

(2015) 01 KAR CK 0341
In the Karnataka High Court
Case No : M.F.A. No. 3067/2010 (CPC)

S. Yathiraj

APPELLANT

Vs

Susma Taluja and Others

RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1(a), Order 7 Rule 10, Order 7 Rule 11, Order 7 Rule 11(d), Order 7 Rule 14
Karnataka Co-operative Societies Act, 1959 — Section 125

Citation : (2015) 2 AKR 687

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : A.D. Ramananda, for the Appellant; Pradeep Naik K., Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

A.V. Chandrashekara, J.—Heard the learned counsel for the appellant and respondent - Sri Pradeep Naik. Matter is at the stage of admission. Order dated 03.04.2010 passed on I.A. No. 7 filed under Order 7 Rule 11 of CPC r/w Section 125 of Karnataka Co-operative Societies Act in O.S. No. 1515/2006, which was pending on the file of the Court of XI Additional City Civil Judge, Bengaluru is called in question by filing the present appeal under Order 43 Rule 1(a) of CPC.

2. Appellant is the sole plaintiff in the said suit. Respondent No. 1 is the first defendant and respondent Nos. 2 to 4 are defendant Nos. 2 to 4 in the said suit. Parties are referred to as per their rank in the Trial Court.

3. Suit came to be filed for the relief of specific performance of contract directing the first defendant to execute a regular sale deed in favour of the plaintiff on the basis of an agreement of sale registered on 24.02.2003. Consequential relief of permanent injunction had been sought against the 2nd defendant -Society and also to grant other reliefs deemed fit in the facts and circumstances of the case.

4. First defendant has been placed ex parte. On service of notice to the first defendant by this court, he is represented by Sri Pradeep Naik, Advocate.

5. 2nd defendant alone chose to contest the suit by filing detailed written statement on the basis of which as many as 9 issues have been framed on 24.06.2008. They are as follows:

"1) Whether the plaintiff prove that the defendant No. 1 has agreed to sell the schedule property for total sale consideration of Rs. 10,00,000/- and executed an agreement of sale dt: 24.2.2003 and received the advance amount of Rs. 9,00,000/-?

2) Whether the plaintiff proves that the defendant No. 2 was illegally trying to sell the schedule property to the third parties?

3) Whether the plaintiff proves that the defendant No. 2 has illegally sold the schedule property in favour of the defendant No. 3 and 4 through a registered sale deed dtd: 30-11-2006?

4) Whether the plaintiff proves that he has been always ready and willing to perform his part of the contract?

5) Whether the plaintiff is entitled the relief of Specific Performance of contract?

6) Whether the plaintiff is entitled to repay the loan due of the defendant No. 1 in respect of the schedule property?

7) Whether the plaintiff is entitled the relief of Permanent Injunction as sought for?

8) Whether the plaintiff is entitled for the relief of declaration as sought for?

9) What Order or Decree?"

6. During the pendency of the suit, 2nd defendant - Society chose to file an application under Order 7 Rule 11 of CPC r/w Section 125 of Karnataka Co-operative Societies Act to dismiss the suit as not maintainable. The said application was contested by the plaintiff and ultimately the learned Judge has passed the following order as found in paragraph 9 of the impugned order dated 03.04.2010. It is this order which is called in question on various grounds as set out in the appeal memo.

7. Admittedly, the 2nd defendant is a Society established under the provisions of the Karnataka Cooperative Societies Act, 1959. Said application came to be filed on the ground that no suit was maintainable without issuance of statutory notice as contemplated under Section 125 of the said Act. Relying upon a decision of this Court in Mahadevaiah Vs. Sales Officer, , the Trial Court has held that instituting a suit against a Co-operative Society is not maintainable under Section 125 of the said Act. It is further held that in the absence of the 2nd defendant, the instant suit cannot be decided completely and effectively.

8. What is argued before this court is that at the time of admitting the suit, notice to defendant No. 2 - Society had been dispensed with as per Section 80 of CPC and therefore, dismissing the suit against the 2nd defendant at a later point of time is not at all maintainable either on law or on facts. This Court is unable to accept the said contention for the simple reason that the provisions under Section 80 of CPC are not applicable to a Society established under the provisions of Karnataka Co-operative Societies Act, 1959.

9. Section 125 mandates issuance of notice prior to the filing of suit if it relates to the business of the Society or touching the constitution or management of the Society. Relief of injunction had been sought against the Society insofar as it relates to the auction proposed to be held by the Society. This definitely touches the business of the Society and therefore suit so filed against the 2nd defendant without issuance of prior notice as contemplated under Section 125 of Karnataka Co-operative Societies Act was not maintainable.

10. It is in this regard learned Judge has rightly referred to the Single bench decision rendered in the case of Mahadevaiah Vs. Sales Officer, .

11. The Division Bench of this Court in the case of K.P. Arvind Vs. Government of Karnataka, has elaborately dealt with the effect of non-issuance of statutory notice prior to presenting a suit. While discussing the provisions of Section 80 of CPC and Section 64 of the Bangalore Development Authority Act, the Division Bench of this Court has held as follows:

"Admittedly, the reliefs sought for by the plaintiffs related to the action taken by the Bangalore Development Authority and the State Government in exercise of their power under the Act... As the suit was filed without issuing the notice as required by Section 64 of the Act and Section 80 of the CPC, it was bad in law, because service of notice as per Section 64 of the Act on the BDA and as per Section 80 of the CPC on the State Government, having regard to the reliefs sought for in the plaint was a condition precedent for instituting a suit of the nature in question... In the absence of such a notice, plaint cannot at all be entertained by a Court. Therefore, on the face of it, the plaint was barred by Section 64 of the Act and Section 80 of the CPC. Hence, the trial Court ought to have rejected the plaint under Order 7 Rule 11(d) of the C.P. Code. In that event, it would have been open to the plaintiffs to file a fresh suit on the same cause of action on complying with Section 64 of the Act and Section 80 of the CPC, whereas the trial Court has dismissed the suit which is not permissible in law."

12. Any application filed under Order 7 Rule 11(d) of CPC can be considered at any stage of the suit. Of course, the said application will have to be considered in the light of the contents of the very plaint and should not be based on the defence taken in the written statement. On reading the entire plaint, it is evident that no suit could have been instituted against the 2nd defendant - Society established under the provisions of Karnataka Co-operative Societies Act, 1959, without issuing prior notice under Section 125 of the Act.

13. The learned Judge has chosen to return the plaint under Order 7 Rule 10 of CPC. Order 7 Rule 10 provides for return of the plaint to the plaintiff so as to represent the same before the proper forum. Proper course that the Trial Court should have adopted was under Order 7 Rule 11 of CPC by rejecting the plaint. When a plaint is rejected in a case like this, plaintiff will have an opportunity to file fresh plaint as contemplated under Order 7 Rule 14 of CPC. This aspect has been lost sight of by the Trial Court.

14. The approach adopted by the learned Judge insofar as it relates to the return of the entire plaint under Order 7 Rule 10 of CPC is not sustainable either in law or on facts. It was incumbent upon the Trial Court to have discussed about the ultimate decision that could be taken in the absence of the 2nd defendant.

15. Therefore, the order dated 03.04.2010 passed by the learned XI Additional City Civil Judge in O.S. No. 1515/2006 can only be considered only as insofar as it relates to the rejection of plaint relating to 2nd defendant only and the suit will have to proceed in accordance with law against defendant Nos. 1, 3 and 4.

Hence, the following:

ORDER

"Appeal is allowed in part. Rejection of the plaint insofar as 2nd defendant - Society is concerned is upheld. Rejection of plaint in respect of other defendants is held to be invalid and improper."

Matter is remitted to the Trial Court to continue the suit insofar as it relates to defendant Nos. 1, 3 and 4.

Any amount freezed by this Court during the pendency of this appeal be sent back to the City Civil Court with a direction to the City Civil Court to deposit the same in any Nationalized Bank till the disposal of the suit.

Since the matter is of the year 2006, the learned Judge of the Trial Court is directed to dispose of the matter as expeditiously as possible preferably within a period of 9 months from the next date of hearing.

Parties to appear before the Trial Court on 04.03.2015 without fail. Office is directed to send the LCR with a copy of this judgment for compliance.

I.A. No. 1/2013, does not survive for consideration.