

(2009) 02 MAD CK 0133

In the Madras High Court

Case No : C.R.P. (PD) No. 3541 of 2008 and M.P. No. 1 of 2008

V. Rajamanickam

APPELLANT

Vs

Shanthi

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (2009) 5 MLJ 406

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : J. Dhanyakumar, for the Appellant; K. Vasu Venkat, for the Respondent

Final Decision : Allowed

Judgement

G. Rajasuria, J.—Inveighing the order dated 26.11.2007 2.9.2008 passed in I.A. No. 110 of 2008 in O.S. No. 124 of 2008 by the Subordinate Judge, Rasipuram, this civil revision petition is focussed.

2. The nitty-gritty, the gist and kernal of the relevant facts, which are absolutely necessary and germane for the disposal of this civil revision petition, would run thus:

The respondent, as plaintiff, filed the suit O.S. No. 18 of 2005 seeking the following relief:

Whereupon the revision petitioner/16th defendant filed the I.A. No. 110 of 2008 for rejection of the plaint on the ground that the very suit itself is barred by virtue of Section 156 of the Tamil Nadu Co-operative Societies Act 1983 (hereinafter referred to as the "Act" for short). After hearing both sides, the lower Court dismissed the application. Being aggrieved by and dissatisfied with the said order, this civil revision petition is focussed by the 16th defendant.

3. The learned Counsel for the revision petitioner/16th defendant, placing

reliance on the grounds of revision, would develop his argument to the effect that Section 156 of the Act is ex facie and prima facie clear that the proceedings of the authority under the Act shall not be called into question in the suit; during the life time of the propositus of the plaintiff, namely, Singaram, the award was passed by the authority under the Co-operative Societies Act and in that award, the other co-sharers of Singaram, namely, defendants 6 and 7 were very much parties; the respondent/plaintiff being the daughter of the said Singaram is having no legal right to ignore the award or proceed with the suit arraying the revision petitioner, who is the auction purchaser in the auction conducted under the Act.

4. Whereas the learned Counsel for the respondent/plaintiff would advance his argument in support of the order passed by the lower Court, by contending that without impleading the respondent/plaintiff, the authority under the Co-operative Societies Act proceeded with the proceedings and sold the property, which would not bind the respondent/plaintiff and as per Section 9 of the C.P.C. such a suit is tenable.

5. At this juncture, it is just and necessary to extract here u/s 156 of the Act.

6. It is ex facie and prima facie clear that the Act expressly ousts the jurisdiction of the Civil Court. If after the death of Singaram-the father of Shanthi, his share was auctioned without impleading Shanthi-the daughter, then the matter would be different. But here indubitably and indisputably, admittedly and unassailably, during the life time of Singaram, by citing Singaram and his two sons, namely, defendants 6 and 7, the other co-sharers, the suit property was auctioned under the Tamil Nadu Co-operative Societies Act, for recovering the dues of the Co-operative Society concerned and accordingly in that auction, the revision petitioner/16th defendant happened to be the successful bidder and he got the property knocked in his favour; in such a case, he has got the right to call upon the Court to reject the plaint, but the lower Court unjustifiably dismissed the prayer of the revision petitioner.

7. I could see considerable force in the submission made by the learned Counsel for the revision petitioner/16th defendant. The plaintiff being the daughter of Singaram would have been entitled to claim right over Singaram's share, had he possessed alienable right or proprietary right over his 1/3 share in the suit property. But it was not so. In such a case, in my considered opinion the suit itself is a misconceived one. But the lower Court, without applying the correct provision of law simply dismissed the I.A. erroneously.

8. The learned Counsel for the respondent cited the decision of this Court reported in *Mattadhari Primary Agricultural Co-op. Bank Vs. Saroja Ammal and Another*, , an excerpt from it would run thus:

6. In *Bharat Heavy Electricals Ltd. v. General Contractor Co.* AIR 1996 Guj. 46, a learned Judge held as under:

The trial Court was required and requested to frame an issue relating to jurisdiction only. It was not open to the trial Court to decide the merits of the issue as it was raised.

The decision makes it clear that it is not open to the trial Judge to decide the merits of the issue, as if it is raised.

9. The above decision is distinguishable on factual basis. The facts involved in the decision cited are entirely different from the ones involved in this case. In the cited precedent, the party concerned was not added in the Co-operative proceedings and in such circumstance, this Court held that Section 156 of the Co-operative Societies Act would not be an embargo for filing the suit. But here the propositus of the plaintiff, namely, Singaram, was very much alive on the date of passing of the award and hence, the plaintiff, who is claiming title under Singaram cannot ignore the award passed as against Singaram. Accordingly, the impugned order of the lower Court is set aside and the I.A. is allowed and consequently, O.S. No. 124 of 2008 shall stand dismissed.

10. In the result, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.