
(2003) 05 RAJ CK 0111
In the Rajasthan High Court
Case No : Civil First Appeal No. 249 of 2003

Shyam Lal and Another	Vs	APPELLANT
Shushil Ruiaya and Others		RESPONDENT

Date of Decision : 27-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Rajasthan Co-operative Societies Act, 2001 — Section 117, 58
Rajasthan Societies Registration Act, 1958 — Section 137, 143, 75, 75(2)

Citation : (2004) 2 RLW 837 : (2003) 4 WLC 56

Hon'ble Judges : Harbans Lal, J

Bench : Single Bench

Advocate : Anoop Dhand, for the Appellant; R.K. Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Harbans Lal, J.—This civil first appeal u/s 96 C.P.C. has been preferred by the plaintiffs-appellants against the judgment and order dated 13.5.2003 of the learned Addl. District Judge No. 1, Sikar, allowing the application of the defendants-respondent No. 1 and 6 filed under Order 7 Rule 11 C.P.C. and dismissing the suit of, the plaintiff.

2. The brief facts of the case are that a suit for permanent injunction was instituted by the plaintiffs against the defendants stating therein that Shri Krishna Go Shala is a registered society under the provisions of the Rajasthan Registration of Societies. Act, 1965 (in short "the Act"). The trustees had no power to make new members without calling an annual general meeting. No annual general meeting was convened since 1982 which was necessary under the Constitution and the Rules of the Society. Defendant Nos. 1 and 2 were not legally appointed trustees. On 8.10.2001, an audit report was submitted by respondent No. 10. But he then submitted another special audit report under the influence of some persons on 23.11.2002 without there being any basis for the same and it was based on false facts, No election was held inspite of several

requests in this behalf. The suit was, therefore, filed after seeking permission u/s 80 C.P.C. r/w Section 143 of the Rajasthan Co-operative Societies Act praying that defendants Nos. 1 and 2 be restrained by a permanent injunction from representing themselves as trustees until they were approved to be trustees of the society in the annual general meeting. It was also prayed that they be restrained from treating other persons as members who were not elected by the executive and were not legally authorised members. An application for temporary injunction was also moved together with the suit.

3. Defendant Nos. 1 and 6 moved an application under Order 7 Rule 11 C.P.C. on 30.4.2003 stating that the suit was barred Under Sections. 75 and 137 of the Rajasthan Co-operative Societies Act, 1965 (in short the "Act of 1965") from being entertained by civil court. It was also alleged that the suit was not maintainable without prior notice u/s 143 of the Act. This application was contested by and on behalf of plaintiffs. Learned court below after hearing the learned counsel for the parties allowed the application and dismissed the suit under Order 7 Rule 11 (d) C.P.C. being barred u/s 75 r/w Section 137 of the Act of 1965 as it was of the view that the dispute raised in the suit touched the constitution, management and business of the cooperative society.

4. I have heard learned counsel for the parties on the admission of this appeal and have also perused the impugned order as well as the plaint, a copy where of has been placed before me by the learned counsel for the appellant for perusal.

5. It is pertinent to state here that in the application on which the impugned order has been passed reference to the provisions of the Act of 1965 has been made and the court below has also proceeded to decide the application oblivious of the fact that the aforesaid Act has since been repealed by the Rajasthan Co-operative Societies Act, 2001 (Act No. 16 of 2002) (in short "New Act") which has come into force w.e.f. 14.11.2002. But, the relevant provisions of Sections 75 and 137 of the Act of 1985 are almost similar to the corresponding Section 58 and 117 of the New Act. It has been held in *Radhey Shyam Khare v. State of M.P.* (1), *H.L. Mehra v. UOI* (2), *UOI v. Tulsiram Patel* (3), and *Roche Products Ltd. v. Collector of Customs* (4), that when an authority passes an order which is within its authority and competence, the order cannot fail merely because it purports to have been made under a wrong provision. Learned counsel for the parties also candidly agreed that the reference to the provisions of the Act of 1965 is of little consequence in this case because the corresponding provisions of the New Act are substantially and materially identical and similar.

6. It may not be out of place to mention here that Section 143 of the Act of 1965 provided that no suit shall be instituted against a co-operative society or any of its officers in respect of any act touching its constitution, management or the business until the expiration of two months next after the notice in writing has been delivered to the Registrar or left at his office stating the cause of action, the name and description and place of residence of the plaintiff and the relief claimed. But, the corresponding Section 119 of the New Act making a departure

from the earlier provision requiring prior notice, provides for mode of service of notice or order. As such, the objection that the suit was not maintainable for want of notice u/s 143 of the Act of 1965 does not survive and is disposed of accordingly.

7. While assailing the impugned judgment/ order, learned counsel for the appellants has contended that the learned court below has not considered the matter in the right perspective and has wrongly and illegally rejected the plaint under Order 7 Rule 11 (d) C.P.C. being barred under the Act. According to him, Section 75(2) of the Act of 1965 states the disputes which shall be deemed to be the disputes touching the constitution, management and business of the society and the plaint does not disclose any such dispute so as to attract the provisions of Section 75(1) of the Act of 1965. He has urged that the suit cannot be said to be barred by law.

8. Learned counsel for the caveator has supported the judgment and order passed by the court below and has submitted that a bare perusal of the plaint and the relief sought therein reveals that the suit clearly touches the constitution, management and business of the cooperative society and the court below has rightly held the suit to be barred by Section 57(1) r/w Section 137 of the Act of 1965. He has also submitted that Sub-section (2) of Section 75 of the aforesaid Act is only illustrative and is not exhaustive. The dispute raised in the suit lies exclusively within the jurisdiction of the Registrar of the Societies and the court below has rightly rejected the plaint under Order 7 Rule 11(d) C.P.C.

9. I have given my anxious and thoughtful consideration to the facts of the case in the light of the rival submissions of the parties.

10. A bare perusal of the plaint makes it abundantly clear that the subject matter of the suit touches the constitution, management and business of the co-operative society and learned court below has rightly held so. Section 75(2) of the Act of 1965 which corresponds to Section 58(2) of the New Act is only explanatory, illustrative and inclusive and not exhaustive as has been canvassed by the learned counsel for the caveators. Indeed, the main dispute/controversy between the parties is with regard to election of the Executive and the accounts of the society. The relief sought for further makes it explicit. So, the provisions of Section 58(1) of the New Act are clearly attracted and the suit being barred thereunder was rightly rejected Under Order 7 Rule 11(d) of the C.P.C.

11. In this view of the matter, therefore, the court below having taken the correct view, no interference in the impugned order is called for by this court in this appeal and this appeal deserves to be and is hereby dismissed in limine.