

APHC010034262023

IN THE HIGH COURT OF ANDHRA



PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3483]

WRIT APPEAL NO: 277/2023

Between:

M Prabhakar Reddy

...APPELLANT

AND

M Lakshminarayana and Others

...RESPONDENT(S)

Counsel for the Appellant:

1.K RAGHUNATHA REDDY

Counsel for the Respondent(S):

1.P S P SURESH KUMAR

2.P VARA PRASAD RAO

3.D SESHASAYANA REDDY

4.GP FOR COOPERATION

CORAM: THE CHIEF JUSTICE DHIRAJ SINGH THAKUR

SRI JUSTICE RAVI CHEEMALAPATI

DATE : 14.10.2024

ORDER (Per Sri Justice Ravi Cheemalapati)

Feeling aggrieved by the orders dated 16.11.2022 passed in Writ Petition No.7716 of 2016, the 2nd respondent in the said writ petition preferred this intra court appeal under Clause 15 of the Letters Patent.

2. The said writ petition was filed challenging the orders dated 05.10.2015 passed by Andhra Pradesh Cooperative Tribunal, Vijayawada, Krishna District in O.A.No.43 of 2014, whereby the sale deed executed by NGO's Cooperative House Building Society Limited, Rayachoti (respondent no.5 herein) in favour of respondent no.1 herein was declared as null and void and the same was set aside and consequently the gift deed executed by respondent no.1 in favour of respondent no.3 was declared as not valid and void in law and further the NGO's Cooperative House Building Society was directed to register the subject plot in favour of the appellant herein and also to deliver the plot by removing the constructions, if any. Vide impugned orders the learned single Judge allowed the writ petition by setting aside the orders impugned in the said writ petition.

3. For clarity, the parties hereinafter will be referred to as per their status in this writ appeal.

4. The facts leading to filing of this writ appeal, in brief, are that, respondent no.1 purchased the subject property from respondent no.5—society under registered sale deed dated 17.10.1987 and in the year 2006, the appellant filed ARC No.1/2007-08 under Section 61(1) of the Andhra Pradesh Cooperative Societies Act alleging that the plot sold to respondent

no.1 was originally allotted to him and that he should be declared as the owner of the property and the said petition was dismissed by respondent no.6-Arbitrator/Deputy Registrar of cooperative society. Aggrieved thereby, the appellant preferred appeal vide CTA No.39 of 2009 before the Cooperative Tribunal, Warangal. The Tribunal remanded the matter to respondent no.6 for fresh adjudication and accordingly the Arbitrator took up the case as ARC No.2/2010-11 and again dismissed the case by order dated 22.10.2010. Assailing the same, the appellant preferred appeal before the Cooperative Tribunal, Warangal vide CTA No.1 of 2011, which latter was transferred to Cooperative Tribunal, Hyderabad and renumbered as CTA No.116 of 2011 and the same was later transferred to Andhra Pradesh Cooperative Tribunal, Vijayawada consequent to bifurcation of the state and the same was renumbered as O.A.No.43 of 2014. The said O.A. was allowed by the Cooperative Tribunal vide orders dated 05.10.2015. Challenging the said orders, the respondent no.1 filed writ petition and consequent to his death, his two sons came on record as Legal Representatives of their deceased father as petitioner nos. 2 and 3. The learned single Judge allowed the said writ petition vide impugned orders and those orders were called in question in this writ appeal.

5. Heard Sri K.Raghunatha Reddy, learned counsel for the appellant and Sri P.S.P.Suresh Kumar, learned counsel for respondent nos.2 and 3.

6. Sri K.Raghunatha Reddy, learned counsel for the appellant, while reiterating the grounds of appeal would contend that since the subject dispute is in between the members of the society and is in relation to constitution, Management and business of the Society, the same can be referred to Registrar as per Section 61 of the Andhra Pradesh Cooperative Societies Act, 1964 and therefore, the Arbitrator and the Cooperative Tribunal have jurisdiction to set aside the registered sale deed fraudulently obtained by respondent no.1 and so also the consequential registered gift deed executed by him in favour of respondent no.3. However, the learned single Judge went wrong in placing reliance on the decisions relied on for respondent nos.1 to 3 for allowing the writ petition, notwithstanding the fact that the subject matter therein was regarding land of the respective Societies and that too not in relation to the dispute touching the constitution, management or business of a society. The learned counsel would further contend that the word 'any dispute' used in Section 61 of the A.P.Cooperative Societies Act, 1964 is too wide and comprehensive to include the subject dispute regarding illegal and fraudulent sale deed obtained by respondent no.1 from the society and

therefore, the Cooperative Tribunal has jurisdiction to cancel the fraudulent and illegal sale deeds. The learned single Judge failed to appreciate the facts of the case and further narrowed down the amplitude, width and scope of section 61 of the Act and upon miscomprehension of the facts and purport of the Act allowed the writ petition. Terming the orders of the learned single Judge as untenable and erroneous, the learned counsel for the appellant prayed to allow the writ appeal by setting aside the said orders.

In support of his contentions, the learned counsel for the appellant relied on the decisions in ***The Vegetols Ltd., by its Managing Agent vs. The Wholesale Co-operative Stores Ltd.***¹, ***Asharfi Lal vs. Smt. Koili (Dead) by L.Rs.***², ***M.Sreedhar v. A.P.Co-operative Tribunal Hyderabad and others***³, ***Duggandla Rami Reddy)died) per L.Rs. v. Tirumala Tirupathi Devasthanams, Tirupathi, Chittoor District and another***⁴, ***The Anakapalli Co-operative Marketing vs. The State of Andhra Pradesh***⁵, ***Hasti Cement Pvt.Ltd. & Anr vs. Sandeep Charan & Ors***⁶, ***Prapul Chandra Mukpalkar & Ant. Vs. P.Ramachandra Reddy & Anr.***⁷,

¹. (1956) 1 MLJ 36

². AIR 1995 SC 1440

³. 2013(5) ALD 176

⁴. 2013(1) ALD 521 (DB)

⁵. (1966)18STC 328(AP)

⁶. AIR 2018 RAJASTHAN 143

⁷. 1998(2)ALD569

Manjeri S.Krishna Ayyar vs. The Secretary Urban Bank Limited, Calicut⁸, S.P.Chengalvaraya Naidu v. Jagannath⁹ and Adapa Goverdhana Rao v. Deputy Registrar of Co-operative Society, Adapavaripalem village¹⁰.

7. On the other hand Sri P.S.P.Suresh Kumar, learned counsel for respondents 2 & 3, would submit that the words 'any dispute' used in Section 61 of the Act would only be in relation to the dispute touching the constitution, management or the business of a society and the dispute regarding execution of sale deed by the society in favour of respondent no.1 not being the one touching the constitution, management or business of the society, either the arbitrator or the Tribunal would not have the power to cancel the registered sale deed or registered gift deed. The person aggrieved shall approach a competent jurisdictional civil Court for getting the registered deeds set aside by taking recourse to the Specific Relief Act. The order passed by the learned single Judge does not require any interference of this Court. The writ appeal being meritless deserves dismissal.

⁸. AIR 1933 MADRAS 682

⁹. 1994 AIR 853

¹⁰. 1996(1)ALD 528

In support of his contentions, the learned counsel for respondent nos.2 and 3 relied on the decisions in ***V.Shravan Kumar vs. Lt.Col.S.B.Sharma and others***¹¹ and ***M.Venkata Ramana vs. A.P.Co-operative Tribunal, Hyderabad and others***¹².

8. The entire controversy revolves round the amplitude of Section 61 of the Andhra Pradesh Cooperative Societies Act, 1964, as to whether it would confer power and jurisdiction on the Arbitrator and the Cooperative Tribunal to decide the genuineness of sale deeds and cancel them.

9. Inasmuch as the decisions relied on by the appellant are not in relation to the issue involved in this writ petition as to whether Section 61 of Act empowers the Arbitrator and Cooperative Tribunal to cancel the registered sale deeds, they cannot be made applicable to the facts of the case on hand. Therefore, in-depth analysis and extensive exploration of the facts of those decisions is unnecessary, since serves no purpose.

10. In the decision relied on by the learned counsel for respondent nos. 2 & 3 in ***M.Venkata Ramana vs. A.P.Co-operative Tribunal, Hyderabad and others*** (supra 12), a Division Bench of the erstwhile High Court of

¹¹. 2011(1)ALD 385

¹². 2010(4) ALD 500

Andhra Pradesh held that Section 61 of the A.P.Cooperative Societies Act cannot be made applicable to decide the genuineness or otherwise of the sale deeds and cancel the sale deeds and for cancellation of sale deeds, the aggrieved must take recourse to the provisions of the Specific Relief Act by approaching a competent civil Court and the said provision does not authorize the arbitrator to usurp the jurisdiction of the Civil Court either for cancelling the sale deeds or for deciding their genuineness.

11. In another decision relied on by the learned counsel for the respondent nos.2 & 3 in ***V.Shravan Kumar vs. Lt.Col.S.B.Sharma and others*** (supra 11), a learned single Judge of the erstwhile High Court of Andhra Pradesh following the decision referred to above (supra 12) held that Arbitrator had no jurisdiction to entertain the dispute relating to specific performance of agreement of sale and the concerned shall approach Civil Court for redressal of their grievances.

12. The observations made in the above referred citations relied on by the learned counsel for respondent nos.2 & 3 in unambiguous terms clarify the controversy involved in this writ petition that Section 61 of the Andhra Pradesh Cooperative societies Act no way clothe the Arbitrator or Cooperative Tribunal with the power to cancel the registered sale deeds and for the said

purpose one must necessarily approach the competent civil Court seeking cancellation of sale deeds as provided in Specific Relief Act.

13. The learned single Judge upon application of the observations in the decisions referred to supra to the facts of the case on hand had rightly allowed the writ petition and the said orders do not deserve any interference of this Court. The writ appeal being bereft of merits deserves dismissal.

14. Accordingly, the Writ Appeal is dismissed. There shall be no orders as to costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR,CJ

RAVI CHEEMALAPATI,J

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