

(1984) 01 AHC CK 0065
In the Allahabad High Court
Case No : S.A. No. 474 of 1976

Tharoo Mal

APPELLANT

Vs

Pilibhit Cooperative Housing Society

RESPONDENT

Date of Decision : 02-01-1984

Acts Referred:

Land Acquisition Act, 1894 — Section 41
Specific Relief Act, 1963 — Section 38, 41
Land Acquisition Act, 1894 — Section 41
Specific Relief Act, 1963 — Section 38, 41
Land Acquisition Act, 1894 — Section 41
Specific Relief Act, 1963 — Section 38, 41

Citation : (1984) AWC 22 Supp

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant; R.S. Varma, for the Respondent

Final Decision : Allowed

Judgement

B.N. Sapru, J.—This is an appeal by the Plaintiff.

2. The case of the Plaintiff was that he was the owner of the plots in suit having an area of 2.43 acres situate in village Pakaria Naugawan, Pargana, Tehsil and District Pilibhit. It was asserted by the Plaintiff that the Defendant wanted to take possession of the plots in dispute and, therefore, the Plaintiff instituted writ petition No. 2399 of 1964 and therein the proceedings for possession were stayed. It was then asserted that on 22-4-1969 a registered compromise was entered into between the Plaintiff and the Defendant. Under this agreement, the Defendant acknowledged the ownership of the Plaintiff over the land in dispute and since the land had been entered in the revenue record in the name of the Defendant, a registered sale deed dated 21-4-1969 was executed by the Defendant in favour of the Plaintiff. Then it was averred that the Plaintiff was in possession without obstruction by the Defendant but recently, sometimes in 1975, the Defendant tried to interfere with the Plaintiff's possession. In the

circumstances, the Plaintiff filed a suit for permanent injunction restraining the Defendant from interfering with the Plaintiff's possession over the land in suit.

3. The Defendant in his written statement admitted that the Plaintiff had filed a writ petition in the High Court. It was asserted that the Defendant was in possession of the land since 1964 when its name was mutated over the same. It was asserted that the suit was barred by Sections 70 and 111 of the U.P. Co-operative Societies Act as also by Section 117 of the said Act and that the civil court had no jurisdiction to entertain the suit. Then it was asserted that if there was any agreement between the Plaintiff and the defendant, the agreement entered into would be void and illegal and the office bearers of the society had no right to transfer the ownership and possession of the plots in suit to the Plaintiff. It was then asserted that the alleged agreement and transfer deed, if any, was never acted upon and the Plaintiff never entered into possession of the plots in suit in pursuance of the alleged agreement of transfer. It was then stated that the suit was barred by Sections 38 and 41 of the Specific Relief Act.

4. The trial court framed the following issues:

1. Whether the Plaintiff is owner and is in possession of the plots-in-dispute as alleged in the plaint?

2. Whether the suit is barred by Sections 70, 111 and 117 of the U.P. Co-operative Societies Act?

3. Whether this Court has no jurisdiction to try this suit as alleged in W.S. Para 4?

4. Whether there was any agreement between the Plaintiff and Defendant's society as alleged in the plaint para 3? If so, is the said agreement void and illegal as alleged in W.S. para 6?

5. To what relief, if any, is the Plaintiff entitled?

6. Whether the said deed executed by the Defendant co-operative society in favour of the Plaintiff on 21-4-1969 is void and illegal as alleged in W.S. paras 6 and 7? If so, its effect?

7. Whether the suit is barred by Sections 38 and 41 of the Specific Relief Act?

5. The trial court found under issue No. 3 that the Civil Court had jurisdiction to entertain the suit.

6. Then it took up issues No. 1, 2 and 4 together. It found that the admitted case of the parties was that the land in dispute originally belonged to the Plaintiff and land acquisition proceedings had been taken in respect thereof. It further found that the Plaintiff had filed a writ petition in the High Court to challenge the acquisition proceedings. It found that there was a compromise between the parties whereby the office bearers entered into an agreement with the Plaintiff which was registered and which was followed by a sale deed in favour of the Plaintiff. The sale deed has been found to have been executed by the president

and the secretary of the Defendant Society of which the Plaintiff was found to be a member. The agreement and the transfer deed were also found to be legal and valid. It further found that the Plaintiff was in possession over the land in suit. The trial court also found that the suit was not barred by Sections 70, 111 and 117 of the U.P. Co-operative Societies Act.

7. Having come to these findings, the trial court decreed the suit and issued a permanent injunction restraining the Defendant and its agent from interfering with the Plaintiff's possession over the land in suit.

8. The Defendant filed an appeal. The appellate court found that the Plaintiff was not in possession on the date of the suit and it was the society which was in possession. It refused to entertain the second argument on behalf of the Defendant that the office bearers had no right to enter into an agreement to transfer the property of the Society to the Plaintiff because this argument raised mixed questions of law and fact and in particular it noted that this plea had not been taken in the written statement on behalf of the Defendant. A further finding of the lower appellate court was that the suit was not barred by Sections 70, 111 and 117 of the U.P. Co-operative Societies Act. The lower appellate court went on to hold that as the Plaintiff was not in possession the suit for perpetual injunction could not be decreed. It further noted that the Plaintiff should have filed a suit for possession of the land in suit instead of filing a suit for grant of injunction. The appeal was accordingly allowed.

9. Aggrieved, the Plaintiff has come up in appeal.

10. In this appeal, an application was made by the Plaintiff Appellant praying that the relief Clause be amended and he be permitted to seek an alternative relief for possession if he was found out of possession. This amendment was allowed by the Court vide order dated 17-8-1982 and the relief for possession has now been incorporated in the plaint.

11. The position that emerges is that the Defendant had executed a transfer deed in favour of the Plaintiff. The suit has been held not to be barred by any of the provisions of the U.P. Co-operative Societies Act. The lower appellate court had dismissed the suit on the ground that the Plaintiff was not in possession on the date of the suit. The Plaintiff has now amended the plaint and relief for possession has been added. On the findings recorded by the lower appellate court, the suit would have to be decreed unless, as urged by the learned Counsel for the Defendant Respondent, the suit is barred by the provisions of the U.P. Co-operative Societies Act.

12. Section 70 of the U.P. Co-operative Societies Act speaks of a dispute which may be referred to arbitration. Sub-section (1) provides that notwithstanding anything contained in any law for the time being in force, if any dispute relating to the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken against a paid servant of a society arises

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

(b) between a member, past member or any person claiming through a member, past member or deceased member, and the society, its committee of management or any officer, agent or employee of the society, including any past officer, agent or employee;

(c) between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent or any deceased employee of the society; or

(d) between a co-operative society and any other co-operative society or societies;

Such dispute shall be referred to the Registrar for action in accordance with the provisions of this Act and the rules and no court shall have jurisdiction to entertain any suit or other proceeding in respect of any such dispute.

13. Thereafter comes up Sub-section (2) which provides that, for the purposes of Sub-section (1), the following shall be deemed to be included in dispute relating to the constitution, management or the business of a cooperative society, namely--

(a)....

(b)....

(c)....

(d) all matters relating to the object of the society mentioned in the bye-laws as also those relating to the election of office bearers.

14. Sri D.P.S. Chauhan has urged that the dispute is between the society and the Plaintiff who was a member of the society. He submits that the society is a housing society and the business of the housing society includes the sale of land to its members and as the Plaintiff claims that the society is not honouring the sale deed executed in favour, of the Plaintiff by the Defendant, the dispute is a dispute covered by Clause (d) of Sub-section (2) of Section 70, as it relates to the object of the society mentioned in the bye laws, and, therefore, the dispute is excluded from the jurisdiction of a Civil Court, in view of the provisions of Section 70 read with Section 111 of the U.P. Co-operative Societies Act as it is a dispute required u/s 70 to be referred to the Registrar.

15. Sri B.D. Mandhyan, appearing on behalf of the Appellant has contended that the Plaintiff is not claiming any relief against the Defendant on the basis of being a member of the co-operative society but is claiming his rights under the sale deed executed by the Defendant society in favour of the Plaintiff. The cause of action, according to Sri Mandhyan, is that the society was interfering with the

Plaintiff's possession and in the alternative it is now pleaded that if the Society be found to be in possession, then the relief of possession be given to the Plaintiff.

16. Sri D.P.S. Chauhan has drawn my attention to a decision of Mr. Justice Satish Chandra (as he then was) in Civil Revision No 2796 of 1977, Vyas Kumar Bakshi v. The Kisan Co-operative Sugar Factory Ltd., (decided on 24-7-1979) in which it was observed by the Court while referring to Section 70, Sub-section (2) thereof in particular, that--

It will be seen that Sub-section (2) gives an artificial meaning to the phrase "dispute relating to the constitution, management or the business of a cooperative society" by including within its ambit the kinds of disputes mentioned in Clauses (a), (b), (c) and (d) of Sub-section (2). Clause (a) refers to claims for amounts due. In other words, claims for amounts due shall be deemed to be disputes relating to the constitution, management or the business of a co-operative society. The only condition for a claim to qualify under Clause (a) is that a demand for payment should be made and that the demand be either refused or not complied with irrespective of the question whether the claim is admitted or not by the Defendant. The nature of the claim is not specified under Clause (a).

17. In this judgment, the learned Judge dealt with the case of Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, on which reliance was placed by Sri B.D. Mandhyan. Referring to the case, the learned Judge observed that--

In that case the artificial definition was only of the word "dispute". Otherwise the claim has to be established to be touching the constitution, election of office bearers, conduct of general meetings and management of a society. Then alone could it be referred to the Registrar of Co-operative Societies. The Supreme Court held that the phrase "touching the business of a society" has, in the context, to be understood in a narrow sense. It means the actual trading or other similar business activity of the society. This case is unhelpful because the phrase "touching the business of a society" was left undefined and the court had to interpret it. In the present case the phrase "dispute relating to the constitution, management or business of the society" has been statutorily deemed to include four kinds of claims mentioned in Clauses (a) to (d). Clause (a), as already seen, is widely worded.

18. Clause (d) of Sub-section (2) of Section 70 of the U.P. Co-operative Societies Act speaks of all matters relating to the object of the society mentioned in the bye laws. Pilibhit Housing Co-operative Society Limited, who is Defendant, entered into an agreement with the State Government as required by Section 41 of the Land Acquisition Act. The agreement is Ex. A-3. Clause 3 (a) provides that the society shall use the land for the purpose of carrying out the housing scheme in accordance with the rules of the society and that subject to the provisions of

Clause (a) that the society shall hold the land for its own use in accordance with its rules. Clause (b) provides that the society shall carry out such housing scheme as aforesaid by building or causing to build on the said plot not less than 100 dwelling houses. Clauses (c) and (d) provide that the society may sell, let out plots of land or any portion thereof to its members. The sale by the society in favour of the Plaintiff appears to have been in exercise of its powers to sell land to its members.

19. Sri D.P.S. Chauhan argues that the Plaintiff's grievance is that in spite of the sale by the Defendant in favour of the Plaintiff, the society did not put the Plaintiff in possession. He points out that having entered into the transaction of sale, the society started interfering with the Plaintiff's possession. Later on, by amendment, it is mentioned that the Plaintiff wants to urge that the society if found to have dispossessed the Plaintiff, the Plaintiff be put in possession, even then the dispute is a dispute relating to the object of the society which is to provide housing site.

20. Sri B.D. Mandhyan appearing for the Appellant urges that the Plaintiff's grievance is not connected with the object of the society. The Society, according to him, has been unlawfully interfering with the Plaintiff's possession which became lawful as a result of the agreement of sale entered into by society in favour of the Plaintiff. He specifically says that under the sale deed the property vests in the Plaintiff and the society does not own the land and the rights are being claimed under the sale deed,

21. I may add here that the byelaws of the society has not been filed in this case and are not on record. Nevertheless the society is a housing society and from Ex. A-3 the purpose for which the land was acquired and given to the society, can be found from Ex. A-3, the agreement, entered into by the society with the State Government as required u/s 41 of the Land Acquisition Act.

22. Once the sale deed had been executed by the society in favour of the Plaintiff, the object of the society, namely settling of plots with the members, was a complete act. The title stood transferred from the society to its members. Any subsequent action of the society in trying to retain possession or trying to take possession of the land would necessarily be ultra vires the object of the society. That act cannot be an act relating to the object of the society. Only those matters can be said to be matters relating to the society which were mentioned in the bye laws.

23. In view of the fact that the findings that title to the land stood transferred under the sale deed dated 21-4-1969 executed by the society in favour of the Plaintiff, the subsequent action of the society in either retaining the land or in trying to take possession of it, cannot be matter covered by Section 70(2)(d) of the U.P. Co-operative Societies Act. In this view of the matter, Section 111 will also not come into play. From this it follows that Section 117 of the Act which requires certain formalities to be done before filing of the suit will also not apply.

24. In the result, the appeal is allowed, the order of the lower appellate court is set aside and the suit of the Plaintiff for possession over the plots in suit is decreed and a permanent injunction is issued restraining the Defendant from interfering with the Plaintiff's possession over the land in suit after the same has been delivered. The Plaintiff Appellant is entitled to his costs throughout.