Learned Counsel for the respondents namely Bagavathy Ammal v. The Chingleput Cooperative House Building

Society Limited, Chingleput & another (1988 T.1.N.J. 423) will have no application at all to the present facts. The said case arose u/s 73 of the

old Co-operative Societies Act, which, now corresponds to Section 90 of the present Co-operative Society Act of 1988. There, the question

involved was not regarding the meaning of the term "touching the business of the Society" used in the above referred to Section 73. The facts in the

said case are briefly as follows:-

The 1st defendant therein had been allotted a Plot as per resolution of a registered society. The conveyance deed had to be executed by the society

only after the house has been completed by the 1st defendant-member therein to the satisfaction of the society. But, instead of completing the

construction and obtaining a conveyance, the 1st defendant therein executed a sale deed of the said Plot to the 2nd defendant therein and the

question that arose for consideration there was, whether the said 2nd defendant was a person claiming through a member as contemplated in the

above referred to old Section 73 of the Act. In that context, this Court only held that the 2nd defendant therein came under the category of

persons referred to u/s 73 of the said old Act, as claiming through a member, the facts and the issue in question, in the present case, are entirely

different and the said decision has no application to the present facts. Therefore, I hold that the civil court has jurisdiction to try the dispute in

question here,

9. Accordingly, the Second Appeals are allowed, the judgments and decrees of the courts below are set aside and the suits are decreed as prayed

for with costs throughout.

This appeal having been posted this day for being mentioned in the presence of Mrs.G..1atha for Mr. A Sankarasubramaniam, Advocate for the

appellant and of Mr. A. Sivaji, Advocate for the 2nd respondent the Court delivered the following Judgment:-

Though specific performance decrees were granted in these Second Appeals, time was not specified for executing the sale deed. No doubt

Learned Counsel for the appellants states that the entire sale consideration had already been paid. So only some time has to be granted for

execution of sale deed. Two months time is granted for execution of sale deed. Since, this aspect was not touched upon when the judgment was

pronounced on 21.2.1994 in these Second Appeals they have been after hearing both the counsel, this order is passed. This order shall for part of

the abovesaid judgment.