

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH : NAGPUR

Civil Revision Application No. 138 of 2013

Applicant : Vijay Bhimrao Sakharkar

versus

Respondents : Sau Laxmibai and ors

Mr S. V. Sirpurkar, Advocate for applicant

Mr Ayub Khan, Advocate for respondent no. 1

Coram : A. P. Bhangale, J

Dated : 7th July 2015

P. C.

1. Heard learned counsel for the parties. Perused the impugned order.
2. Respondent no.1 Laxmibai filed Regular Civil Suit No. 813 of 2009 against present applicant and respondents no. 2 and 3 for specific performance of contract. According to her, defendant no. 2 Rajkumar agreed to sell suit plot and house built thereon to her and agreement to that effect was executed on 4.3.1998. She averred that she being lady of 65 years of age, agreement was obtained in the name of her son Vijay

who is original defendant no. 3 and present applicant, though sale deed was to be obtained in her name. Since defendant Rajkumar failed to execute sale in her name even though he received entire amount of consideration from her, respondent no. 1 Laxmibai filed suit, as aforesaid.

3. Applicant/defendant no. 3 filed application (exhibit 37) requesting the trial Court to frame the issues of jurisdiction and limitation as preliminary issues. According to him, defendant no. 1 is a cooperative society and defendant no.2 is its Secretary; he became member of the Society and plaintiff was never a member of the Society. He stated that since specific performance was sought against a Cooperative Society, jurisdiction to entertain and try the suit lies with the Cooperative Court. Secondly, he stated that alleged agreement was executed in the year 1998 and suit filed in the year 2009 was time-barred.

4. Learned trial Judge rejected application holding that the civil court has jurisdiction to entertain, try and decide the suit and that the suit is not time barred. It is this order which is the subject-matter of challenge in this revision.

5. Mr Sirpurkar, learned counsel for applicant has relied upon ruling in **M/s A. V. R. & Co. & ors v. Fairfield Cooperative Housing Society & ors** reported in (1998) 4 SCC 408 to contend that dispute between a cooperative society and a non-member claiming through a member of the society as provided in Section 91 (b) of the Maharashtra

Cooperative Societies Act will be decided by the Cooperative Court. He also took me through the provisions of Section 91 of the Maharashtra Cooperative Societies Act, 1960 in general and sub-section (1) (b) thereof in particular.

6. Learned counsel for respondent no.1 opposed the submission advanced by learned counsel for applicant.

7. I have heard both learned counsel at length. Section 91 (1) (b) reads thus :

“91. Disputes

(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the committee or its officers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society to the cooperative Court if both the parties thereto are one or other of the following :

(a)

(b) a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society or a person

who claims to be a member of the society;

(c)

(d)

(e)”

8. A bare perusal of the aforesaid provision would make it crystal clear that it relates to the dispute touching the constitution; elections of the committee or its officers; conduct of general meetings, management or business of a society. It does not refer merely to a dispute between some member and non-member. From *Souda Chitthi* dated 4.3.1998 it becomes clear that defendant Rajkumar has agreed to sell plot no. 285 from a land which was his self acquired property, exclusively in his possession. That agreement is not executed by defendant Rajkumar for and on behalf of some Cooperative Society in favour of a member of such Society. Viewed from any angle, therefore, provisions of Section 91 (1) (b) of the Act are not at all attracted to this case so as to hold that the Civil Court has no jurisdiction in the matter and it is the Cooperative Court which has exclusive jurisdiction to entertain and try the dispute.

9. In **M/s A.V.R. & Co. And ors v. Fairfield Cooperative Housing Society and ors** (supra), the issue before the Apex Court was totally different. In that case, respondent no. 2 was member of the disputant society while appellants no. 1 and 2 were not members, but

were licensees claiming through respondent no. 2 therein. In that view of the matter, the Apex Court held that dispute touched the business of the society and it fell within the ambit of Section 91 of the Act since appellants no. 1 and 2, the outsiders, were permitted to possess the suit premises as licensees of respondent no.2 Society in contravention of the rules, bye-laws and regulations of the Society. The said judgment thus cannot be applied to the present case. First contention of learned counsel about jurisdiction, therefore, must fail.

10. As regards the second contention that the suit was barred by time, it is observed that after defendants refused to perform their part of contract in response to plaintiff's notice dated 7.5.2009, suit was filed on 24.9.2009. Hence, finding of the trial Court that the suit is filed within the period of limitation is correct and needs no interference.

11. No case is made out to hold that the trial Court has not exercised jurisdiction vested in it by law or that it has failed to exercise jurisdiction so vested in it by law. Learned trial Judge has not acted in the exercise of jurisdiction illegally or with material irregularity. Thus, there is no merit in the revision petition. It is accordingly dismissed with no order as to costs.

JUDGE

joshi