
(2014) 07 CHH CK 0002
In the Chhattisgarh High Court
Case No : F.A. No. 35 of 2009

P.K. Kumra

APPELLANT

Vs

President, Smriti Grih Nirman Sahkari Samiti Maryadit

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9, 96
Specific Relief Act, 1963 — Section 31

Citation : AIR 2014 Chh 152

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Arvind Dubey, Advocate for the Appellant; Shipra Biswas, Advocate for the Respondent

Judgement

Goutam Bhaduri, J.

1. Invoking appellate jurisdiction of this Court under Section 96 of the Code of Civil Procedure (for short "the Code"), the plaintiff appellant has called in question the validity of the judgment and decree dated 22nd December, 2008 passed by the Court of 11th Additional Sessions Judge (FTC), Durg in Civil Suit NO.6-A/2008. Brief facts which are involved in this case are that a suit for declaration, permanent injunction and for recovery was filed by the plaintiff appellant wherein it was pleaded that the cancellation affected in respect of sale deed was executed by Smriti Grih Nirman Co-operative Society (henceforth called as "Society"), in respect of plot No. B/473, in favour of plaintiff/appellant be declared void thereby declaration be further made that the sale deed dated 6.2.1985 be held valid and consequently the possession was also valid. The dispute was with respect to Plot No. B-473 situated at Smrithi Nagar, Bhilai. According to the plaint allegations, the appellant/plaintiff was a member of the Co-operative Society bearing No. 890 who had allotted Plot No. B-473 and a registered sale deed was executed in his favour on 6.2.1985. It was also pleaded that apart from that, recurring deposit was also opened with Bhilai Co-operative

Bank i.e., the defendant/respondent No. 2 wherein the amount was regularly deposited and even after the maturity, the amount was not paid, therefore, the maturity amount of rupees for 18 years and 6 months was also claimed. Subsequently, the dispute arose in between the parties and whereby the membership of the appellant plaintiff was cancelled and the allotment and sale executed in respect of the plot was also cancelled by the Society. However, for an intervening period when such action of society was objected by the plaintiff, the membership of the plaintiff was revived but the amount was not returned. Subsequently, in the year 2000-2001, the plaintiff was informed that his membership has been again cancelled and the allotted plot has also been cancelled which according to the plaintiff/appellant, the Co-operative Society did not have the power to do so, therefore, the civil suit was filed for the following relief(s) :

2. In reply to the plaint allegations, it was stated that the allotment of the plot and the sale deed was cancelled for which the society was entitled. It was also stated that before filing of such civil suit, no notice was served u/S. 94 of the C.G. Cooperative Societies Act, 1960 (hereinafter referred to as the "Act of 1960"). The defence was also raised that the amount of deposit in the recurring account when matured, neither any request was received by the defendant to keep it in other account nor it was renewed, as such, the amount was kept in abeyance and subsequently, as against the outstanding which was due from the plaintiff appellant, the said amount was set off.

3. On the basis of the pleading, the learned court below has framed the following issues:

4. The learned court below thereafter came to hold by his judgment dated 22nd December, 2008 and gave a finding in respect of Issue Nos. 5 & 8 and dismissed the suit by giving a positive answer to issue Nos. 5 & 8. It was held that the civil suit was not maintainable as the Civil Court was denuded of the power to decide the same under the Cooperative Societies Act.

5. Learned court below further by the impugned judgment came to hold that by conjoint reading of Sections 64 & 82 of the C.G. Co-operative Societies Act 1960, the Civil Courts do not have power to decide such dispute. It was held that the entire power was/is vested with the Registrar, Co-operative Society. The learned court below has further held that in view of section 94, since no prior notice was served, the suit "was not maintainable in respect of the fact touching the constitution, management or business of the Society.

6. Assailing the order, the learned counsel Mr. Arvind Dubey for the appellant would submit that in the instant case, the suit was filed by the plaintiff appellant for declaration and permanent injunction and the declaration was sought for that the sale deed executed in favour of the plaintiff-appellant on 6.2.1985 was valid and further declaration was prayed that the cancellation of such plot be declared as null and void. It was also prayed that the possession of the plaintiff/appellant

be protected and permanent injunction was sought not to disturb the possession. Another claim was also made for recovery of Rs. 91,320/-. He would, therefore, submit that such question of declaratory relief cannot be held to be a bar u/S. 82 of the Cooperative Societies Act and will not exclude jurisdiction of the civil court as the civil suit for declaration was founded on the ground that cancellation of sale deed by mere declaration was a nullity.

7. With respect to the notice u/S. 94 of the Co-operative Societies Act, he would further submit that the finding arrived at by the Court below was premature at this stage. He would also submit that there was no need for the Court to go into such issue at this stage and it was premature to go into such issue as the court itself has in the earlier part of the order has held that the Court does not have jurisdiction to entertain the issue, therefore, had it been held that the court has jurisdiction to entertain the issue, the court should have entered into second aspect of validity and maintainability of the suit and the affect of notice u/S. 94 of the Act. He, therefore, prays for setting aside the order.

8. Per contra, learned counsel Ms. Shipra Biswas appearing on behalf of the respondents would submit that the order passed by the learned court below is well merited. She would submit that the appellant plaintiff was a member of the society and since the society was engaged in business of housing, therefore, any cancellation or execution of sale deed will come within the mischief of business of the Society. She, therefore, submitted that eventually, the provisions of Section 64 read with section 82 of the Act will come into play. She would further submit that the notice u/S. 94 was also not issued, therefore, the suit was rightly dismissed.

9. To appreciate the rival submissions raised, it is proper to refer to sections 64 & 82 of the Act of 1960 which read as under:

"64. Disputes.--(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or business, and conditions of employment of a Society or the liquidation of a society shall be referred to the Registrar by any of the parties to the dispute if the parties thereto are among the following:

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or a nominee, heirs or legal representatives of any deceased agent or deceased servant of the society, or the liquidator of the society;

(b) a member, past member or a person claiming through a member, past member or deceased member of a society or of a society which is a member of the society;

(c) a person other than a member of the society who has been granted a loan by the society or with whom the society has or had business transactions and any person claiming through such a person;

(d) a surety of a member, past member or deceased member or a person other than a member who has been granted a loan by the society, whether such a surety is or is not a member of the society;

(e) any other society or the liquidator of such a society; and

(f) creditor of the society.

(2) For the purpose of sub-section (1), a dispute shall include--

(i) a claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not;

(ii) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, any officer, past officer or deceased officer, any agent, past agent or deceased agent, or any servant, past servant or deceased servant, or its committee, past or present, whether such loss be admitted or not;

(iv) a question regarding rights, etc, including tenancy rights between a housing society and its tenants or members; and

(v) any dispute arising in connection with the election of any officer of the society or representative of the society or of composite society:

Provided that the Registrar shall not entertain any dispute under this clause during the period commencing from the announcement of the election programme till the declaration of the results.

(3) If any question arising whether a dispute referred to the Registrar is a dispute, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.

82. Bar of jurisdiction of Courts.--(1) Save as provided in this Act, no civil or revenue Court shall have any jurisdiction in respect of -

(a) the registration of a society or of bye-laws or of an amendment of a bye-law;

(b) the removal of a committee and the management of the society after such removal;

(c) any dispute, required to be referred to the Registrar or his nominee or board of nominees;

(d) any matter concerning the winding up and the dissolution of a society.

(2) While a society is being wound up, no suit or other legal proceedings relating

to the business of such society shall be proceeded with, or instituted against, the liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose.

(3) Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any Court on any ground whatsoever."

10. The controversy in the question has to be, therefore, tested in view of the pleadings made by the parties. The plaintiff in his plaint has stated that a sale deed was executed in his favour on 06.02.1985 by the Society and the possession was also handed over to him. The plot was bearing No. B-473 comprised in Khasra No. 125/1/3, 4 and was admeasuring 2400 sq.ft. It is also pleaded that a notice was given by the Co-operative Society on 27.1.1997 and permission was sought to transfer the amount of recurring deposit in favour of the Bank/Defendant No. 2 which was not acceded to by the plaintiff and as a result thereof, the membership of the plaintiff appellant was cancelled and the plot was also cancelled. It is also pleaded that the sale deed having been executed, neither the power was vested with the Society to cancel such registered sale deed nor the President or any Member of the Society had such power to do so. It was also pleaded that the said action of cancellation of sale deed was a nullity and be declared void.

11. The real bone of contention, therefore, comes whether the reliefs which have been sought before the Civil Court are of nature that will bar jurisdiction of such Court under Section 82 of the Act, 1960.

12. The reliefs claimed in the case before the Court below would go to show that primarily it was prayed that the sale deed which was executed on 06.02.1985 be declared valid and in continuation, it was pleaded that the cancellation affected of such sale deed by the Society be declared null and void. Therefore, the relief(s) substantiates the fact that the plaintiff had claimed declaration to the effect about the cancellation of the sale deed be declared null and void.

13. With respect to cancellation of registered instrument, Section 31 of the Specific Relief Act, 1963, would be relevant. This section deals with as to when cancellation may be ordered. The provision of Section 31, therefore, is reproduced hereinbelow:

"Section 31. When cancellation may be ordered.--(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

14. Section 31 of the Specific Relief Act, 1963 provides that any persons against whom a written instrument is void or voidable, and who has reasonable apprehension that if such instrument is left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, pass such order. A combined reading of section 31 of Specific Relief Act, 1963 along-with section 82 of the Co-operative Societies Act, 1960 would go to show that the power which is conferred upon the Civil Court u/S. 31(1) of ordering a cancellation of written instrument is evidently not vested in the Co-operative Court constituted under the C.G. Co-operative Societies Act, 1960. It is well settled that the jurisdiction which is conferred on Civil Court u/S. 9 of the Code of Civil Procedure, 1908 to try suits of civil nature can be abrogated only by an express provision of the statute or where it is impliedly barred. Section 82 of the C.G. Cooperative Societies Act, 1960 do not either expressly or by necessary implication confer jurisdiction on the Co-operative Court to grant declaratory relief especially of the nature referable as in the present case to Section 31 of the Specific Relief Act, 1963.

15. The issue as to whether a declaration of this nature can be granted by the Co-operative Court is not res integra but has been dealt with in a decision of the Supreme! Court in Ramesh Chand Ardawatiya Vs. Anil Panjwani, where the provisions of Section 75 of the Rajasthan Cooperative Societies Act, 1965 came up for consideration. Section 75(1) conferred jurisdiction on the Registrar, notwithstanding anything contained in any law for the time being in force in respect of disputes touching the constitution, management or the business of a co-operative society arising inter alia between the members, or past members or between the society or its committee and any past committee. The Supreme Court held that a suit for declaration of title, or possessory title or for that matter seeking the restoration of possession would fall within the inherent jurisdiction of the Civil Court and would not be governed by Section 75. In that regard the Supreme Court held as follows:

"The plaint as framed by the plaintiff is for declaration of title as owner (and in the alternative, his possessory title) and seeking restoration of possession, as also issuance of mandatory and preventive" injunctions against a recent encroachment. Neither is it a dispute between the parties referred to in Clauses (a) to (e) of sub-section (1) of Section 75, nor does the nature of the dispute fall in Clauses (a) to (c) of sub-section (2) of Section 75 so as to be one excluded from the domain of a Civil Court."

16. Similar type of question also came up for consideration in case of V.K. Munshi Vs. Raipur Co-operative Housing Society Limited and another, wherein the High Court of Madhya Pradesh has held that when a question as to Civil Courts jurisdiction to entertain a suit arises in view of Section 82(1)(c) of the Act, 1960 it will not have effect of excluding the civil court jurisdiction when the suit is based on ground that the impugned order is a nullity. Here in the instant case, similar situation arises wherein it is pleaded that the cancellation of the sale deed

was challenged on the ground that the President or any Member of the Co-operative, Society does not have any power to do so and the same is a nullity. In V.K. Munshi (supra), Dipak Mishra, J. (as His Lordship then was) referring to the decision of the Raipur Co-operative Housing Society and others v. Smt. Sushiladevi (Civil Revision No. 100/1977) decided on 30th November, 1978 and Rao Bhupendra Singh Vs. Smt. Gopal Kunwar Umath and Another, held in para 6 that the controversy in question has to be tested keeping in view the provisions of Sections 64 & 82 of the Act, 1960 and in all those decisions, it has been emphasized that if the dispute in question relates to "touching business of the society" the Civil Court's jurisdiction to entertain the suit is barred.

17. Therefore, taking note of similar facts in the instant case wherein the declaration is prayed on the ground that the cancellation of registered sale deed is a nullity, the same principles can be applied for.

18. Lastly similar preposition came up for consideration in case of Dr. Kusum Verma and Another Vs. Pritam Singh Gulati and Another, wherein it was held by the High Court that when the dispute raised by the plaintiff cannot by any stretch of imagination be taken to be a dispute touching the constitution, management or business of the society, then in such case, the civil court shall have the jurisdiction to decide the dispute. Likewise, in the instant case, the society, ex facie had parted with its interest in the plot in dispute with the execution of the sale deed. The transaction of sale of the plot stood completed with the registration of the sale deed. In case the sale deed was voidable, its effect could only be taken away by getting it cancelled through a Civil Court of competent jurisdiction and not by any officer of the Society. Consequently, any order passed by any officer of the Society would be a nullity.

19. Learned counsel for the appellant has further gone into the question of Section 94 in this regard about the maintainability of the suit. In the opinion of this Court, if the Court had formed an opinion on the earlier part that the Court did not have the jurisdiction, then in such eventuality, the question entering into validity of service of notice u/S. 94 of the Act, 1960 was uncalled for. Having held that the court does not have jurisdiction, there was no occasion for the Court to traverse into such issue and it should be left open for further adjudication in the eventuality the case would have been decided on merits.

20. In view of the aforesaid discussions, I am of the opinion that the learned court below has failed to interpret the provisions of Sections 64 & 82 of the Co-operative Societies Act in proper perspective thereby came to hold a wrong finding that the Civil Court does not have the jurisdiction to decide the dispute touching the declaration and cancellation of the sale deed. In the result, the appeal is allowed. The matter is remitted back to the court below for adjudication afresh on merits.