

(1995) 04 KAR CK 0028

In the Karnataka High Court

Case No : Regular Second Appeal No. 526 of 1988

Vadigeri Jambanna

APPELLANT

Vs

Hospet Co-operative City Bank Ltd.

RESPONDENT

Date of Decision : 18-04-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Karnataka Co-operative Societies Act, 1959 — Section 101 (2), 118, 70
Karnataka Cooperative Societies Rules, 1960 — Rule 38, 38 (5)

Citation : (1995) ILR (Kar) 2811 : (1996) 2 KarLJ 556

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : K.S. Savanur, for the Appellant; G.S. Visweswara, for R-1 and H. Rangavittalachar, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Bharuka, J.—The plaintiff having lost before the Courts below has preferred this Second Appeal. He had filed the present suit for declaring auction sale held on 28.6.1978 by the first defendant as null and void and for consequent declaration of his title over the suit properties and for recovery of possession thereto from defendant No. 2 who is the auction purchaser.

2. The relevant facts, as found by the Courts below, may be noticed in short. Defendants 3 to 5 and one Sridhar Rao, who has died in 1980, constituted a Hindu Joint Family. Defendants 4 and 5 are the own brothers of said Sridhar Rao and defendant No. 3 is their mother. The said Sridhar Rao had taken certain loan from defendant No. 1 the Co-operative Society. For his failure to repay the said loan the Society raised a dispute under 70 of the Karnataka Co-operative Societies Act, 1959, (hereinafter in short the Act) whereupon the Registrar, as provided u/s 71(1)(c) of the Act referred the dispute for disposal to an Arbitrator appointed by him. The Arbitrator gave an award determining the dues payable by said Sridhara Rao. Pursuant to the said award recovery proceedings were

initiated under the provisions of the Act and Rules framed thereunder and the suit property was sold on 28.6.1978 by the Assistant Registrar acting as the recovery officer to defendant No. 2. The same was duly confirmed after the expiry of the statutory period prescribed for filing objections. Both the Courts have found that though the plaintiff as well as defendants 3 to 5 had full knowledge of the said auction sale, for the reasons best known to them, the plaintiff purported to purchase the suit property from defendants 3 to 5 under a registered sale deed dated 12.2.1982 (Ex.P-1). The Courts have non-suited the plaintiff on two grounds :

i) the suit is not maintainable in view of the provisions contained u/s 103 read with 118 of the Act and

ii) it is barred by limitation.

3. At the time of admission of the present appeal the following substantial Question of Law was formulated :

"Whether the Courts-below were justified in law in holding that the plaintiff could not have challenged the validity of the auction sale held under the provisions of the Co-operative Societies Act?"

4. As provided u/s 101(1)(c) of the Act an award made u/s 71 can be executed by the Registrar or any other person subordinate to him empowered by the Registrar in this behalf" by 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.

5. Rule 38 of the Karnataka Co-operative Societies Rules, 1960 (hereinafter in short the Rules only) provides for attachment and sale of Immovable properties on execution of a decree. Rule 2(c) defines a decree to mean any order, decision or award referred to in Section 101. Therefore sale of Immovable property for satisfaction of an award is permissible under Rule 38. It was under this provision that the auction sale of the suit property were effected by the recovery officer.

6. According to the plaintiff the suit property has fallen to the share of defendants 3 to 5 pursuant to a registered partition effected between the said defendants and late Sridhar Rao and as such this property would not have been sold in execution of a decree made against the said Sridhar Rao. In addition to this the Courts below have found that the deemed partition was effected under the registered Sale Deed dated 4.3.1972 (Ex P-6) which was never acted upon. Despite this till the date of auction sale, the property remained to be that of joint family consisting of defendants 2 to 5 and late Sridhar Rao. These being the facts, the said defendants would have been well within their rights to challenge the same as provided under Sub-rule 5(a) of Rule 38 of the Rules which reads as under:-

"At any time within 30 days from the date of sale an Immovable property the decree-holder or any person entitled to share in a rateable distribution of the

assets or whose interests are affected by the sale may apply to the Recovery Officer to set aside the sale on the ground of a material irregularity or mistake or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or mistake or fraud unless the said Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud."

It has also been found by the Courts of fact that though defendants 3 to 5 as also the present plaintiff had the knowledge of the impugned auction sale at the time it was effected, still they did not opt to challenge the same under the provisions of Section 38(5)(a) and despite the said sale, almost five years thereafter decided to effect the second sale in favour of the plaintiff under the Sale Deed dated 12.2.1982 (Ex.P-1). Keeping in view these facts the Courts have come to the conclusion that the suit filed by the plaintiff is hit by the provisions of Section 118 read with 103, 101(2)(b)(v) of the Act and is thus not maintainable.

7. Sri Savanur, appearing for the plaintiff-appellant has assailed the impugned Judgment and decree on an assertion that the bar of jurisdiction of the Courts as contemplated u/s 118 can operate only in cases of inter-se disputes between the Co-operative Societies or its members and not in a case where the grievance is raised by a stranger in respect of certain acts and actions taken by authorities under the Act in respect of properties held by such strangers. According to him since plaintiff or his vendors were never members of the defendants Co-operative Society nor they had taken any loan, therefore the validity of the sale of their property cannot be adjudicated under the provisions of the Act or the Rules framed thereunder and the only appropriate forum for challenging the validity of such sale can be Civil Court. In support of his contentions he has relied on the Decisions in the cases of TULJANASA NARAYANASA HABIB AND ORS. v. S.S.K. CO-OPERATIVE BANK LTD 1972 (1) Mys. L.J. 365: Paragraph 6, VEERABHADRAPPA SANGAPPA MUNDAS v. SAKHALCHAND LAKHAMAJI MARWADI 1959 Mys. L.J. 129, Vasudev Gopalkrishna Tamwekar Vs. The Board of Liquidators Happy Home Co-operative Housing Society, . On the other hand, Mr.Visweswara, appearing for respondent No. 1 Co-operative Society and Mr. Rangavittalachar, appearing for respondent No. 1 while supporting the findings of the Courts below on the question of maintainability of the suit have submitted that in the facts of the present case since the only dispute raised by the plaintiff pertains to auction sale of the property under the provisions of the Act, the only remedy available to the appellant or his processors-in-interest was to raise objection in this regard, as provided under Sub-rule (5) of Rule 38 of the Rules. It was only when the decision of the Registrar would have gone against them that the suit could have been brought before the Civil Court for setting aside of the sale. According to the learned Counsel for the defendants, the condition precedent for availing the remedy by way of suit was first to approach the authorities constituted under the Act and that having not been done, the suit has

been rightly held as not maintainable.

8. For examining the rival contentions raised at the bar I would first like to refer to Section 9 of C.P.C. which reads as under:-

Section 9. Courts to try all civil suits unless barred:- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I:- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of question as to religious rites or ceremonies.

Explanation II:- For the purposes of this Section, it is immaterial whether or not any, fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place."

Therefore the Courts under the C.P.C., cannot try suits cognizance whereof has been expressly or impliedly barred. Section 118 of the Act creates bar on the jurisdiction of the Civil Courts and it reads as under:-

"118 BAR OF JURISDICTION OF COURTS-

a (1) Save as provided in this Act no Civil or Revenue Court shall have any jurisdiction in respect of-

(a) the registration of a Co-operative Society or bye-laws or of an amendment of bye-laws:-

(b) the removal of a committee:

(c) any dispute required u/s 70 to be referred to the Registrar or the recovery of moneys u/s 100:

(d) any matter concerning the winding up and the dissolution of a co-operative society.

(2) While a co-operative society is being wound up no suit or other legal proceeding to the business of such society shall be proceeded with, or instituted against the Liquidator as such or against the society or any member thereof except by leave of the Registrar and subject to such terms as he may impose.

(3) Save as provided in this Act no order, decision or award made under this Act shall be questioned in any court on any ground whatsoever."

As stated above the bar created u/s 118 is dependent on the provisions of the Act in this regard and therefore it is necessary to ascertain whether the Registrar has elsewhere spoken in any way in this regard. For this purpose, keeping in view the facts of the present case, Section 101(2) of the Act is relevant which reads as under:-

"(2) (a) Notwithstanding anything contained in this Act, every question relating

in the execution, discharge or satisfaction of an order, decision or award referred to in Sub-section (1) or relating to the confirmation or setting aside of a sale held in any execution of such order, decision or award in pursuance of Clause (c) of Sub-section (1) or relating to any claim or objection to an attachment of any property made u/s 103 or in execution in pursuance of the said Clause (c) shall be determined by an order of the Registrar or any other person subordinate to him empowered by the Registrar under the said Clause (c) (hereinafter in this Section referred to as, authorised person), before whom such question arises."

Sub-section (2) of Section 101 read with Rule 38(5) of the Rules clearly provides that any person who is aggrieved by a sale effected under the said provisions has to file his objection before the sale officer for setting aside the sale at the first instance. In case such a claim or objection is rejected then only as provided u/s 101(2)(b)(iv) of the Act, the party against whom the order is made in such proceeding can institute a suit in a Civil Court to establish the right which he claims in the property. The said clause reads thus:-

"Where a claim or an objection is preferred, the party against whom an order is made may within a period of one year from the date of such order, institute a suit in a Civil Court to establish the right which he claims to the property in dispute."

9. Therefore, from the scheme of the Act, it is quite clear that the jurisdiction of the Civil Court to entertain a suit involving a dispute of the present nature can be entertained only if such claim or objection is raised before the authorities under the Act at the first instance. This is a condition precedent or sine qua non for entertainment of a civil suit. That being the legal position, in my considered opinion, the Courts below have rightly held that the present suit is not maintainable. So far as the Decisions cited by Mr. Savanur are concerned, I do not find any relevance of the said Decisions on the facts of the present case, requiring any detailed discussion.

10. The Appeal is accordingly dismissed. Parties to bear their own costs.