



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3996 OF 2016

Rajarshree Shahu Maharaj Magaswargiya Audyogik Utpadak
Sahkari Sanstha Maryadit Thru Sec. K M Bodkh

VERSUS

Maroti Kundalik Bodkhe And Another

- Mr. N. K. Tungar, Advocate for the Petitioner
- Mr. Y. G. Somani, Advocate for the Respondent No. 2

CORAM : R. M. JOSHI, J

DATE : JULY 29, 2025

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to the order passed vide Exh. 19 dated 19.01.2016 in RCS No. 46/2013 whereby the Trial Court dismissed the suit for want of jurisdiction.

3. The facts which led to the filing of this Petition can be narrated in brief as under:

Petitioner/Plaintiff filed suit bearing RCS No. 46/2013 seeking cancellation of the sale deed dated 18.06.2012 and declaration that the Plaintiff is the owner of the suit property. Defendant filed application

under Section 9A of the Code of Civil Procedure raising objection to the maintainability of the suit on the ground that the provision of Maharashtra Cooperative Societies Act, 1960 (for short "**the Act**") would have application to the present case and in view of Section 91 thereof, civil Court has no jurisdiction to entertain the suit. The said contention of the Defendant is accepted by the Trial Court by passing order vide Exh. 19. It is held that the main relief is of declaration of the correctness of resolution dated 01.06.2012 and the decision of the suit depends upon the findings recorded against the said issue. It is held that since there is a bar created by Section 91 of the Act for entertaining a suit in respect of a dispute between member and non member the suit is held to be without jurisdiction.

4. Learned Counsel for the Petitioner submits that the Cooperative Court has no jurisdiction to cancel any instrument including the sale deed. It is his submission by referring to the judgment of Division Bench of this Court in case of **Alok Agarwal and Others vs. Punam Co-operative Housing Society Ltd. And Others,**

2013 (1) Mh.L.J. 104 that civil Court is vested with the power to cancellation of the written instrument under Section 31 of the Specific Relief Act, 1963. It is his contention that in view of the said judgment, the order passed by the Trial Court of dismissal of the suit for want of jurisdiction is not sustainable.

5. Learned Counsel for the Respondent/Original Defendant sought to support the impugned order by contending that unless the resolution dated 01.06.2012 is declare to be null and void, it would not be within jurisdiction of the Civil Court to give declaration in respect of these sale deeds. It is his further submission that the issue of correctness of the resolution is beyond jurisdiction of the Civil Court. Thus, it is his submission that there is no infirmity in the order impugned.

6. In order to ascertain the jurisdiction of the Court, the Court will have to consider the reliefs prayed by the Plaintiff. Undisputedly, the Plaintiff is seeking cancellation of the sale deed in question including between Plaintiff and Defendant. No doubt, there are pleadings in respect of the correctness or

otherwise of the resolution dated 01.06.2012. However, as a matter of fact the relief is sought is only of declaration of the sale deed.

7. Now question arises as to whether the Cooperative Court has jurisdiction to give such declaration and to cancel written instrument. In this regard, reference can be made to judgment of the Division Bench in case of **Alok Agarwal** (supra) and more particularly paragraph 16, which reads thus:

16. The real bone of contention, however, is whether the reliefs which have been sought before this Court are of a nature that would fall within the jurisdiction of the Co-operative Court under sub section (1) of Section 91. The co-operative society, which is the Plaintiff before this Court, has among the reliefs sought claimed a declaration to the effect that the agreement dated 30 May 2007 under which the Appellant claims title is null and void and unenforceable as against the society. Declaratory relief of this nature cannot be granted by the Co-operative Court. Section 31 of the Specific Relief Act 1963 provides that any person against whom a written instrument is void or voidable, and who has reasonable apprehension that if such instrument is left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and

order it to be delivered up and cancelled. The power which is conferred upon the Civil Court under Section 31(1) of ordering cancellation of a written instrument is evidently not vested in the Co-operative Court constituted under the Maharashtra Co-operative Societies Act 1960. It is well settled that the jurisdiction which is conferred on a Civil Court under Section 9 of the Code of Civil Procedure 1908 to try all suits of civil nature can be abrogated only by an express provision of the statute or where it is impliedly barred. The provisions of Section 91 of the Maharashtra Co-operative Societies Act 1960 do not either expressly or by necessary implication confer jurisdiction on the Co-operative Court to grant declaratory relief especially of the nature referable as in the present case to Section 31 of the Specific Relief Act 1963.

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8. From the above judgment, it is clear that the Cooperative Court while exercising powers under Section 91 of the Act would have jurisdiction to grant any declaratory relief in the nature which is referable to Section 31 of the Specific Relief Act.

9. In view of the above settled position of law, it cannot be said that the Civil Court has no jurisdiction to entertain suit. It is immaterial as to whether the Plaintiff will succeed in getting relief or

not and such possibility of success would not become ground to decide issue of jurisdiction of civil Court. Suit filed by Plaintiff, therefore, is certainly maintainable and hence, could not have been dismissed for want of jurisdiction. In the result, Petition stands allowed in terms of prayer clause 'B'. Impugned order is set aside. Trial Court is directed to decide the suit in accordance with law.

10. Parties are directed to appear before the Trial Court on 18.08.2025. No separate notice shall be issued to the parties.

(R. M. JOSHI, J.)