

(2016) 03 KAR CK 0374

In the Karnataka High Court

Case No : Writ Petition Nos. 49491 and 38532 of 2015 (CS-RES)

Siddamma

APPELLANT

Vs

Bhavani Housing Co-operative Society Limited and Others

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 105, Section 117, Section 70
Specific Relief Act, 1963 — Section 31

Citation : (2016) 4 KantLJ 302 : (2016) 2 KCCR 1655

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : H.V. Nagaraja Rao, Advocate for Chandranath Ariga, Advocate, for the Appellant; H.C. Shivaramu, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—1. These petitions are heard and disposed of by this common order, as these are petitions by the very petitioner in respect of the same circumstances.

2. The facts, as narrated by the petitioner, are as follows:

"The petitioner is said to be the absolute owner of property bearing No. 14, "Q" Block (part of land bearing survey No. 132 and 133 of Kathriguppe) Banashankari III Stage, Bangalore, measuring about 40 feet by 30 feet. It is said to be a residential site formed by a house building co-operative Society, known as Bhavani Housing Co-operative Society Ltd., the first respondent herein."

The above property was said to have been originally allotted to one K.S. Sowmya and conveyed to her under an absolute Sale deed dated 22.6.1999 by the said Society. Physical possession appears to have been delivered under a Possession Certificate dated 11.7.2001.

The said Sowmya, a well known Kannada film star, is said to have died in an air crash, as on 17.4.2004. It appears she had entered into an agreement to sell,

the above said property, with the petitioner. After the death of Sowmya, her husband, who is said to have succeeded to her estate, is said to have executed a registered sale deed in favour of the petitioner, dated 24.9.2005.

The petitioner is said to be dependant on her sons for all her needs, including the management of her properties, as she is ageing and had also suffered injuries in the recent past, apart from being diagnosed for several age related illnesses and was hence totally bed-ridden. It transpires that when one of her sons, Narasimha Murthy, had routinely visited the above property, as on 15.3.2015 it was found to be free of any encroachment. However, it is stated that when he again visited the site on 18.8.2015, he found that there was construction activity in full progress, on the said property. Having failed to gather proper details of the person or persons at whose instance the construction was being carried on, it is said that he had immediately approached the jurisdictional police to prevent the illegal construction. However, the police had opined that it was a dispute of a civil nature and that he would have to take civil action. It transpires that a civil suit was filed in OS 7246/2015, before the City Civil Court, Bangalore, after ascertaining that it was the second respondent in the first of these petitions, who was constructing on the said property. The suit is said to be pending as on date.

It transpires that the second respondent who has entered appearance in the suit, has set up a defence that the site in question had been allotted by the first respondent - society in favour of the third respondent and had been conveyed under a registered sale deed dated 14.8.2012. And that the said third respondent, had in turn, executed a registered sale deed in favour of the second respondent, dated 18.3.2015. And that she was putting up construction as absolute owner thereof.

Incidentally, it is stated that it is significant to note that the third respondent is said to be the sister-in-law of the Secretary of the first respondent - Society. It is also alleged that there are several civil and criminal cases pending against the said Secretary, one P.H. Dayanand. It is alleged that the said person has poor antecedents and is accused of various instances of cheating and fraud. It is claimed that he is closely associated with a minister of Cabinet rank, in the present State Government. It is urged that the immunity developed by the said Dayananda, is evident from the circumstance that the police were unable to execute several non-bailable warrants issued against him, because of his political clout and ill-gotten financial strength.

It is contended that the said Dayananda, knowing fully well that the petitioner was the owner of the property in question had proceeded to allot the same clandestinely in favour of his sister-in-law and had thereafter executed a sale deed in her favour, representing the Society as its Secretary.

It is also stated that in order to facilitate the above illegal sale deed and seeking to regularise the same and in order to deprive the petitioner of her property, the respondent - Society -acting through the medium of its Secretary, Dayananda,

had sought amendment of its Bye-laws before the fifth respondent, which appears to have been readily allowed as on 3.12.2013. The amendment was to the effect that a member was ineligible to be allotted a site if any member of his family possessed a site in Bangalore City.

The petitioner contends that the mala fides and the criminal intention of the said Secretary further becomes evident from the fact that the fourth respondent was set up to file a mischievous petition raising a dispute under Section 70 of the Karnataka Cooperative Societies Act, 1959 (hereinafter referred to as "the KCS Act", for brevity), within one week from the date of amendment against Sowmya and her family members, including her deceased brother - claiming that 4 sites had been allotted to members of the same family in violation of the amended bye-law. It is alleged that the fifth respondent had, without reference to basic documents such as an encumbrance certificate, which would have disclosed the status of the ownership of the sites, had promptly allowed the petition on the basis of a statement filed on behalf of the society, represented by Dayananda, conceding that there was indeed a violation of the Bye-laws by the previous management, when in fact, there was no such prohibition at the time of allotment in favour of Sowmya and her family members. The order was made against a dead person.

It is urged that the above exercise was a shoddy attempt to regularise the illegal sale transaction made by Dayananda, representing the society, in favour of the third respondent his sister-in-law.

The amendment to the Bye-laws, which is now claimed as the justification for the impugned order and the deprivation of the property of the petitioner is that - it is now prescribed under the Bye-laws that a member and his family would be entitled to only one site. It transpires that the family of Sowmya, who had agreed to sell a site in favour of the petitioner, had purchased four sites in the layout formed by the Society. As there was no such prohibition against members of the same family holding more than one site, at that point of time.

It is pointed out that even assuming that such amendment could be applied retrospectively, the significant circumstance that in the proceedings before the fifth respondent, Dayananda who is said to have appeared before the fifth respondent on behalf of the Society, vide Statement of Objections dated 15.3.2014 had conceded that there was an irregular allotment made in favour of late Sowmya and this assertion was made on a gross suppression of the fact that he had already executed a sale deed in respect of one of those sites, the site belonging to the petitioner, in favour of his sister-in-law, as per sale deed dated 14.8.2012.

It is in the above background that the above petitions are filed. The second of the above petitions W.P.38532/2015, is seen to have been filed seeking the quashing of the Sale deeds dated 14.8.2012 and 18.3.2015, referred to hereinabove and the first of these petitions, in WP 49491/2015, seeking that the

impugned Order passed by the Additional Registrar of Co-operative Societies be quashed.

3. Though respondents No. 1,2 and 5 are represented by counsel, no statement of objections are filed. Respondent No. 2 has, however, filed an application questioning the maintainability of the writ petition. Respondents No. 3 and 4 are deemed to have been served, as there was no response to the notice by way of paper publication.

In so far as the objection regarding the maintainability of these petitions is concerned, the objection is to the effect that since the petitioner seeks to question an order passed by the fifth respondent in a dispute raised under Section 70 of the KCS Act, the petitioner has an alternative remedy as provided under Section 105 of the KCS Act and hence the present petition is misconceived.

4. On the other hand, the petitioner has contended that the availability of an alternative remedy of appeal is not a bar for this court to entertain a writ petition in exercise of its plenary powers, particularly, when serious irregularities including fraud is plainly disclosed in the circumstances of the case.

The following authorities are cited in support of the above proposition.

"1. Binny Mill Labour Welfare House Building Co-operative Society Limited v. D.R. Mruthyunjaya Aradhya, 2008(3) KCCR 1692.

2. Andi Mukta Sadguru Shree Maktajee etc., v. V.R. Rudani and Ors. , 1989 (2) SCC 691

3. Scheduled Caste (Harijan) House Building Co-operative Society Limited and Another v. The State of Karnataka and others, , ILR 2006 Kar. 2180;"

5. To address the above question, the text of Section 70 of the KCS Act is reproduced hereunder for ready reference:

"S 70. Disputes which may be referred to Registrar for decision.--(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society arises -

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

(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 employee of the society, or

(c) between the society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs, or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or

(d) between the society and any other co-operative society, or a credit agency.

such dispute shall be referred to the Registrar for decision and no court or labour or revenue court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purpose of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely:--

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

(b) a claim by a society 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 is admitted or not;

(c) xxxxx

(d) any dispute between a co-operative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a co-operative society notwithstanding anything contrary contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947)];

(e) a claim by a co-operative society for any deficiency caused in the assets of the co-operative society by a member, past member, deceased member or deceased officer, past agent or deceased agent or by any servant, past servant or deceased servant or by its board, past or present whether such loss be admitted or not.

(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a cooperative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

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5....."

6. Even if the petitioner can be said to be a person claiming under a deceased member, it would appear that Sub-section (2) which exhaustively refers to what shall be considered as disputes "touching the constitution, management or the business of a cooperative society". And the same are specified. It may be noticed that disputes pertaining to transfer of immovable property or the validity of registered sale deeds is not contemplated. What is contemplated is recovery of debts by the society, a dispute by a surety from whom any recovery may have been made by the society, election disputes or a dispute between a society and

its employee or employees. The tenor of Sub-section (2) is clearly restricted to the named disputes and cannot be read as including all transactions forming part of the business of the Society.

In the case of Executive Director, KPTC Employees Cooperative Society Limited v. The Joint Registrar, , ILR 2013 Kar. 2701, the question was whether recovery of excess money paid under a sale deed by a member to the vendor society could be recovered by resort to a dispute under Section 70 of the KCS Act. After referring to the following authorities, namely,

- "1. Scheduled Caste (Harijan) House Building Co-operative Society Limited and Another v. The State of Karnataka and others, , ILR 2006 Kar. 2180;
2. Suresh v. The Managing Director, Karnataka Milk Federation, Bijapur and another, , 2008(6) KLJ 530;
3. A.S. Nanajappa v. The Deputy Registrar of Co-operative Societies and others, WP 42094/2001 dated 29.8.2005;
4. J. Diwakar Hegde v. Karkala Taluk Agricultural Produce Cooperative Society Limited, (1975)2 KLJ 390;
5. The Karnataka State Co-operative Apex Bank Limited v. Additional Registrar of Co-operative Societies and another, WP 13477/1995 dated 14.8.1995;
6. C. Narasegowda v. HMT Employees House Building Cooperative Society Limited, Bangalore, 1992(3) KLJ 495;
7. Murugayya v. L.B. Pawar and others, 1969(1) Mys.LJ 196; and
8. K. Prabhakaran v. P. Jayarajan, , AIR 2005 SC 688."

the learned Single Judge having held that such a dispute though not squarely covered under clauses (a) to (e) of sub-section (2) of section 70, was still to be construed as involving the business of the society and hence could be entertained - would not be of avail.

7. Even if such a liberal view is to be taken in the present case on hand, the authority vested in the Additional Registrar of Co-operative Societies would stop short of deciding whether an allotment made by a society in favour of its member was valid. But when once a sale deed is executed and registered, the purchaser becomes the absolute owner and neither the Authority nor the Society would have the power to negate the registered deed unless it is cancelled by a competent Civil Court.

It may hence be said that a dispute as to the validity of the sale deed in favour of the deceased, under whom the petitioner claims, could not have been raised before the Additional Registrar of Co-operative Societies. A reading of Section 117 of the KCS Act would not also indicate that the said Authority is vested with any such power to address the validity of a registered Sale deed. Consequently, even the appellate authority, prescribed under the KCS Act, would have no

jurisdiction to address the order passed in such a dispute. The writ petition is hence held to be maintainable, as the petitioner is left with no remedy as against the impugned Order, in the first of these petitions, passed by a statutory authority. Further, having regard to certain glaring circumstances which are apparent, prima facie, it is a fit case for the intervention of this court.

8. The following sequence of events, that are plainly demonstrated by the petitioner, would indicate the gross mischief apparent in the facts and circumstances of the case.

The property in question is seen to have been allotted to K.S. Sowmya by the respondent - Society and conveyed to her under a registered sale deed dated 22.6.1999. The said Sowmya is said to have died on 17.4.2004. Her husband had then executed a registered sale deed in respect of the property in favour of the petitioner as on 23.9.2005.

Inexplicably, the very site bearing No. 14 has been conveyed by the respondent - Society through its Secretary, P.H. Dayananda, under a purported registered sale deed dated 14.8.2012, in favour of one Bhagyalakshmi, who is said to be the sister-in-law of the said P.H. Dayananda. There is no reference in that deed to the earlier transactions whereby the petitioner was holding the said property as absolute owner.

The respondent - Society appears to have effected amendments to its Bye-laws, prescribing that a member is ineligible to be allotted a site by the Society if any of his family members already holds a site in the city of Bangalore. This amendment was brought into force with effect from 3.12.2013. A dispute under Section 70 of the KCS Act, naming the deceased Sowmya, her deceased brother, Amarnath, her mother and her sister-in-law as the respondents, apart from the Society, is raised by one Chandrappa, the fourth respondent in the first of these petitions as on 9.12.2013. It is seen to have been contended that the above named persons constituted a single family and each of them had been conveyed a house site by the Society, under four sale deeds - all dated 22.6.2009, which was in violation of the bye-laws (as amended in the year 2013, immediately prior to the filing of the dispute).

The Society has entered appearance through its Secretary, P.H. Dayananda, and a statement is filed categorically admitting that there was indeed a violation of the bye-laws of the Society in such allotment and sale of sites in favour of Sowmya and her family members, as per Statement dated 15.3.2014. Significantly, there is no reference to the Sale deed dated 14.8.2012, in respect of site No. 14 by the very Secretary, in favour of Bhagyalakshmi, in the said statement of objections.

9. In the face of the admitted violation, the Additional Registrar of Co-operative Societies has passed the impugned order dated 11.4.2014, allowing the petition filed by Chandrappa and cancelling the allotment made in favour of Sowmya of site No. 14. The Society was thereby directed to execute a registered sale deed

in respect of the site in favour of the petitioner therein.

Significantly, the sale deed of the petitioner herein has never been questioned or cancelled. It is seen that even the sale deed in favour of Sowmya is not cancelled. What the Assistant Registrar of Co-operative Societies has sought to cancel is the allotment made in her favour, which was ineffective as the registered title deed has remained unaffected. Chandrappa who had raised the dispute has not chosen to enforce the impugned order. Nor had the Society taken any steps. For it is noticed that Bhagyalakshmi who had purchased the site even as early as in the year 2012, when the petitioner's sale deed was in force, has subsequently sold the same under a purported registered sale deed dated 18.3.2015, in favour of the second respondent in the first of these petitions.

It would thus appear that without the sale deed in favour of Sowmya being cancelled by a competent court of law, the petitioner who claims under her would continue to have a valid and enforceable title to the subject property. The sale deed dated 14.8.2012 in favour of respondent No. 3 and the sale deed dated 18.3.2015 in favour of respondent No. 2 are therefore held to be void ab initio.

In *Binny Mill Labour Welfare House Building Co-operative Society Limited v. D.R. Mruthyunjaya Aradhya*, 2008(3) KCCR 1692, the first principles of law as to how such sale deeds executed in the face of a subsisting sale deed would be void ab initio are succinctly and comprehensively discussed. The said decision would apply on all fours to the present case in so far as the invalidity of the sale deeds set up by respondents No. 2 and 3 are concerned.

The petitioner should however, have the same cancelled by recourse to an appropriate suit in terms of Section 31 of the Specific Relief Act, 1963 and seek consequential reliefs of recovery of possession, if such reliefs are not already prayed for in the pending suit aforementioned.

10. The Order impugned, in the first of these petitions, is non-est in having been passed against dead persons and in the face of blatant suppression of facts by the respondent - Society and for the reason that the petitioner is directly affected by the same. Further, without the cancellation of a registered document, in the manner known to law, the Additional Registrar of Co-operative Societies could not have issued an order directing registration of the property in question in favour of a third party. The impugned order is hence quashed.

The petitions are allowed in terms as above.