



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.04.2022

DELIVERED ON: 21 .04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P. (MD) .No.383 of 2017

and CMP(MD) .Nos.1874 & 1875 of 2017

Sowdha Sheriff

...Appellant/Appellant
/Claim Petitioner

Vs

1.The Deputy Registrar (Co-operative Societies)

No.14/B, Sales Officer,

No.14/B, Sannathi Street

Railway Feeder Road, Near LIC

Cheranmadevi, Tirunelveli District

2.The Special Officer

Naguneri-Radhapuram Taluk

Agricultural Producers Co-operative Marketing

Societies Limited, Naguneri @ Valliyur

Tirunelveli District

....Respondents/Respondents
/Respondents

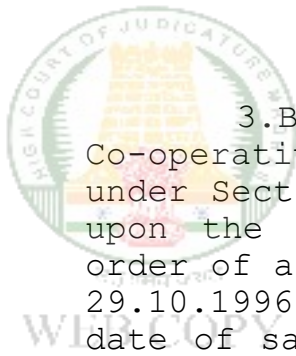
PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India to set aside the judgment and decree, partly dismissing CMA(CS).No.5 of 2015 dated 12.08.2016 passed by the learned Special Judge for Co-operative Cases/Principal District Judge, Tirunelveli and thereby confirming the order passed in C.E.P.No.112 /1996-97 dated 14.01.2015 on the file of Deputy Registrar of Co-operative Societies, Cheranmahadevi, Tirunelveli.

For Petitioner	: Mr.Niranjana S.Kumar
For R1	: Mr.M.Senthil Ayyanar
For R2	: Mr.S.Kumar

O R D E R

The claim petitioner is the appellant.

2.The husband of the claim petitioner was working as a Special Officer in Nanguneri-Radhapuram Taluk Agricultural Producers Co-operative Marketing Society Ltd., between 07.01.1994 to 17.08.1994. During his tenure, as a Special Officer certain irregularities were found and an enquiry was initiated as against him under Section 81 of the Tamil Nadu Co-operative Societies Act. As per enquiry report, it was found that the appellant's husband has caused a loss to a tune of Rs.8,00,000/- to the Society.

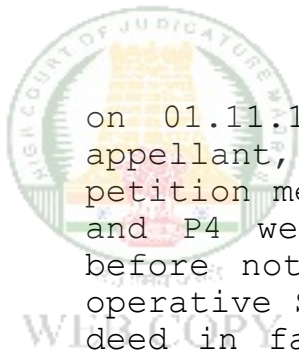


3. Based upon the said enquiry report, the Deputy Registrar of Co-operative Society, Cheranmahadevi initiated surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act. Based upon the conclusion arrived at in the surcharge proceedings, an order of attachment of the petition mentioned property was passed on 29.10.1996 and a sale notice was issued on 27.03.2010 fixing the date of sale as 29.04.2010. After issuance of the sale notice, the appellant filed a claim petition before the Registrar of Co-operative Societies, Cheranmahadevi contending that she is the absolute owner of the petition mentioned property in view of the registered document marked as Exhibits P1 to P5. According to the appellant, the properties were originally the ancestral properties of her husband. It devolved upon the appellant's husband, three brothers and a sister. Two of the brothers of the appellant's husband have sold their respective shares namely 2/9th share in favour of the appellant under Exhibits P1 and P2. The appellant had further contended that another brother and sister have released their respective shares namely 5/9th share in favour of the appellant's husband under Exhibits P3 and P4. The appellant's husband has chosen to execute a gift deed in favour of the appellant under Exhibit P5 and gifting the properties got by him under Exhibits P3 and P4. Hence, the appellant is the absolute owner of the petition mentioned properties. Therefore, the auction notice is bad in the eye of law. The said application was dismissed by the Registrar of Co-operative Societies, Cheranmahadevi.

4. The appellant filed CMA(CS).No.5 of 2015 before the Special Tribunal for Co-operative Cases/Principal District Judge, Tirunelveli. The learned District Judge was pleased to dismiss the claim petition with regard to 5/9th share, but upheld the claim petition with regard to 4/9th share in the case of the appellant. Challenging the disallowed portion of 5/9th share, the appellant has filed the above Civil Revision Petition.

5. The learned counsel for the appellant/claim petitioner contended that the petition mentioned property originally belonged to the father of the appellant's husband. After his death, it devolved upon four sons and a daughter. Two sons have executed a registered sale deed in respect of their 4/9th share in favour of the appellant under Exhibits P1 and P2 on 18.01.1980 and 29.05.1981 respectively. Thus, the appellant has become an absolute owner of 4/9th share.

6. The learned counsel for the appellant further contended that another brother of the appellant's husband had executed a release deed in favour of the appellant's husband under Exhibit P3 on 18.01.1980. The sister of the appellant's husband has executed a release deed under Exhibit P4 on 24.09.1991. Hence, as per Exhibits P3 and P4, the appellant's husband become the owner of 5/9th share. The said 5/9th share obtained under Exhibits P3 and P4 was gifted by the appellant's husband in favour of the appellant under Exhibit P5

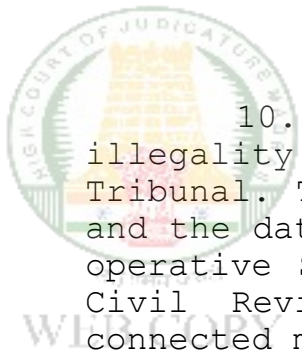


on 01.11.1995. Hence, according to the learned counsel for the appellant, the appellant became the absolute owner of all the petition mentioned properties. He further contended that Exhibits P3 and P4 were executed in favour of the appellant's husband even before notice was issued under Section 81 of the Tamil Nadu Co-operative Societies Act. The appellant's husband has executed a gift deed in favour of the appellant under Exhibit P5 even before the property was attached by the department. Hence, when the entire property got vested with the appellant even before the order of attachment passed by the Co-operative Department, the authorities under the Co-operative Societies Act and the Tribunal ought to have allowed the claim in its entirety. Hence, he prayed for allowing the revision petition.

7.Per contra, the learned counsel appearing for the Special Deputy Registrar of Co-operative Societies contended that Section 81 notice under the Co-operative Societies Act was issued as against the appellant's husband on 17.03.1995. Eight months thereafter, the appellant's husband has executed a gift deed in favour of the appellant on 01.11.1995 with regard to 5/9th share in the petition mentioned property. Hence, the gift deed executed by the appellant's husband is not bonafide and it was executed only with an intention to evade any sale pursuant to the surcharge proceedings. Hence, he contended that the Co-operative Tribunal has rightly rejected the claim petition for 5/9th share of the petition mentioned property.

8.I have given anxious consideration to the submissions made on either side.

9.Admittedly, the appellant/claim petitioner's husband was issued with a notice under Section 81 Tamil Nadu Co-operative Societies Act on 17.03.1995. In the said notice, it was pointed out that the appellant's husband has caused a loss to the tune of more than Rs.8,00,000/- to the Society. On the date of issuance of Section 81 notice, the appellant's husband was the owner of 5/9th share in the petition mentioned property. Eight months thereafter, the appellant's husband has executed a gift deed in favour of the appellant on 01.11.1995. Hence, it is evident that the gift deed by the appellant's husband in favour of the appellant is not bonafide in nature. It was executed only with an intention to evade any sale of the property pursuant to the proceedings under Co-operative Societies Act. The Co-operative Tribunal has discussed in detail about all the documents and upheld the claim petition of the appellant to an extent of 4/9th share covered under Exhibits P1 and P2 documents which are 14 years prior to Section 81 notice. However, the Co-operative Tribunal has rejected the claim petition with regard to 5/9th share on the ground that the gift deed has been executed by the delinquent in favour of his wife eight months after receipt of Section 81 notice.



10. In view of the above discussions, I do not find any illegality or irregularity in the order passed by the Co-operative Tribunal. The Tribunal analysed the date of sale deed, release deed and the date of issuance of notice under Section 81 of Tamil Nadu Co-operative Societies Act and has arrived at a correct finding. This Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

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/ /2022

Sub Assistant Registrar(CS)

msa

To

1.The Special Tribunal for Co-operative Cases/
Principal District Judge, Tirunelveli

2.The Registrar of Co-operative Societies
Cheranmahadevi

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S. KUMAR, Advocate (SR-20340[F] dated 22/04/2022)

+1 CC to M/s.NIRANJAN S. KUMAR, Advocate (SR-20362[F] dated 22/04/2022)

+1 CC to M/s.SPL.GP. (SR-20713[F] dated 22/04/2022)

C.R.P. (MD).No.383 of 2017
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NA (CO)

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