

RAJASTHAN HIGH COURT

Hanuman Meena

Vs.

Chandra Singh

Civil Misc. Appeal No. 1856 of 2002

(R.S. Chauhan, J.)

08.12.2006

JUDGEMENT

R.S. Chauhan, J.

1. The appellant has challenged the judgment dated 11-7- 2002 passed by the Additional District Judge, No. 5, *Jaipur City, Jaipur* whereby the learned Judge has quashed and set aside the order dated 28-4-2000 passed by the Additional Civil Judge (Junior Division), *Jaipur (East)* and has remanded the case back to the learned Magistrate.

2. The brief facts of the case are that the respondent-plaintiff had filed a civil suit wherein he had claimed that he had purchased a plot, Plot No. 23 situated in Vijay Nagar Scheme, J.L.N. Marg, Jaipur from Shri Laxmi Narayanpuri Bhawan Nirmal Sahkari Samiti Ltd., *Jaipur* (henceforth to be referred to as 'the society', for short). Since 1981 he is in possession of the said plot. However, after handing over the possession to him, the society tried to reduce the size of his plot and tried to issue an amended allotment letter. The plaintiff cautioned the society against it. It was further claimed that plot Nos. 25 and 26 were bought by the pro forma respondent/defendant No. 1. The defendant No. 1 and her husband in collusion with the society members wanted to encroach upon the plaintiffs plot. Therefore, the suit for declaration to the effect that the plaintiff is the sole owner and in possession of the plot No. 23 in question and for permanent injunction was filed.

3. The appellant and the defendant No. 1 filed an application under Order 7, Rule 11 of the Civil Procedure Code (henceforth to be referred to as 'the Code' for short) stating therein that the civil suit was barred under Section 75 of the Rajasthan Co-

operative Societies Act, 1965 (henceforth to be referred to as 'the Act of 1965', for short) as well as under Section 137 of the Act of 1965. Vide order dated 28-4-2000, the learned trial Court held that the suit was, indeed, barred by the above-mentioned sections and, therefore, dismissed the said suit under Order 7, Rule 11 of the Code. Since the plaintiff was aggrieved by the said order, he filed an appeal before the learned Judge. Vide judgment dated 11-7-2000, the learned Judge quashed and set aside the order dated 28-4-2000 and remanded the case back to the learned trial Court. Hence, this appeal before this Court by the defendant No. 2 in the original suit.

4. Mr. Mahendra Goyal, the learned counsel for the appellant/defendant No. 2, has vehemently argued that according to the Order 7, Rule 11(d) of the Code, where the suit appears from the statement in plaint to be barred by any law, the plaint shall be rejected. According to Section 75 of the Act of 1965, in case a dispute touching the constitution, management, or the business of a co-operative society arises among members, past members and person claiming though members, past members and deceased members, then such a dispute is to be referred to the Registrar of the Co-operative Societies for decision and no Court shall have jurisdiction to entertain any suit or any proceeding in respect of such dispute. Similarly, Section 137 of the Act of 1965 prohibits the jurisdiction of the civil or revenue Court in respect of any dispute covered under Section 75 of the Act of 1965 to be referred to the Registrar, Co-operative Societies. Therefore, according to the learned counsel, the suit filed by the plaintiff was clearly barred under the Act of 1965. Since the bare perusal of the plaint clearly revealed that the dispute was between the two members of the same society and involved another member who had purchased the property through a past member, therefore, the suit was clearly barred under Section 75 read with Section 137 of the Act of 1965. Since the prohibition of the law was so apparent on the face of record, the learned trial Court had rightly dismissed the suit. But the learned Judge has unnecessarily and illegally held that an issue needs to be framed on the point whether such suit is barred or not under the provisions of the Act of 1965. According to the learned counsel, there is no need of framing of such an issue as the plaint obviously relate to a dispute covered by Section 75 of the Act of 1965.

5. On the other hand, Mr. Rajendra Prasad, the learned counsel for the respondent-plaintiff has strenuously argued that the appellant is not a member of the society and no allegations were leveled against him. In fact the contest was between the plaintiff and the pro forma-respondent/defendant No. 1. Moreover, in case the plaintiff is

directed to approach the Registrar, he would be deprived of a judicial remedy. According to the learned counsel, a litigant cannot be stopped from approaching the Court of law and cannot be forced to appear before the Registrar, who is a non-judicial officer. Moreover, since the written statements have already been filed before the learned trial Court, no purpose would be served in now sending the case before the Registrar. Therefore, he has supported the impugned judgment.

6. We have heard the learned counsel for both the parties and have perused the impugned judgments.

7. Section 75 of the Act of 1965 reads as under:-

"75. Disputes which may be referred to arbitration -

(1) notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society 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 co-operative society,

(e) between the society and the surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society or with whom the society has or had transaction under Section 66, whether such a surety is or is not a member of a 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.

(2) For the purpose of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely :-

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such

debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with election of any officer of the society,

(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.

8. Moreover, Section 137 of the Act of 1965 reads as under:-

137. Bar of jurisdiction of Courts - (1) Save as provided in this Act, no civil or revenue Court shall have any jurisdiction in respect -

(a) the registration of a co-operative society or of an amendment of a bye-law;

(b) the removal of a committee;

(c) any dispute required under Section 75 to be referred to the Registrar; and

(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 proceedings relating 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 the Registrar may impose.

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

9. Thus, according to Section 75(a) of the Act of 1965, in case there is a dispute among members, past members, and persons claiming through members, past members and deceased members and in case the dispute relates to business of a co-operative society, then such a dispute has to be referred to the Registrar. The business of the co-operative society is certainly the selling of the plot to the members. Hence, a dispute with regard to the size or sale of the plot amongst the members would necessarily have to be referred to the Registrar. Section 137 of the Act of 1965 clearly prohibits a civil Court from having any jurisdiction in respect of any dispute covered

under Section 75 to be referred to the Registrar. In the present case, the dispute clearly related to the size of the plot allotted by the society to the plaintiff and the defendant No. 1. Since the appellant-defendant No. 2 had bought the plot from defendant No. 1, and since there was a dispute that arose between the plaintiff and the appellant, obviously the dispute related between a member and a person who claimed through a past member of the society. Thus, obviously the dispute comes within the purview of Section 75 of the Act of 1965. Therefore, *ipso facto* such a dispute has to be referred to the Registrar. Under Section 137 of the Act of 1965, the civil Court does not have any jurisdiction to try such a lis. Since Order 7, Rule 11(d) clearly states that after perusing the plaint, if it is obvious that the dispute is barred by any law, then the suit ought to be dismissed. A bare perusal of the plaint clearly reveals that the matter is covered under Section 75 of the Act of 1965. Hence, the learned trial Court was legally justified in dismissing the suit. When the bar contained in the Act of 1965 is categorical and it is obvious that the plaint relates to a matter covered under Section 75 of the Act of 1965, there is no reason for framing any issue on this point. Therefore, the learned Judge was not justified in directed the trial Court to frame a issue and to take evidence on this point. Hence, the impugned judgment dated 11-7-2000 is unsustainable.

10. Since a specific bar has been created by the Legislature in its wisdom, there is no force in the argument that a litigant cannot be stopped from approaching the Court of law and cannot be forced to appear before the Registrar, who is a quasi-judicial body. Wanting to lessen the burden on the judiciary, wanting to create alternate dispute resolution forum, the Legislature in its wisdom has directed the matter covered under Section 75 of the Act of 1965 to be referred to the Registrar. Simultaneously, it has barred the jurisdiction of the civil Court from trying such a dispute. Both the sections are legally valid. Therefore, the plaintiff cannot have a legitimate grievance against being referred to the Registrar for seeking justice. The Registrar being a quasi-judicial body is expected to act in accordance with law.

11. In the result, this appeal is allowed and the impugned judgment dated 11-7-2002 is quashed and set aside. The order dated 28-4-2000 is confirmed. There shall be no order as to cost.

Appeal allowed.