

(2000) 12 RAJ CK 0017
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3377 of 1991

Smt. Parvati Devi

APPELLANT

Vs

Churu Kraya Vikraya Sahakari Samiti Ltd. and Others

RESPONDENT

Date of Decision : 19-12-2000

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 37

Citation : (2001) 3 RLW 1545 : (2001) 4 WLC 539 : (2001) 2 WLN 54

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Sudhir Sharma, for the Appellant; Arjun Singh for Sangeet Lodha, Rajesh Joshi, Rakesh Sinha and R.P. Dave, for the Respondent

Final Decision : Dismissed

Judgement

Balia, J.

(1). Heard learned counsel for the parties.

(2). Petitioners, who are the legal representatives of deceased Kurda Ram, challenge the orders Annex. 4 & 5 passed against Kurda Ram. The petitioners also challenge the validity of the orders on the ground that the provisions of Sec. 118 of the Co-operative Societies Act are ultra vires. However, in the facts and circumstances of the case, I am of the opinion that it is not open for the petitioners to challenge the validity of the orders Annex. 4 & 5 with reference to constitutional validity of the provisions.

(3). Kurda Ram, who was Member of the Churu Co-operative Marketing Society, was charged with misappropriation of funds of the Society. The amount which was alleged to have been misappropriated and misused was principal sum of Rs. 17,649.03 ps., the interest thereon upto 26th Feb., 1976 Rs. 9, 178 and costs Rs. 407,41 totally to Rs. 27,234.44. This amount was found to have been the loss caused to the society on account of misuse of funds by Kurda Ram as assessed by the Court of Flying Squad, Churu vide order dated 21st July, 1976.

Thai order of the Assistant Registrar cum Flying Squad was appealed before the Addl. Registrar, Co-operative Societies, Jaipur. By order dated 9.8.79 the appeal was accepted and the order of the Assistant Registrar cum Flying Squad, Churu as set aside and the Assistant Registrar was directed to make a fresh order in accordance with law after holding an enquiry. Notices were issued to said Kurda Ram by the Assistant Registrar on 19th Sept., 1979. Kurda Ram did not appear on 10th Sept., 79 but moved an application on 11.9.79 and asked for time on account of illness. Thereafter, the proceedings were adjourned to 10th March, 1980, 30th Nov., 1980, 15th Dec., 1980 and 20th January, 1981. Thereafter, sending the report of the enquiry to said Kurda Ram, he was again required to present himself before the Assistant Registrar to explain the accounts on 20th Jan., 1981. He appeared and was allowed to inspect the records but he did not produce any evidence in rebuttal. Again he was given opportunity on 17th March, 1981 and 20th April, 1981, on which dates he remained absent. In these circumstances, the Assistant Registrar passed the order reaffirming the earlier finding recorded by the Court of Flying Squad and finding that the said Kurda Ram was guilty of causing loss to the Society to the tune of Rs. 27, 234.44 ps. directed the recovery of the sum from Kurda Ram.

(4). The said Kurda Ram has filed an appeal against the order of the Assistant Registrar dated 16.5.1981 before the Registrar. That appeal was dismissed as barred by time. Thereafter, Kurda Ram preferred a revision against the order of Assistant Registrar before the State. Since the petitioner during the pendency of the revision before revisional authority died, no application for bringing on legal representatives was ever filed by them before the revisional authority.

(5). It was urged by the learned counsel for the petitioners that the order passed by the State Government on revision was against the dead person, hence is a nullity and be set aside. This contention cannot be accepted. In the absence of any application by the legal heirs of the deceased, the revision came to be decided as it was constituted against the petitioner Kurda Ram. When the revision was filed by Kurda Ram, on his death it was for his legal representatives to have brought this fact to the notice of the Revisional Authority and asked for their substitution. If the legal representatives have failed to persecute the proceedings before the State Government representing for the petitioner, no fault can be found with the order of the State Government on the ground that it has been passed against a dead person. Even in the absence of this order for want of the existence of the petitioner, revision would have failed. Thus, it is apparent that the order of recovery having become final against said Kurda Ram after hearing him, the recovery could have been validly executed against the estate of said Kurda Ram, the validity of these orders could not have been challenged by the legal representatives in the execution proceedings.

(6). So far as the validity of Sec. 118 of the Co-operative Societies Act prescribing mode of execution is concerned, this ground does not affect the validity of the demand that has been raised against the petitioners. Sec. 118 only

provides the mode of execution.

(7). The principal ground on which the validity of Sec. 118 has been challenged is that it provides alternative mode for execution for recovering various amounts under various provisions of the Act which can be adopted by the Registrar in his discretion and there is no guideline in which case which course shall be adopted. It was pointed by the learned counsel for the petitioner that there is wide difference between the provisions of Clause (a) and (b) of sub-sec. CD. All properties are liable to be proceeded against the recovery of sum by the Co-operative society, if the recourse is taken under clause (b) and agricultural land shall be out of execution proceedings if the proceedings are taken under clause (a) as a decree of civil Court, and therefore, it being discretion left to the discretion of the Registrar is wholly arbitrary.

(8). Having given my careful consideration, I am of the opinion that the contention is not well founded. Chapter XII of the Co- operatives Societies Act deals with the execution of awards, decrees, orders and decisions. The relevant provisions for our purposes u/S. 117 and 118 and be reproduced hereinbelow:-

"CHAPTER XIII

Execution of Awards, Decrees, Orders and Decisions.

Sec. 117. Enforcement of charge. - Notwithstanding anything contained in Chapter IX, or any other law for the time being in force, but" without prejudice to any other mode of recovery provided in this Act, the Registrar or any person subordinate to him empowered by the Registrar in this behalf, may, on his own motion or on the application of a Co-operative Society, make an order directing the payment of any debt or outstanding demand due to the society by any member or past or deceased member, by sale of the property or any interest therein, which is subject to a charge under sub-section CO of Sec. 38;

Provided that no order shall be made under this section unless the member, past member or the nominee, heir or legal representative of the deceased member, has been served with a notice of the application and -

(i) where such person dispute the debt or demand, such dispute is finally adjudicated under Sec. 77; or

(ii) where such person does not dispute the debt or demand, he fails to pay such debt or demand within seven days from the date of the service of such notice as aforesaid.

Section 118. Execution of orders, etc. (1) Every order made by the Registrar under sub-section (2) of Section 74 or u/s 117, every decision or award made under Sec. 77, every order made by the liquidator under Sec. 80 and every order made by the Tribunal u/Sec. 123, 125, 126 or 127 and every order made u/Sec. 124, shall, if not carried out.-

(a) on a certificate signed by the Registrar, or any person authorised by him in

this behalf, be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court; or

(b) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue;

Provided that any application for the recovery in such manner of any sum shall be made-

(i) to the Collector and shall be accompanied by a certificate signed by the Registrar or by any person authorised by him in this behalf;

(ii) within twelve years from the date fixed in the order, decision or award and if no such date is fixed, from the date of the order, decision or award, as the case may be; or

(c) be executed by the Registrar or any other person subordinate to him empowered by the Registrar in this behalf by the attachment and sale or without attachment, of any property of the person or a co-operative society against whom the order, decision or award has been obtained or passed,

(2) Any private transfer or delivery of, or encumbrance or charge on, property made or created after the issue of the certificate of the Registrar or any person authorised by him, as the case may be, under sub-Sec. (1), shall be null and void as against the society on whose application the said certificate was issued".

(9). While Sec. 117 is confined to enforcement of charge for the purpose of recovery of the sum due to the Society by any member or past or deceased member by sale of the property or any Interest therein which is subject to a charge under Sub-sec. CD of Sec. 38. Obviously, Sec. 117 is not a general mode of execution of decree but enforcement of charge created u/S. 38 of the Act, to secure recovery of said amounts such dues remaining unpaid the demand for the recovery of which the property is subjected to charge can always be recovered by enforcing the charge which amounts to enforcing charge. However, enforcement of charge is not the only or necessary mode for effecting the recovery of sum for which charge has been created. Firstly, It is for the creditors choice whether he wants to enforce the charge and recover his dues or may take recourse to general mode of recovery against all properties, including that which is subject to charge. Even where proceedings to enforce the charge is pursued. It does not exclude the availability of other properties of debtor from the execution of decree. In such even, if the entire debt is satisfied by realising the security by enforcing charge, the matter ends. However, if the entire debt due is not satisfied through such recovery, the other properties of the debtor can still be proceeded against for remaining debt due. If the recovery from realisation of property is eater than the amount due from the debtor, the same has to be made good to him after satisfying the debt and charge of realisation out of such receipts.

(10). Sec. 118 deals with the execution proper. A perusal of the scheme of Sec. 118 reveals that sub-sec. (1) does not deal with the execution of various orders

referred to therein by the Registrar at his discretion. Different modes have been provided but it has been left to the decree-holder to enforce his recovery by choosing different modes as are available to him under the law. Clause (a) & (b) both require that an application has to be made for issuance of certificate to the Registrar and it is only after the Registrar issues a certificate certifying the amount due under any order referred to in the provision, it is for the decree-holder either to approach the appropriate authority with an appropriate application within the time prescribed for initiating the proceedings under the CPC for recovering the sum or to approach the Collector with an application accompanied with a certificate issued by the registrar certifying the sum to be recovered, to recover the demand as arrears of land revenue. In either case, the Registrar's obligation ends on issuing a certificate for the sum to be recovered by the creditor society. It is, thereafter, the decree- holders choice to choose the forum available to him under the law. Merely because the law provides multiple modes for the recovery of sum which has been adjudicated in favour of a decree-holder, the law does not become ultra-vires. It does not give any authority to any functionary under the Act to pick and choose forum for the purpose of execution of the decree. Where multiple forums are provided under the statute and left to the litigating person to choose the forum which is best to suit his need. It is to provide different modes of execution to be proceeded by the decree holder for recovering the outstanding sum. Such provision cannot be held to be ultra vires for that reason alone. It may be further seen that clause (c) of sub-sec. (1) empowers the Registrar to execute such orders. To execute a decree by attachment and sale or sale without attachment of any property of a person or a Co-operative society against whom the order, decision or award has been obtained or passed. All the three provisions by themselves do not include or exclude any property from the provisions of the execution. The properties which are subjected to recovery proceedings shall be governed by the ordinary law which apply to properties available for execution and therefore, apprehension of the petitioner that Sec. 118 is in conflict with Sec. 37 of the Tenancy Act is also not well founded and cannot be sustained.

(11). For the reasons aforesaid I do not find any substance in the contention that the provisions of Sec. 118 are ultra vires.

(12). The petition fails and is hereby dismissed.

(13). No orders as to costs.