

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

SECOND APPEAL NO.495 OF 2013

(Nikunj Pradeep Khawal ..vs.. Nishant Sahakari Gramin Path Purawatha Sanstha Maryadit Akola,
through its General Manager and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATED : 27-10-2015

Heard Shri R.L. Khapre, learned Advocate for the appellant and Shri A.S. Kilor, learned Advocate for the respondent Nos.1 and 2.

2. The appellant/original plaintiff has challenged the judgment and decree passed by the subordinate Courts, dismissing the suit filed by the appellant, upholding the objection raised by the respondent No.1 under Section 9-A of the Code of Civil Procedure.

3. The appellant filed the civil suit praying for decree for declaration that the suit property is ancestral property and for permanent injunction restraining the defendant Nos.1 and 2 from selling, auctioning or transferring the suit property in any manner. The respondent No.1 filed an application under Section 9-A of the Code of Civil Procedure raising the objection to the tenability of the civil suit on the ground that the civil suit is barred in view of the provisions of Section 163 of the

Maharashtra Co-operative Societies Act, 1960.

4. The learned trial Judge upheld the objection raised by the respondent No.1, recording that the father of the appellant/plaintiff has suffered the award in Dispute Case Nos.79/99, 80/99 and 81/99 and the suit property which was mortgaged, was attached by the order passed by the Co-operative Court during the pendency of above referred dispute cases and the auction which was to take place was in execution proceedings. The learned trial Judge recorded that the plaintiff, in terms, was objecting to the execution and therefore, if he had any grievance in the matter, he is required to raise the objection as per Rule 107(19)(c) of the Maharashtra Co-operative Societies Rules, 1961. The learned trial Judge concluded that he had no jurisdiction to entertain and try the suit and dismissed the suit accordingly.

The appellant being aggrieved by the judgment and decree passed by the trial Court, had filed appeal before the District Court which is dismissed by the judgment dated 29-10-2013. The learned District Judge has concurred with the conclusions of the learned trial judge that the civil suit is barred in view of Section 163 of the Maharashtra Co-operative Societies Act, 1960. In addition, the learned District Judge has recorded that the suit is bad for non-issuance of notice contemplated by Section 164 of the Maharashtra Co-operative Societies Act, 1960.

The appellant being aggrieved by the judgment and decree passed by the subordinate Courts has filed this appeal.

5. Shri R.L. Khapre, learned Advocate for the appellant has submitted that the claim made by the appellant is required to be adjudicated upon by the civil Court and it cannot be said that the decree as sought by the appellant cannot be granted by the civil Court. It is submitted that the bar created by Section 163 of the Maharashtra Co-operative Societies Act, 1960 is not attracted in the present case and the subordinate Courts have committed an error in dismissing the suit filed by the appellant relying on Section 163 of the Maharashtra Co-operative Societies Act, 1960. It is further submitted that the learned District Judge has committed an error by referring to the provisions of Section 164 of the Maharashtra Co-operative Societies Act, 1960, which are not applicable at all and even the respondent No.1 had not raised any objection relying on it. The learned Advocate for the appellant has raised other contentions, on merits of the matter.

6. Shri A.S. Kilor, learned Advocate for the respondent Nos.1 and 2 has supported the impugned judgments.

7. After hearing the learned Advocates for the

respective parties, I find that the bar created by Section 163 of the Maharashtra Co-operative Societies Act, 1960 is attracted in the present case. The appellant/ plaintiff has prayed for decree for permanent injunction restraining the respondent Nos.1 and 2 from selling or auctioning the suit property. The respondent Nos.1 and 2 are taking action to enforce the award passed by the Co-operative Court. It is undisputed that the award has attained finality. The learned Advocate for the respondent Nos.1 and 2 has pointed out from the copy of the award that the suit property was attached under the orders of the Co-operative Court which was passed during the pendency of the disputes before the Co-operative Court. In these circumstances, if the appellant has any grievance, it has to be made before the Recovery Officer as contemplated by Rule 107(19) of the Maharashtra Co-operative Societies Rules, 1961. I am supported in my view by the judgment given by this Court in the case of *Special Recovery Officer/Sales Officer vs. Suhas Balkrishna Shete and ors.* reported in **2014(5) Bombay C.R. 172**. Though the above referred judgment is given by this Court while hearing the writ petition, the ratio laid down by the judgment would apply to the present case.

8. In view of the above, I find that the subordinate Courts have not committed any error.

This Court has recorded in the judgment given in

the case of *Special Recovery Officer/Sales Officer vs. Suhas Balkrishna Shete and ors.* that appropriate remedy in such situation would be under Rule 107(19) of the Maharashtra Co-operative Societies Rules, 1961 and if occasion arises the party may file civil suit after decision of the Recovery Officer. The learned Advocate for the appellant, on instructions, has submitted that the appellant would be taking steps as per Rule 107(19) of the Maharashtra Co-operative Societies Rules, 1961. In these facts, it would not be proper for this Court to deal with the substantial questions of law raised by the appellant.

9. The appeal is disposed accordingly. In the circumstances, the parties to bear their own costs.

Needless to say that the appellant may take appropriate steps as per Rule 107(19) of the Maharashtra Co-operative Societies Rules, 1961, if so advised.

JUDGE