

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.46 OF 2019
WITH
CIVIL APPLICATION NO.41 OF 2019
IN
SECOND APPEAL NO.46 OF 2019**

Proposed Yashwant Sahakari Soot Girni
Limited & Anr.

..Appellants

Versus

Yashwant Sahakari Soot Geerni Sevak
and Labourer's Co-operative Housing
Society Ltd., Solapur & Anr.

..Respondents

Mr. Akshay Shinde, for the Appellants

CORAM : NITIN W. SAMBRE, J.

DATED : 17th OCTOBER, 2022

P.C.:

1. This second appeal is by the plaintiffs who has initiated Regular Civil Suit No. 517 of 2013 against the respondents/defendants with a prayer for declaration that the resolution dated 25/03/2013 passed by defendant no. 1-society to which the defendant no. 2 is a party is null, void, ultra-vires and not binding on plaintiff nos. 1 & 2.

2. A further declaration is sought that the resolution dated 10/06/2010 passed by plaintiff no. 1-Society appointing plaintiff no. 2 as its Chief Promoter is legal, valid and binding in general.

3. The decree for perpetual injunction was sought thereby restraining defendant no. 2 from interfering with the possession

of the plaintiff nos. 1 & 2 over the suit property. The fact remains that the plaintiff no. 1 is an unregistered society.

4. In the aforesaid background, the application Exhibit-22 was taken out by the defendants stating that the suit filed by the plaintiffs is not maintainable in law, as it is not a juristic entity as such cannot sue or be sued. Similarly, the application Exhibit-24 was taken out by appellants/plaintiffs pursuant to the provisions Order I Rule 8 of the CPC for permission to pursue the suit through plaintiff no. 2 in representative capacity. Accordingly, on 4th January, 2016, Trial Court framed an issue as to its jurisdiction to try and entertain the suit. Vide order dated 21st October, 2016, Trial Court has held that it has jurisdiction to try and entertain the suit.

5. Application Exh.22 for rejection of plaint under Order VII Rule 11(a) of CPC came to be allowed, whereas application Exh.24 for permission to pursue the suit in representative capacity under Order I Rule 8 of CPC came to be rejected vide common order dated 21st October, 2016.

6. The appellants/plaintiffs feeling aggrieved preferred an appeal being Civil Appeal No. 284 of 2016 on the file of Ad-hoc District Judge-4 Solapur. The appeal also came to be dismissed on 27/03/2017. As such, this second appeal.

7. The contentions of learned counsel for the

appellants/original plaintiffs are, admittedly the plaintiff no. 1 is an unregistered society which consists of the plaintiff no. 2 as its chief promoter and other members. It is claimed that the plaintiff no. 2 was representing the interest of members of plaintiff no. 1, who are beneficiaries from the suit land which was meant for construction of houses, the plaintiffs moved an application under Order I rule 8 of CPC. It is claimed that the application was taken out by the appellants/plaintiffs vide Exhibit-24 thereby satisfying the very requirement under the provisions of Order I Rule 8 of the CPC seeking leave of the Civil Court to pursue the suit in representative capacity for and on behalf of members of plaintiff no. 1 and also the similarly placed persons.

8. According to him, requirement under provisions of Order I rule 8 were also assured to be complied, if so required by issuing public notice in newspaper. According to him, considering the nature of claim put forth in the plaint, as the appellants were representing the interest of the number of persons, the suit ought to have been permitted to be persuaded in representative capacity by putting the appellant/plaintiff no. 2 to the condition of compliance of other requisites of Order I Rule 8 of CPC.

9. As such, the question of law which the appellants/plaintiffs

intend to canvass is, whether both the Courts below have failed to appreciate the very suit claim in the backdrop of the provisions of Order I Rule 8 of the CPC.

10. With the assistance of learned counsel for the appellants, I have perused the pleadings in the plaint, the applications Exhibits 22 & 24 so also the concurrent findings recorded by both the Courts below.

11. It appears that the suit claim is based on the rivalry between the appellants and respondents as both the parties intend to have control over the property of the defendant no. 1-society.

12. Case of the appellants/plaintiffs is based on the alleged claim that the suit property was meant for the members of proposed plaintiff no. 1-society. Neither the details of the members who are interested/beneficiaries nor that of details in the suit property are disclosed. So also prejudice caused to so called members is not alleged in the plaint. As both the Courts have noticed that the appellants has not satisfied the very pre-requisites of the provisions of Order I Rule 8 of the CPC, has rejected the claim put forth.

13. If the provisions of Order I Rule 8 are appreciated, the least that was expected from the appellants was to disclose the very cause to the members of the appellant no. 1 - society

(may be based on different cause of action), the prejudice caused to its members and the legal wrong. Perusal of the pleadings prima facie reveals that the appellants have failed to demonstrate or satisfy any of the aforesaid ingredients.

14. As the plaintiff No.1, an unregistered association lacks status of juristic person and has no authority in the eye of law to sue, the Courts below were justified in rejecting the plaint. Apart from above, the provisions of Order I Rule 8 of CPC are also not duly complied with viz. issuance of notice of institution of suit to the person interested in a manner specified therein, impleadment of such parties to the suit, the details of the members of the proposed co-operative society. That being so, it has to be held that the appellants have failed to satisfy the requirements under Order I Rule 8 of the CPC. That being so both the Courts below were justified in recording the adverse findings.

15. As such, the second appeal which sans substantial question of law stands dismissed. Pending applications also stands dismissed.

(NITIN W. SAMBRE, J.)