
(2014) 04 BOM CK 0193

In the Bombay High Court

Case No : Notice of Motion No. 2716 of 2011 in Suit No. 2240 of 2011

Usha Sunder Premises Co-operative Society Ltd.

APPELLANT

Vs

Mr. Nilang Desai and Others

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Maharashtra Co-operative Societies Act, 1960 — Section 43, 44, 45, 91, 91(1)

Citation : (2014) 04 BOM CK 0193

Hon'ble Judges : R.S. Dalvi, J

Bench : Single Bench

Advocate : Snehal Shah, Ms. Dipti Panda and Mr. Dhawal Mohan i/b Thakore Jariwala and Associates, Advocate for the Appellant; Gaurav Joshi, Sr. Advocate, Ms. Neeta Jain and Mr. Sunil Gangan i/b RMG Law Associates for Defendant No. 4 and Mr. Rohan Kelkar, Mr. Bankim Gangar and Mr. Shahazad Kazi i/b Negandhi Shah and Himayatullah for Defendant No. 1, Advocate for the Respondent

Judgement

R.S. Dalvi, J.—The preliminary issue with regard to the bar of the inherent jurisdiction of the Court u/s 91 of the Maharashtra Co-operative Societies Act, 1960 (MCS Act) is to be decided. The issue has been framed thus:

Whether this Court's jurisdiction is barred u/s 91 of the Maharashtra Co-operative Societies Act, 1960.

2. The suit is filed by a co-operative housing society against the two previous owners of the land owned by the society, part of which came to be leased to them under an unregistered agreement of lease. The suit is also filed against the Ex-Secretary of the society who is alleged to have executed a forged and fabricated document in favour of another third party. Defendant Nos. 1 & 2 are the previous owners. Defendant No. 3 is the previous Secretary. Defendant No. 4 is the successor in interest of defendant Nos. 1 & 2 under certain documents executed by and between defendant Nos. 3 & 4.

3. The predecessors-in-title of defendant Nos. 1 & 2 sought to develop their

property for construction of the building of the plaintiff-society. Their land upon which was their dwelling house was agreed to be and came to leased to defendant Nos. 1 & 2. The lease is unregistered. The main property of defendant Nos. 1 & 2 came to be conveyed to the plaintiff-society.

4. It is alleged that defendant No. 3 without authority of the plaintiff executed a Deed of Confirmation and registered the Indenture of Lease on behalf of the plaintiff without knowledge and consent of the plaintiff. Defendant No. 3 is also alleged to have executed a Deed of Modification Agreement, Deed of Assignment and Conveyance in favour of defendant No. 4 for and on behalf of plaintiff-society but without its knowledge and consent. Defendant No. 3 is stated to have acted upon a resolution purportedly passed by the plaintiff-society but which is alleged to be forged.

5. The plaintiff-society has sought declaration and cancellation of the Deed of Modification, Deed of Confirmation Agreement and Deed of Assignment/Conveyance.

6. It has to be seen whether the dispute between the parties falls within Section 91 of the MCS Act, the relevant part of which runs thus:

91. Disputes.-(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the committee or its officers other than elections of committees of the specified societies including its officer, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, to the Cooperative Court if both the parties thereto are one or the other of the following-

(a).....

(b).....

(c) a person other than a member of the society, with whom the society has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under sections 43, 44 or 45, and any person claiming through such person;

(d)

(e)

7. u/s 91 to bar the Civil Court's jurisdiction, which is otherwise unlimited and is only subject to express and implied bar under a statute, it must be a dispute touching the management of the society and between the society, its members or the person other than the members of the society who has entered into any transaction in respect of which certain restrictions and regulations are prescribed inter alia u/s 45 of the MCS Act. Section 45 runs thus:

45. Restrictions on other transactions with non-members.-Save as is provided in this Act, the transactions of a society with persons other than members, shall be subject to such restrictions, if any, as may be prescribed.

8. There are no regulations or restrictions prescribed with regard to defendant No. 4 who is the person other than the plaintiff-society's member and who has entered into the aforesaid transactions with defendant No. 3, the Ex-Secretary of the society.

9. The transactions which the plaintiff-society has sought to challenge in respect of which the suit for declaration and cancellation is filed are not the transactions of the plaintiff-society. They are specifically the transactions only by and between defendant No. 3 who has purportedly acted on behalf of the society but who is alleged to have acted without the knowledge and consent of the society. Consequently the transactions in the suit are not the transactions contemplated u/s 45 of the MCS Act. Consequently defendant No. 4 who is the person other than the society is not the person with whom the society has had any transaction. Even if respondent No. 3, having acted as the Secretary of the society can be taken to be the person acting on behalf of the society and hence the transaction may be taken to be of the society (which the society has challenged), the transaction is not one in respect of any restriction or regulation imposed u/s 45 of the MCS Act.

10. Sections 43 & 44 which relate to restriction on borrowing and loan making policy do not apply at all to the suit transactions.

11. In the case of Margret Almeida and Others, Vs. Bombay Catholic Coop. Housing Society Limited and Others, to which my attention has been drawn by Mr. Shah on behalf of the plaintiff, the Supreme Court considered the purport of the entire Section 91 read with Section 45 in a suit in which the resolution of the society as also the conveyance came to be challenged by the society. It has been held referring to the judgment in the case of Marine Times Publications Pvt. Ltd. Vs. Shriram Transport and Finance Co. Ltd. and another, that before the dispute can be referred to the Co-operative Court u/s 91(1) of the MCS Act, it is not only essential that the dispute should be of the kind described in the sub-section but also essential that parties to the dispute must be ones specified thereunder. Hence both the subject matter as also the parties must be those specified in the section. It is, therefore, held that if either of the two requirements is not satisfied the dispute cannot be adjudicated by the Co-operative Court. Consequently then the Civil Court's jurisdiction would not be barred.

12. It is also held that the class of persons under sub-section (c) of Section 91(1) is not an unqualified class. That class of persons would, therefore, be only such person other than the member of the society with whom the society has any transaction in respect of which any restriction or regulation is prescribed and not all outsiders.

13. It is held in para 40 thus:

It appears that the only circumstance which enables the Cooperative Court to exercise its jurisdiction against such a third party is that while adjudicating a dispute which is otherwise amenable to its jurisdiction, the Cooperative Court reaches the conclusion that a third party acquired some interest in the property of one of the parties to the dispute.

14. It is further held in para 47 that if any party disputes the validity of the title conveyed, the dispute would have to be adjudicated by the Civil Court u/s 9 of the CPC.

15. Consequently the contention on behalf of the defendants that as the dispute relates to the management and business of the plaintiff-society and is between the society, its member and the person other than its proposed members being covered u/s 91, it must be adjudicated in the Co-operative Court is incorrect. The Civil Court's jurisdiction is not seen to be barred. The aforesaid preliminary issue is answered in the negative.

16. The Notice of Motion taken out by the plaintiff being Notice of Motion No. 565 of 2012 is adjourned for hearing to 16.06.2014.