

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 WRIT PETITION NO. 11516 OF 2019

VISHNUPRASAD KISANLAL DAYAMA AND ANOTHER
VERSUS
SMT. CHANDRAPRABHA RAMESHLAL DAYAMA AND OTHERS

.....

Advocate for Petitioners : Mrs. Deshmukh C. S.
Advocate for Respondent Nos. 1 to 3 : Mr. D. A. Bide

.....

CORAM : V. K. JADHAV, J.
DATED : 12th FEBRUARY, 2020

PER COURT:-

1. Heard both sides.
2. The petitioners are the original plaintiffs. The petitioners have instituted the suit bearing Regular Civil Suit No. 354 of 2019 for declaration under Sections 34 and 38 of the Specific Relief Act, 1963. The suit property is a plot ad-measuring 8500 sq. ft. situated at Industrial Estate, Kedgaon, Taluka and District Ahmednagar. It is an industrial plot and the said industrial estate is owned by respondent no.4 – Ahmednagar Industrial Estate Society (for short, “society”) formed and established for providing plots to the industrialists who are intending to start their business. The petitioners/plaintiffs, the husband of defendant no.1 and the father

of defendant nos. 2 and 3, namely, Rameshchandra, are the real brothers. The petitioners/plaintiffs claim that the property as detailed in para 1 of the plaint is the property of joint family business and accordingly, sought declaration to that effect. Respondent nos. 1 to 3 i.e. original defendant nos. 1 to 3, on their appearance in the suit, have filed application Exhibit 25 for rejection of the plaint. Though it is not specifically mentioned as to under which provision of the Code of Civil Procedure the said application Exhibit 25 is filed, it appears that the said application has been filed under Order VII Rule 11 Clause (d). The petitioners/plaintiffs sought declaration by way of prayer clause (A) to the effect that the “plaintiffs family is the tenant in the property specifically mentioned in para No. 1 of the plaint”. In the backdrop of this prayer clause (A) in the suit and considering the application Exhibit 25 and the say filed by the petitioners/plaintiffs to the said application, the trial court held that there is bar of Section 91 (1) (b) of the Maharashtra Co-operative Societies Act, 1960, as the dispute between respondent no.4-society and the person claiming himself to be the Member of the society falls within the definition of “disputes” under Section 91 and in terms of the provisions of Section 91(3) of the Maharashtra Co-operative Societies Act, 1960

the jurisdiction of the civil court is barred. The trial court observed that the plaintiff wants declaration that he is the tenant and the society is providing the land to its member on lease basis and as such, the dispute between the parties falls within the definition of Section 91 and therefore, the civil court has no jurisdiction to try the suit as per Section 91(3) of the Maharashtra Co-operative Societies Act, 1960. By the impugned order dated 14.08.2019 below Exhibit 25 in Regular Civil Suit No. 354 of 2019, the 8th Joint Civil Judge, Senior Division, Ahmednagar has also directed the return of plaint. Hence this Writ Petition.

3. Learned counsel for the petitioners/original plaintiffs submits that there is specific pleading for seeking declaration that the property shown in para 1 of the plaint is of joint family business. Learned counsel submits that in para 7 of the plaint, it has been specifically stated that defendant no.4-society is formed and established for the purposes of providing industrial plots and as the plot shown in para 1 of the plaint is owned by the society and the plaintiffs are having leasehold rights in the property, they have joined respondent no.4 as party to the suit, but the plaintiffs are not claiming any reliefs against defendant no.4. Learned counsel

submits that even in para 8, it has been specifically pleaded that the cause of action for filing the suit arose when defendant no.4-society has allotted the plot to Sahayog Industries initially in the year 1972 and thereafter in the year 1973, the plaintiffs and defendant no.1's husband have started business under the name and style as "M/s. M.R. Plastic Industries" in the suit property. It is further pleaded that the cause of action also arose when the plaintiffs and defendants had obtained loan from financial institutions and doing business. The cause of action also arose in the year 1998 when Rameshchandra died and plaintiff nos. 1 and 2 have started business and Rameshchandra's share was given to defendant nos. 1 to 3. The cause of action also arose when plaintiffs have realized that defendant nos. 1 to 3 are trying to create third party interest and hence they have raised objection with defendant no.4. The cause of action also arose when defendant nos. 1 to 3 have decided to alienate the property and create third party interest when the third party has visited the factory. Learned counsel submits that in the backdrop of the specific pleadings along with the cause of action, it is apparent that the prayer clause (A) has been incorrectly formulated. It is not disputed that respondent no.4-society has allotted plot no.76,

which is subject matter of the suit, to run the industry in the area earmarked as an industrial society owned by respondent no.4 and as such, there is no question of seeking any declaration that the plaintiffs' family is tenant in the property. Even assuming that the said prayer is there, however, in terms of the pleadings and the prayers made in the suit, the provisions of Section 91(3) of the Maharashtra Co-operative Societies Act, 1960 are not attracted. Learned counsel submits that the petitioners/plaintiffs would immediately file an application for correction of prayer clause (A) in the suit if the suit is restored by setting aside the impugned order.

4. Learned counsel for the respondents/original defendants submits that the suit plot no.76 is not the property of the joint family of the petitioners and the respondents and the suit property is an independent property of respondent nos. 1 and 2 which was originally belonging to respondent no. 4. The said plot was handed over to the husband of respondent no.1 and father of respondent nos.2 and 3 under the rent agreement dated 28.11.1972. Learned counsel submits that after death of father of respondent nos. 2 and 3, they came in possession of the suit property and the petitioners

are having no concern with the suit property. Learned counsel submits that even respondent no.4-society has filed say to the application filed by the petitioners/plaintiffs seeking temporary injunction stating therein that after death of Rameshchandra Dayama, the name of respondent no.1 Chandraprabha stands mutated in respect of the said plot as she was shown as the sole proprietor. On 12.07.2004, in terms of resolution no.4/1, the suit plot remained continued in the name of Sahyog Industries on lease. Learned counsel submits that if the petitioners are claiming the suit plot as the joint family business, then, respondent no.4-society is involved in the matter and the bar under Section 91(3) stands attracted. Learned counsel submits that the trial court has therefore rightly returned the plaint to the petitioners/plaintiffs for presentation of the same before the co-operative court. There is no substance in this Writ Petition. The Writ Petition is liable to be dismissed.

5. On careful perusal of the paint, it appears that there is a dispute between the brothers *inter se* in respect of the suit plot no. 76. It is not disputed that the said plot has been allotted to deceased Rameshchandra. However, it has been specifically

pleaded in the plaint that the business, initially in the name of the Sahyog Industries and thereafter in the name of M/s. M.R. Plastic Industries, is a joint family business. In the backdrop of these pleadings, the petitioners/plaintiffs have instituted the suit for declaration. By any stretch of imagination, this cannot be considered to be a dispute touching the constitution, the conduct of the general meetings, management or business of the society etc. as specified under the provisions of Section 91 of the Maharashtra Co-operative Societies Act, 1960. In view of the same, the bar of Section 91 (3) of the Maharashtra Co-operative Societies Act, 1960 is not attracted in the facts and circumstances of the present case. Furthermore, learned counsel for the petitioners, on instructions, made a statement that the petitioners would file an application seeking amendment in the plaint, particularly, in respect of prayer clause (A) of the suit and formulate it in the following manner:

“It be declared that the property shown in para 1 of the plaint is of joint family business.”

6. In view of the same and the discussion as above, the order impugned is not sustainable in the eyes of law. Even assuming that

the prayer clause (A) is incorrectly formulated, however, still then the nature of dispute does not fall within the category of disputes as referred under Section 91 of the Maharashtra Co-operative Societies Act, 1960 so as to attract the bar under Section 91(3) of the Maharashtra Co-operative Societies Act, 1960. Even if the petitioners file application for seeking amendment in prayer clause (A), it is for the respondents/defendants to oppose the said amendment. The trial court may decide the application, if filed, on its merits. It is also open for the respondents/defendants to raise the other grounds as available in law even if the said prayer no. (A) is corrected. Thus, considering the entire aspect of the case, I proceed to pass the following order:

ORDER

- I. The Writ Petition is hereby allowed.
- II. The impugned order dated 14.08.2019 passed by the 8th Jt. Civil Judge, Senior Division, Ahmednagar below Exhibit 25 in Regular Civil Suit No. 354 of 2019 is hereby quashed and set aside.
- III. Application Exhibit 25 is hereby rejected.

IV. The petitioners/original plaintiffs are at liberty to file an application for amendment in respect of prayer clause (A) of the plaint and the trial court to decide the said application on its own merits in accordance with law after giving opportunity of being heard to the respondents/defendants.

V. The Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)

vre/