(2008) 02 CAL CK 0028

In the Calcutta High Court

Case No : F.A. No. 342 of 2005

Sisirkana Guha and Others APPELLANT

Vs

Ayakar Grihanirman Samabaya Samity Limited and Another RESPONDENT

Date of Decision : 28-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2008) 2 CHN 428 : 113 CWN 451

Hon'ble Judges : Rudrendra Nath Banerjee, J;Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Anupam Chatterjee, Prabal Mukherjee and Dwijadas Chakraborty, for the Appellant;Bhaskar Ghosh and K.K. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—This first appeal is at the instance of the plaintiffs in a suit for specific performance of contract and is directed against the judgment and decree dated July 27, 2005 passed by the learned Civil Judge (Senior Division), 5th Court, Alipore, in Title Suit No. 56 of 2004 thereby dismissing the suit on the ground that the Civil Court has no jurisdiction to entertain the suit in view of the restriction imposed u/s 134(2)(d) of the West Bengal Co-operative Societies Act, 1983 as the same should be referred to the Registrar of the Co-operative Societies u/s 95(1)(d) of the Act for disposal.

2. Being dissatisfied, the plaintiffs have come up with the present appeal.

3. The appellants before us filed a suit for specific performance of contract against the respondents and the case made out by the plaintiffs-appellants may be summed up thus:

(a) All that piece and parcel of 14 cottah of revenue-free land as mentioned in the schedule ''A'' to the plaint is the subject-matter of the dispute and the plaintiff No. 1 was the owner of 4.22 acres of land at Mouza-Chawk Garia under Khatian No. 117 Dag Nos. 104, 106 which she sold to the defendant Nos. 1 and 2 for valuable consideration by different kobalas in the year 1970.

(b) Both the defendants purchased the land to construct 60 feet wide link road from the lands belonging to the co-operative with the main road and the 60 feet wide road had been constructed out of the said land. Only a small portion had been amalgamated with the lands of the co-operative with the main road.

(c) By a registered agreement for sale dated 19th May, 1971 and registered on 20th May, 1971 by the defendants agreed to sale the suit property to the plaintiff No. 1 or her nominee for consideration of the sum of Rs. 21,000/- out of which the plaintiff No. 1 paid a sum of Rs. 20,900/- to the defendants by adjustment with the consideration money payable to the plaintiff No. 1 before the execution of the said agreement for sale.

(d) The terms and considerations of the agreement was as follows:

(i) The vendors should convey 14 cottah of developed land to the purchaser or her nominees and would keep reserved for transfer before the distribution of plots among the members within the area transferred by the vendor by deed of even date or its vicinity within the scheme of the township area free from all encumbrances.

(ii) The above land of 14 cottahs should be conveyed to the purchaser or her nominees as soon as the plots within the township area should be ready for distribution among the members of the societies.

(iii) The purchaser had made payment of the sum of Rs. 20,900/- to the vendors out of the total consideration of Rs. 21,000/- for 14 cottahs of land, which the vendors acknowledged.

(iv) The price and the consideration had been settled and fixed at the rate of Rs. 1,500/- per cottah of developed land within the township area totalling a sum of Rs. 21,000/- in full and final settlement as per the valuation made or estimated at that moment but if the average cost of the developed lands exceeded the estimated cost of Rs. 1,500/- per cottah, the purchasers should be bound to pay the excess cost per cottah over the then valuation of Rs. 1,500/- per cottah.

(v) The vendors should make out marketable title of the property or the demised land set out in annexed schedule before the execution of the conveyance and for such purpose, the purchaser or her nominee made inspection of deeds, documents or any such paper or papers in original for the purpose of investigation of title.

(vi) Should the vendors fail to make out a marketable title and to observe and perform the terms and conditions and stipulations, the vendors should on demand refund to the purchasers the consideration money and should also pay to the purchasers her costs and incidental to the investigation of the title not exceeding Rs. 100/- only.

(vii) If notwithstanding the vendors making out a marketable title and the purchasers offering conveyance as aforesaid for execution by the vendors and the vendors failed or neglected to execute and/or register the document and complete the same and to observe and perform the terms and conditions and stipulations therein contained, the purchasers should be entitled to specific performance of the agreement or to sue for damages and costs at her option that she would elect to do.

(viii) By a letter dated 17th April, 1973 the defendant No. 2 requested the plaintiff No. 1 to make her choice as to the scheme, plots containing a total area of 14 cottah which the plaintiffs wanted to purchase. It was also stated that in default of such choice being made in time they would allot the plots having an area of 14 cottah of land according to their own choice. In reply, the plaintiff No. 1 by letter dated 19th April, 1973 informed the defendants that the plaintiff No. 1 wanted to purchase the suit plots as per the agreement and accordingly, the defendants delivered the possession of the suit plots to the plaintiffs and since then the plaintiffs had been in possession of the plots.

(ix) As per Clause 4 of the agreement, the consideration money had been fixed for Rs. 1,500/- per cottah of developed land within the township scheme of area but if the average cost of the developed land exceeded an estimated cost of Rs. 1,500/- per cottah, the plaintiffs should be bound to pay the excess costs as per cottah over the valuation of Rs. 1,500/-. The defendants, however, informed the plaintiffs that considering the development costs the price of the suit land per cottah would be more than Rs. 1,500/-.

(x) Some years after the possession of the suit plots were given, the plaintiffs took a loan of Rs. 6,000/- from the defendant No. 2 and it was agreed that if the loan could not be repaid, the plots would be surrendered to the defendants; the plaintiffs, however, repaid the amount.

(xi) In the year 1993, the defendants proposed to the plaintiff No. 1 to accept a permanent lease on the suit land instead of purchasing the suit land and in order to avoid unnecessary conflict, the plaintiff No. 1 without prejudice agreed to the proposal on certain terms and conditions, inter alia, that the plaintiffs would have the full right to give sub-lease or to assign, sale or mortgage the said leasehold property. Accordingly, a draft of the said lease-deed was also sent to the defendants, which was received by them on 24th February, 1993 and 25th May, 1993 respectively. In the said draft deed of lease of the plaintiff Nos. 2 to 5 were joined as lessees as nominees of the plaintiff No. 1, ultimately, if the said proposal was not confirmed by the plaintiffs.

(xii) In view of the aforesaid circumstances the plaintiff No. 1 addressed a letter through her Advocate dated 28th April, 1995 to the defendants thereby asking them to complete the transaction either by a sale as per the agreement or by executing a permanent lease-deed in favour of the plaintiffs or her nominees but in spite of that the defendants paid no heed. Hence the suit.

4. The suit was contested by the defendants by filing written statement thereby

denying the material allegations made in the plaint and one of the points taken by the defendants was that the Civil Court has no jurisdiction to entertain the suit in view of the provisions contained in the West Bengal Cooperative Societies Act, 1983.

5. In the past, an application under Order 7 Rule 11 of the CPC was filed for rejection of the plaint on the ground that the suit was barred. The Court having rejected the plaint, the plaintiffs preferred an appeal before this Court and this Court set aside the order rejecting the plaint and directed the Court below to decide the issue of maintainability of the suit, having regard to the provision contained in Section 95 and Section 134 of the West Bengal Co-operative Societies Act, 1983.

6. After remand, the learned Trial Judge has, by the judgment and decree impugned herein, held that the suit filed by the appellants is barred under the aforesaid provisions.

7. Being dissatisfied, the plaintiffs have come up with the present first appeal.

8. Therefore, the only question that arises for determination in appeal is whether the learned Trial Judge was justified in holding that the suit is barred under the provisions of the West Bengal Co-operative Societies Act, 1983.

9. In order to appreciate the question, it will be appropriate to refer to those provisions, which are quoted below:

95. (1) Any dispute concerning the business of a co-operative society capable of being the subject of civil litigation or any dispute relating to the affairs of a co-operative society (other than a dispute relating to the disciplinary action taken by a co-operative society against the paid employees of the co-operative society of the terms and conditions of the service of the paid employees of the co-operative society) shall be referred in the prescribed manner to the Registrar, if the parties thereto are among the following:

(a) a co-operative society or its board or an officer (past or present), agent, employee or liquidator of a co-operative society; or

(b) a member or a past member or a person claiming through a member or a past member or on behalf of a deceased member of a co-operative society or a financing bank of a co-operative society; or

(c) a surety of a member or past member or deceased member of a co-operative society, whether such surety is or is not a member of the co-operative society; or

(d) any other co-operative society or any person including any financing bank having transaction with a co-operative society or any liquidator of a co-operative society.

134. (2) Save as provided in this Act, no Civil Court or Revenue Court shall have jurisdiction in regard to:

(e) any dispute required u/s 95 to be referred to the Registrar.

10. At the very outset, it will appropriate to refer to a Special Bench decision of this Court in the case of Anjan Choudhury Vs. Anandaneer Co-operative Registered Housing Society and others, , where the Special Bench categorically pointed out the nature of disputes which cannot be resolved by a Civil Court. The following observations of the Court made in paragraphs 21 and 22 of the judgement are relevant and are quoted below:

As we have already indicated, the "dispute", in order to come within the provisions of Section 86 of the old Act and Section 95 of the new Act and thus to go out of the jurisdiction of the Civil Courts under the provisions of Section 132 of the old Act and Section 134 of the new Act, must be disputes, not just concerning or involving a co-operative society, but concerning the business or relating to, the affairs of the society, such business of affairs which the society is authorised to be concerned with or be involved in order to carry out its objectives under the Act and as chartered by and in its rules and bye-laws. A loan granted by a society which is only a Co-operative Housing Society and not a Co-operative Credit Society, or a tenancy granted in respect of a portion of its property by a society which is a Co-operative Credit Society and not a Co-operative Housing Society, cannot thus give rise to a dispute concerning the business or relating to the affairs of the Society. But, as already stated, if the dispute concerns or relates to something which the Society is legally authorised to and required by its rules and bye-laws to undertake, it would squarely come within the provisions of Section 95 of the new Act, corresponding to Section 86 of the old Act and cannot be entertained by the Civil Court if the parties to the dispute are as specified in those sections. And once these conditions are satisfied, the dispute must be referred to the Registrar and cannot be taken cognizance of by the Civil Courts, however complicated the questions of law the dispute may involve. If that be, and we think that to be, the law made by our legislature and that law does not suffer from any Constitutional infirmity, then it is simply useless to express any anxiety, as manifested in the order of reference as to whether the Registrar, not being expected to be "properly well-equipped as a Civil Court", would be able to decide the dispute effectively. Even if a legislative measure appears to be unwise, we must leave it at that, for neither we can review legislative wisdom nor should be presumptuous to think that wisdom is our sole monopoly. Justice Holmes once said to Justice Stones that if the legislature enacts a measure and "I can''t find anything in the Constitution expressly forbidding them to do, I say, whether I like it or not, ''Goddamit, let them do it''".

22. This brings us to the case in hand where the promoters of a Co-operative Housing Society, before its formation and registration as such, entered into a written agreement to purchase some land and having failed to obtain conveyance from the seller, instituted this suit in the Civil Court in the name of the Society after the same was duly formed and registered. As would appear from the plaint and the deed of agreement, the land was sought to be purchased for the co-

operative society and for the avowed purpose [vide Clause 2(c) of the deed of agreement], of constructing houses thereon for allotment of apartments to the members. The dispute in this case therefore directly concerns the business and relates to the affairs of the society which is patently a Co-operative Housing Society and is therefore clearly a dispute within the meaning of Section 86(1) of the old Act and Section 95(1) of the new Act. The dispute also is one between a co-operative society and "any person having transactions" with the co-operative society within the meaning of Clause (d) of Section 86(1) and of Clause (d) of Section 95(1) as aforesaid. The fact that, the co-operative society was not formally formed and registered when the agreement was entered into is immaterial for the society has already come into jural existence when the suit was filed and the question of maintainability would obviously have to be decided on the state of affairs prevalent at the time when the suit was instituted. The suit, therefore, could not be entertained by the Civil Court under the provisions of Section 132(2)(d) of the then prevailing Act of 1973, now replaced by Section 134(2)(d) of the present Act, 1983. The Court below was accordingly wrong in entertaining the suit and in holding that it had jurisdiction and that the plaint was not liable to be rejected under the provisions of Order 7 Rule 11 of the CPC and that the Court had jurisdiction to proceed with the suit.

11. Bearing in mind the aforesaid proposition of law laid down by the abovementioned Special Bench, we now propose to consider the object of the defendants against whom the suit has been filed. Those are quoted below:

The object of the society shall be primarily to establish on co-operative basis, settlements of housing schemes for persons with moderate income, by affording each settled facilities for owning a house or flat and ultimately to develop as far as practicable, the settlement so established into self-sufficient communities.

In furtherance of the above object the society shall, in conformity with the Act, rules and bye-laws have the power to raise funds; to procure lands on purchase, hire or lease; to develop, to sell, leave or let out such lands;... .

12. At this stage it will also be profitable to refer to some of the powers and duties of the Managing Committee of the society as provided in Rule 59 of the bye-laws which are reproduced below:

(j) to enter into all such agreements, make all such arrangements, take all such proceedings and do all such acts and things as may be necessary or proper for the due management of the affairs of the society has been established and for securing and furthering its interest subject to the provisions of the Act and rules and subject all to the bye-laws for the time being of the society;

(k) to enter into all contracts for the society and settle the terms thereof;

(p) to buy, sell, hire, mortgage, let out and develop buildings and other properties of the society and decide terms thereof and to make such arrangement as may be necessary for their up-keep, periodical repairs and payment of rates and taxes;

(x) to do all such acts and things as are incidental to or which the committee may think conducive to the attainment of the objects of the society or any of them.

13. On consideration of the provisions of the bye-laws mentioned above, we find that the agreement with the plaintiffs first for purchase of the land and then for selling part thereof after developing the same and constructing the link road were made strictly in the terms of the bye-laws which authorised the societies to purchase, develop and sell lands by dealing with the outsiders and those acts were within the scope of the words "affairs of the society" and thus, the resultant dispute with the "outsiders" who had dealings with the society in this regards comes within the purview of the words "any person having transactions with the society" and as such, is required to be referred to the Registrar and consequently, the jurisdiction of the Civil Court is excluded.

The learned Trial Judge, therefore, rightly concluded that the Civil Court had no jurisdiction to entertain the dispute involved in the suit.

14. We, therefore, find no merit in this appeal and the same is hereby dismissed. In the facts and circumstances, there will be, however, no order as to costs.

Rudrendra Nath Banerjee, J.

15. I agree.

