(1992) 03 KL CK 0042

In the High Court Of Kerala

Case No : C.R.P. No''s. 2293 to 2298 of 1981 and 2299 to 2301 of 1991 F

V.G. Vijayakumar APPELLANT

Vs

Ramapuram Aided School Employees Co-Operative Society Ltd. and Others RESPONDENT

Date of Decision : 25-03-1992

Acts Referred:
Constitution of India, 1950 — Article 141
Evidence Act, 1872 — Section 44
Kerala Land Reforms Act, 1963 — Section 125, 125(1), 125(2)

Citation : (1992) 03 KL CK 0042

Hon'ble Judges : K.K. Usha, J

Bench : Single Bench

Advocate : C.K. Koshy, for the Appellant; Siby Mathew, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Usha, J.—Common questions are raised in these civil revision petitions. The Petitioners are members of Ramapuram Aided School Employees Co-operative Society, the first Respondent in all the revision petitions. They had executed surety bonds in favour of the Society undertaking to re-imburse the society if the principal debtors failed to pay installments due under the chitty conducted by the Society. The principal debtors who are also members of the Society having defaulted in making payment, dispute was referred u/s 69 of the Kerala Co-operative Societies Act, 1969 and notices were sent on the Petitioners and the principal debtors by the Assistant Registrar of Co-operative Societies appointed as Arbitrator in the arbitration proceedings. The Petitioners appeared before the Arbitrator and took time for filing objection. Thereafter, they filed civil suits contending that the proceedings u/s 69 is not liable to be continued and that the bonds executed by them in favour of the Society do not create any liability on them as they are null and void on account of fraud. Interlocutory applications were filed in the suits seeking interim injunction restraining the society from proceeding with the arbitration proceedings u/s 69 of the Co-operative Societies

Act.

2. The 1st Respondent society contended that the suit itself is not maintainable in view of the provisions contained u/s 69 and Section 100 of the Co-operative Societies Act and therefore the Petitioners are not entitled to an interim injunction as paryed for. The Courts below found that the civil suits are prima facie barred in view of the provisions contained under Sections 69 and 100 of the Kerala Cooperative Societies Act and on that ground rejected the application for in term injunction. The civil revisions are filed by the Plaintiffs/Petitioners challenging the above view taken by the Courts below.

3. The main contention raised by the Petitioner is that the chitty was being conducted by the Society against the terms of Thalavariola and against the provisions of the Co-operative Societies Act and Rules, even though the Petitioner do not specifically refer to violation of any particular section or rule. It is further submitted that the Secretary of the Society had misappropriated large amounts and the installments paid were not properly credited. The disciplinary action was taken against the Secretary and he was dismissed from service. The fraud committed by the Secretary should be treated as fraud committed by the society. The Assistant Registrar of the Department before whom the arbitration is pending has authority to supervise the actions of the Secretary and other officers of the bank and therefore he cannot be judge in a dispute when fraud and illegality are alleged against the society. According to the Petitioner, it is against natural justice. In Anr. place, it is submitted that when the society is party to fraud and collusion the provisions, of Section 69 has no application and the normal forum is civil Court. The above contention raised by the Petitioners on the basis of their argument that fraud committed by the Secretary should be treated as fraud committed by the Society. It is also the case of the Petitioners that since the chitty being conducted in a fraudulent manner, it cannot be treated as an activity touching the business of the society. The Petitioners even though entered appearance before the Arbitrator had not subjected themselves to his jurisdiction. Both the Courts below have wrongly addressed themselves to the real question involved in the case is the complaint, of the revision Petitioners. According to the Petitioners, the Court below should have entered a finding on the fraud and collusion of the Secretary and other persons including the principal debtor before holding that the civil Court has no jurisdiction. Therefore, the revision, Petitioners contend since they are alleging fraudulent action on the part of the Secretary of the society, civil Court''s jurisdiction is not ousted by virtue of the provisions contained u/s 69 and Section 100 of the Co-operative Societies Act. The learned Counsel appearing on behalf of the Petitioners relied on number of decisions in support of the contentions raised by him. Reference will be made to those decisions after considering the contentions put forward on behalf of the Respondents.

4. It was submitted on behalf of the 1st Respondent in all the revision petitions that the Courts below have correctly held that the jurisdiction of the civil Court is

barred in the facts and circumstances of the case. Chitty was being conducted properly and legally following all the formalities contemplated by Chitty Act. When default was made by the subscribers of the chitty in the matter of payment to the society, the Petitioners are also became liable to the society in the capacity as sureties. When they refused to make payment in discharge of their liability as surety, a dispute as defined by Section 2(i) of the Co-operative Societies Act, 1969 arose between the members of the society and the society. The dispute was therefore referred to the Registrar u/s 69 of the Kerala Co-operative Societies Act. The Asst. Registrar of the Co-operative Societies was appointed as the Arbitrator and on receipt of the notice, the revision Petitioners entered appearance through counsel before the Arbitrator and took several adjournments for filing their objections. It was thereafter, the suits were filed. The 1st Respondent would contend that the suits are barred by virtue of the provisions contained u/s 69 and Section 100 of the Kerala Co-operative Societies Act, 1969.

5. The relevant portion of the Section 69 of the Kerala Co-operative Societies Act reads as follows:

69. Disputes to be referred to Registrar.-(I) Notwithstanding anything contained in any law for the time being in force, if a, dispute arises.

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

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

(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, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or

(d) between the society and any other society; or

(e) between a society and the members of a society affiliated to it; or

(f) between the society and a person other than a member of the society who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

(g) between the society and a surety of a member, past member, deceased member, or employee or a person other than a member who has been granted a loan by the society whether such a society is or is not a member of the society; or

(h) between the society and a creditor of the society, such dispute, shall be referred to the Registrar for decision, and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

The term dispute is defined u/s 2(i) as follows:

''dispute'' means any matter touching the business, constitution, establishments or management of a society capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society, whether such claim be admitted or not;

Section 100 reads as follows:

Bar of Jurisdiction of Courts.-No civil or revenue Court shall have any jurisdiction in respect of any matter for which provision is made in this Act.

6. As mentioned earlier amounts are due from the principal debtors to the society as subscribers to chitty who had defaulted, the Petitioners who are sureties of the subscribers also became liable to pay the amount to the society. The liability is disputed by the Plaintiffs. Both Plaintiffs and the principal debtors are members of the society. Conduct of the chitty is admittedly part of the business carried on by the society. Under these circumstances, it is clear that a dispute as defined in the Act has arisen between the members of the society and the society as contemplated by Section 69(i)(b). Under these circumstances, the reference made u/s 69 of the Act is fully justified.

7. The Petitioners would contend that they are not liable to pay any amount to the society. Liability is cast on them due to the fraudulent action of the Secretary in not keeping the accounts properly. It is further submitted that the chitty itself was not being conducted in accordance with law and on this ground also, no liability could arise from any default made by the subscribers in paying the subscription which in turn would absolve the Petitioners who are the sureties. The contention raised is that, as defense to the claim made against the Petitioners, fraud on the part of the Secretary of the society is alleged by the Petitioners. Therefore the question to be decided is whether the civil Court would get jurisdiction to try the dispute which is arising between the parties inspite of the provisions contained u/s 69 and Section 100 of the Co-operative Societies Act only on the ground of the allegation of fraud against secretary of the society or even against the society by way of defense of the Petitioners.

8. The learned Counsel appearing on behalf of the Petitioners relied on a decision of the Supreme Court in A.R. Antulay Vs. Ramdas Sriniwas Nayak and Another, and contended that a relief through a Court of law should be preferred than a relief before any other authorities. In a statute where there is a specific ouster of jurisdiction of the civil Court, the dictum laid down in the above decision will not come for the help of the Petitioners:

Strong reliance was placed by the Petitioners on a decision of this Court in Velappan v. Thomas 1979 KLT 412, in support of their contention that when fraud is alleged, civil Courts jurisdiction cannot be ousted. If the facts of the above case are examined it will be clear that the reliance placed on the above decision by the Petitioners is totally misconceived. The question which came up for consideration in the above case was whether a civil suit has power to go into the question of validity of an order passed by the Land Tribunal even when it was proved that the order was secured by fraud or collusion in view of the provisions contained in Section 125(1) and (2) of the Kerala Land Reforms Act. Section 125(1) and (2) read as follows:

125 (1) No civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Land Tribunal or the Appellate Authority or the Land Board or the Taluk Land Board or the Government or any Officer of the Government:

Provided that anything contained in this Sub-section shall apply to the proceedings pending in any Court at the commencement of the Kerala Land Reforms (Amendment) Act, 1969.

(2) No order of the Land Tribunal or the Appellate Authority or the Land Board or the Taluk Land Board or the Government or an officer of the Government made under this Act shall be questioned in any civil Court except as provided in this Act.

Sub-section (1) and (2) have ousted the jurisdiction of the civil Court in regard to the matters which are by or under the Act required to be settled, decided or dealt with by the land tribunal or the appellate authority. After considering the question elaborately the view taken by the learned judge was as follows:

It is true that the provision contained in Section 125 has been enacted for a particular purpose. According to me, the purpose behind this section is to insulate tenants from harassment at the hands of the landlords by taking recourse to civil action when a matter is concluded by the order of a competent Land Tribunal. This postulates that the orders passed by the Land Tribunal will be orders passed in accordance with law. Orders of Tribunals as decrees of civil Courts can be had for various vitiating circumstances. A party may secure an order by the exercise of fraud. Parties may collude and bring into existence an order affecting rights of those who are not parties thereto. In extreme cases, the Tribunals themselves may be parties to the fraud. The question is whether the bar u/s 125(2) is so all pervasive as to render the jurisdiction of the civil Court ineffective even to go into such vitiating circumstances as fraud and collusion. According to me, to answer this question in the affirmative will be to destroy the very foundation of the legal system and the procedure established by law.

In the concluding portion of the judgment the learned Judge held as follows:

To say that a Tribunal or statutory authority can hear a case involving fraud, to which fraud the authority itself is a party, is shocking to judicial conscience. To say that an order based on fraud or collusion cannot be challenged in civil Courts is to shake the a foundation of our legal system. The Kerala Land Reforms Act cannot be deemed to lay down any such wide jurisdiction on the Land Tribunals. If the contention of the Appellant''s counsel is to be accepted one will have to hold that orders of Land Tribunals upholding tenancy even vitiated by fraud and collusion and orders by which purchaser certificates are issued, be it in the most unwholesome manner, are even above Article 141 of the Constitution of India. My considered opinion is that Section 44 of the Evidence Act contains in built safeguards to salvage orders obtained by fraud and collusion. According to me, the validity of the order in O.A. No. 140 of 1978 can be questioned on the ground of collusion.

The contention raised by the Petitioners in the present case is not that an award passed by the arbitrator is vitiated by fraud and collusion and therefore it is liable to be challenged in a civil suit. On the other hand the contention is that in the dispute which is referred for arbitration u/s 69 of the Kerala Co-operative Societies Act, the Petitioners have to raise a defense of fraud and collusion on the part of the Secretary of the society, the society and the principal creditors in order to resist the claim put forward against the Petitioners and therefore the arbitrator has no jurisdiction to entertain the dispute and that it is only the civil Court which can decide the matter. In the above referred decision this Court has not held that while considering a dispute arising under the Land Reforms Act the Land Tribunal or the Land Board as the case may be has no jurisdiction to take into consideration an argument raised on the basis of fraud and collusion. The only effect of the judgment is that if an order has been obtained from the Land Tribunal or Land Board etc., by way of fraud or collusion, it is open to the aggrieved party to challenge the same in a civil Court in spite of the provisions contained in Section 125 of the Kerala Land Reforms Act. Therefore I am of the view that the decision in Velappan v. Thomas 1979 KLT 412 would not in any way assist the Petitioners to substantiate their contention.

A Full Bench of this Court, had occasion to consider the nature of the jurisdiction by the Registrar or other officer authorised u/s 69 of the Kerala Co-operative Societies Act in Balachandran v. Deputy Registrar 1979 KLT 249. This Court had held the jurisdiction of the Registrar u/s 69 of the Kerala Co-operative Societies Act is co-terminus with the jurisdiction of the ordinary civil Courts. The Registrar will have jurisdiction to entertain all matters ordinarily and normally cognizable by civil Courts. In Ramabhakutula Ramayya v. Chittoor District Co-operative Deputy Registrar and Ors. A.I.R.1945 Mad 370 a Division Bench of the Madras High Court held that even a challenge against the sale conducted in liquidation proceedings taken under Madras Co-operative Societies Act, 1932 on the ground of material irregularity and fraud in connection with the proclamation and conduct of sale, a civil suit is barred and the authorities provided under the Co-operative Societies Act have sample jurisdiction to go into the above question. In the present case even if the Petitioners take up the contention of fraud and collusion on the part of the Secretary or the Principal debtors, to resist the claim put forward against them the arbitrator will certainly have jurisdiction to entertain such contention. An unsuccessful attempt has been made in the memorandum of the revision petition to plead that the arbitrator is also party to the fraud on the basis of a contention that he is an officer who has a duty to supervisor the working of the society. There is no merit in the above contention. Merely because certain powers have been given to the officers of the department to take action against the society accordance with the provisions of the Act, it cannot in any way be interpreted s that the officers of the department are also guilty of the offences committed by the society. So also there is no merit in the contention that if the secretary of a society is guilty of fraud, the society also should be treated of being guilty of the same fraud.

The next contention taken by the Petitioners is that in cases where the question of limitation under the Limitation Act is to be considered the bar of civil suit will not lie. Referring to decisions in Thilakan v. M.C.V. Co-operative Society 1976 KLT 256 and Kavi Rajan v. Co-operative Tribunal 1989 KLT 695, the Petitioner submitted that the provisions of the Limitation Act have no application to the adjudication by an arbitrator u/s 69 of the Kerala Co-operative Societies Act and therefore the Petitioner will be denied the opportunity to put forward a contention on the basis of the provisions of the Limitation Act. I do not find any merit in the above contention also. It is well established that the bar of limitation does not extinguish the cause of action, it only acts as a bar to the remedy of civil suit for enforcement of an existing right. Therefore there is no justification in contending that merely because the Petitioners could have taken up a plea of limitation if a civil suit had been filed against them, the provisions contained in the Co-operative Societies Act ousting the jurisdiction of the civil Court have to be ignored.

No case is made out by the Petitioners to hold that the Courts below have acted without jurisdiction or has acted with material irregularity in taking the view that the suits are prima facie not maintainable. In the light of the above finding it is not necessary to go into the question whether the Plaintiff had submitted to the jurisdiction of the arbitrator and therefore disabled themselves from challenging the proceedings before the arbitrator in the civil suits filed by them later.

In the result the orders passed by the Courts below are affirmed. The civil revision petitions fail and they are dismissed.