

(2011) 11 MAD CK 0155

In the Madras High Court

Case No : S.A. (MD) No. 1079 of 2011 and M.P. (MD) No.1 of 2011

Vadasery Pothujana Kaitharee Nesavalur Kooturavu Sangam
Ltd.

APPELLANT

Vs

Kaliappan and Rajagopal
Kaliappan Vs Rajagopal and
Vadasery Pothujana Kaitharee Nesavalur Kooturavu Sangam
Ltd.

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Tamil Nadu Co-operative Societies Act, 1983 — Section 156

Citation : (2011) 11 MAD CK 0155

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : C. Godwin, for the Appellant;

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This Second Appeal is focussed by the Third party animadverting upon the judgment and decree dated 22.09.2010, passed in A.S.No.22 of 2009 by the learned I Additional Subordinate Judge, Nagercoil in confirming the judgment and decree dated 22.12.2008, passed in E.A.No.145 of 2007 in E.P.No.124 of 2005 in O.S.No.674 of 2004 by the learned I Additional District Munsif, Nagercoil.

2. The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3. The thumb nail sketch of the relevant facts absolutely necessary and germane for the disposal of this second appeal would run thus:

The appellant herein as third party filed E.A.No.145 of 2007 before the Executing Court in E.P.No.124 of 2005 in O.S.No.674 of 2004, which suit was filed by the first respondent herein against the second respondent for the purpose of getting

a decree for specific performance of an immovable property and he got such decree also.

4. The contentions as put forth and set forth by the appellant/claimant/third party herein was to the effect that the immovable property concerned, i.e. the house was allotted by the appellant/3rd party Co-operative Society in favour of the second respondent on condition that the later should pay Rs.50/-per month for 20 years and only thereafter, the sale deed would be executed by the appellant herein in favour of the second respondent and to the shock and surprise of the appellant, the second respondent even though paid Rs.50/-per month only for 5 years, yet thereafter, he did not pay any amount. Curiously and illegally the second respondent went to extent of entering into an agreement of sale with the first respondent herein for the purpose of selling the property concerned in favour of the first respondent, even though the second respondent had not become the owner of it.

5. The trial Court framed the point for consideration as to whether the application was maintainable or not?

6. On ground of maintainability, initially the petition was dismissed, as against which appeal was filed, for nothing but to be dismissed.

7. Being aggrieved by and dissatisfied with the same, the Second Appeal was focussed by the appellant/third party on various grounds, suggesting the following substantial questions of law:

(a) Whether the court below is justified in law in dismissing the claim petition filed under Order 21 Rule 99 C.P.C. on the ground that the appellant is not a party to the suit?

(b) Whether the court below is justified in law in dismissing the claim petition filed under Order 21 Rule 91 C.P.C. since the appellant is the owner of the suit property?

(c) Whether the court below is justified in law in dismissing the I.A.No.61 of 2010 petition for additional evidence to establish that the appellant is the owner of the suit property?

(d) Whether court below is justified in law in not applying the principle laid in 2004 (2) CTC 168 to the facts of the case?

(Extracted as such)

8. I would like to fumigate my mind with the principles as found enunciated and enshrined in the following decisions of the Honourable Apex Court:

(i) Hero Vinoth (minor) Vs. Seshammal, .

(ii) Kashmir Singh Vs. Harnam Singh and Another, .

(iii) State Bank of India and others v. S.N. Goya reported in 2009 1 L.W. 1 .

9. It is palpably and pellucidly clear as per the dictum of the Hon''ble Apex Court that unless any substantial question of law is involved, the question of entertaining a Second Appeal would not arise.

10. With that in mind, even at the incipient stage, I heard the learned counsel for the appellant, who has put forth and set forth his arguments, which could be tersely and briefly set out thus:

The property concerned, namely the house still stands in the name of the appellant Co-operative Society and Municipal Taxes are being paid even though by the second respondent, only in the names of the appellant Society (herein after referred to as Society).

11. In strictosensu, as per law, the appellant herein happened to be the real owner of the property and no sale deed was executed by the Society in favour of the second respondent. In such a case, the second respondent had no right to enter into such agreement of sale with first respondent and both the Courts below fell into error in upholding the claim of the first respondent and the case reached the stage whereby the first respondent already got the sale deed executed by the Court and he is going to obtain delivery of it also as against the interest of the society.

12. I am at a loss to understand as to how the appellant/petitioner being a Co-operative Society had lost sight of the provisions of the Tamil Nadu Co-operative Societies Act in its favour. Both the Courts below also did not refer to Section 90 and 156 of the Tamil Nadu Co-operative Societies Act, 1983. Those provisions of law are all reproduced for ready reference thusly:

90. Disputes. -(1) If any dispute touching the constitution of the board or the management or the business of a registered society (other than a dispute regarding disciplinary action taken by the competent authority constituted under sub-section (3) of Section 75 or the Registrar or the society or its board against a paid servant of the society) arises -

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

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its board or any officer, agent or servant of the society, or

(c) between the society or its board and any past board, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the society, or

(d) between the society and any other registered society, such dispute shall be referred to the Registrar for decision.

Explanation. -For the purposes of this section, a dispute shall include-

(i) a claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member whether such debt or demand be admitted or not.

(ii) a claim by a registered society against a member, past member or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property; and

(iii) a decision by the board under sub-section (3) of section 34:

Provided that no dispute relating to, or in connection with, any election shall be referred under this sub-section till the date of the declaration of the result of such election.

(2) The Registrar may, on receipt of such reference,

(a) decide the dispute himself or transfer it for disposal to any person subordinate to and empowered by him; or

(b) subject to such rules as may be prescribed, refer it for disposal to an arbitrator or arbitrators.

(3) Subject to such rules as may be prescribed, the Registrar may withdraw any dispute referred under sub-section (1) to any person subordinate to him or transferred under clause (a) or referred under clause (b) of sub-section (2) by the Registrar or any person subordinate to him and -

(a) decide the dispute himself; or

(b) transfer it for disposal to any person subordinate to and empowered by him; or

(c) refer it for disposal to an arbitrator or arbitrators; or

(d) re-transfer the same for disposal to the person from whom it was withdrawn; or

(e) refer it for disposal to the arbitrator or arbitrators from whom it was withdrawn.

(4) If a question arises, whether for the purposes of this section any person is or was a member of a registered society, or whether the dispute referred for decision is a dispute touching the constitution of the board, or the management or the business of the society, such question shall be decided by the Registrar.

(5) Where any dispute referred to the Registrar under sub-section (1) or withdrawn by him under sub-section (3) relates to immovable property, the Registrar or the person or the arbitrator or arbitrators to whom it is transferred, referred or retransferred under sub-section (2) or sub-section (3) may on the

application of a party to the dispute direct that any person who is interested in such property, whether such person be a member or not, be included as a party to the dispute and any decision that may be passed on the reference, by the Registrar, the person, the arbitrator or arbitrators aforesaid, as the case may be, shall be binding on the party so included, provided that he shall be liable only to the extent of such property.

(6) The Registrar may pass such interlocutory orders as he may deem fit in the interests of justice.

(7) Nothing contained in the Arbitration Act, 1940 (Central Act X of 1940) shall apply to any arbitration under this section.

(8) Nothing contained in section 34 of the Code of Civil Procedure, 1908 (Central Act V of 1908) shall apply to any decision passed or award made under this section.

(9)(a) The period of limitation for referring a dispute under this section shall be regulated by the provisions of the Limitation Act, 1963 (Central Act, 36 of 1963) as if the dispute were a suit and the Registrar, a civil court, subject to the following modifications, namely:

(i) when the dispute relates to a society in respect of which a Special Officer has been appointed u/s 88 or to a society which has been ordered to be wound up u/s 137, the period of limitation shall be six years from the date of the order issued u/s 88 or section 137, as the case may be;

(ii) save as otherwise provided in clause (i), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) of sub-section (1), the period of limitation shall be six years from the date on which the act or omission with reference to which the dispute arose, took place;

(iii) when the dispute is in respect of, or in connection with any election, the period of limitation shall be two months from the date of declaration of the result of the election.

(b) Notwithstanding anything contained in clause (a), the Registrar may admit a dispute after the expiry of the period of limitation if the applicant satisfied the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired.

156. Bar of jurisdiction of Civil Courts.-Notwithstanding anything contained in any other law for the time being in force no order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any court and no injunction shall be granted by any court in respect of anything which is done or intended to be done by or under this Act.

(Emphasis supplied)

13. My mind is redolent and reminiscent of the following decisions:

(i) B. Azhagusundaram v. C.T. Azhagia Sundaram reported in (2008) 3 MLJ 716.

(ii) V. Rajamanickam Vs. Shanthi, .

14. I would like to point out that a mere pouring over and perusal of the said Sections and the precedents cited supra would display and demonstrate that the appellant has chosen the wrong forum. The appellant being the society, as per the contract itself, as contended by the learned counsel for the appellant, could have very well invoked the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and proceeded to recover the property, in view of the alleged default committed by the second respondent. It is also worthwhile to remind that judgments/orders in most of the civil cases are only in personam and they do not bind third parties. Here also the appellant is not a party to the suit. In such a case, because the first respondent obtained a sale deed by proceeding as against the second respondent, that will not bind the Co-operative Society.

15. Section 90 of the Tamil Nadu Co-operative Societies Act would unambiguously and unequivocally highlight and spotlight that the co-operative Society, which allotted the land or house or immovable property to its Member can recover it from the allottee in case of default of the later, if the allottee is having any grievance, it is for him to raise the same as a dispute u/s 90 of the Tamil Nadu Co-operative Societies Act and no Civil Court can interfere in view of Section 156 of the Tamil Nadu Co-operative Societies Act.

16. I recollect and call up the adage "why buy a cow, when you could get milk for free".

17. Once the Society itself is vested with rights to proceed as against the allottee, who defaulted to pay the instalments, I am at a loss to understand as to why the Society should figure as a third party in the Execution Petition filed by the first defendant. Both the Courts below without advertting to the aforesaid legal position, went tangent. Still I am of the view that the Second Appeal could not be entertained.

18. In view of the aforesaid legal position, I hereby recognise the statutory rights of the appellant to proceed under the Tamil Nadu Co-operative Societies Act, 1983, to recover the property concerned if at all the facts as stated by the appellant is true.

19. With the above observations, the Second Appeal is dismissed. No costs. Consequently, connected M.P. (MD) No. 1 of 2011 is dismissed.