

## M. Narisimhan Vs The Deputy Registrar of Co-op. Societies and Others

**Court:** Madras High Court

**Date of Decision:** Aug. 26, 2002

**Citation:** (2003) 1 CTC 327

**Hon'ble Judges:** A. Ramamurthi, J

**Bench:** Single Bench

**Advocate:** T.M. Hariharan, for the Appellant; M. Saravana Kumar, for S.M. Subramaniam, for the Respondent

**Final Decision:** Allowed

### Judgement

A. Ramamurthi, J.

The plaintiff, who lost in both the Courts below is the appellant.

2. The case in brief is as follows:- The plaintiff filed a suit for declaration and for permanent injunction relating to the suit property. The plaintiff

purchased house bearing door No. 3-1-20 under a registered sale deed dated 23.6.1972 for Rs.1000 executed by Pankajam Ammal for herself

and on behalf of minor son. He again purchased house No. 24 under a registered sale deed dated 16.4.1975 for Rs. 1500 from one Asalu Iyengar

and Thiruvenkata Iyengar. The two properties were purchased out of his own earnings and both the properties were adjacent to one another.

During 1976, the plaintiff demolished the two houses and constructed a single house bearing door No. 23, ward No.12 and assessment was also

made in his name. The plaintiff came to know on 30.12.1977 the defendants 1 and 2 are trying to attach the schedule mentioned property in

pursuance of an Arbitration Award obtained by the 2nd defendant against the 3rd defendant, who is the son of the plaintiff in connection with the

alleged misappropriation of some amount in the Bank. The absolute property of the plaintiff cannot be attached for the alleged dues of his son.

Hence, the suit.

Defendants 1 and 2 resisted the suit by denying the averments in the plaint. They also denied the absolute right of the plaintiff relating to the suit

property. The third defendant was employed as a Clerk in the Deposit Section of the 2nd defendant bank and he and other employees of the bank

misappropriated Rs. 7,63,100. Disciplinary proceedings were initiated against them for recovering the misappropriated amount. During the

pendency of the proceedings, the 3rd defendant attempted to sell the property and therefore, attachment before judgment was made on

31.7.1997. The plaintiff also filed objection petition under Rule 135 of the Tamil Nadu Cooperative Societies Act (hereinafter referred to as "the

Act") before the 1st defendant on 7.1.1998 and it is still pending. Suppressing the same, the plaintiff has come forward with the present suit. The

suit is not maintainable before the Civil Court in view of the bar u/s 156 of the Act. There was no notice u/s 80 of Civil Procedure Code. The

plaintiff and his son, the 3rd defendant are living in the same property as joint family members. The plaintiff has taken the sale deed in his capacity

as head of the family and as such, the suit is liable to be dismissed.

The trial court framed 7 issues and on behalf of the plaintiff, he was examined as P.W.1 and ExsA.1 to A-10 were marked and on the side of the

defendants, no witness was examined and no document was marked. The trial Court dismissed the suit and aggrieved against this, the plaintiff

preferred A.S. 56 of 1999 on the file of Principal District Court, Tuticorin and the learned Judge after hearing the parties, dismissed the appeal and

aggrieved against this, the plaintiff has come forward with the present second appeal.

3. The appellant has raised the following substantial questions of law in the memorandum of grounds of appeal:

(1) Whether the suit is barred under the provisions of the Tamil Nadu Cooperative Societies Act and whether the jurisdiction of the Civil Court is

completely ousted under the said Act?

(2) Whether the Civil Court cannot interfere in the proceedings initiated under the Tamil Nadu Cooperative Societies Act especially when the same

are clearly illegal and unjust and when basic and mandatory rules of fairplay, equity and justice are given a go-by?

(3) Whether the finding of the Courts below that the suit is premature is legally sustainable?

(4) Whether respondents 1 and 2 can proceed against the appellant, a stranger under the provisions of the cooperative societies Act when the

appellant has not offered his property as security to the 2nd respondent for the alleged acts and omissions of the 3rd respondent?

4. Heard the learned counsel for the parties.

5. The third defendant was employed as a clerk in the 2nd defendant bank and according to defendants 1 and 2, the 3rd defendant and other

persons working in the bank have committed misappropriation of a sum of Rs. 7 lakhs and odd and for which, disciplinary proceedings were taken

against them. During the pendency of the recovery proceedings, the 3rd defendant attempted to sell away the schedule mentioned property and

therefore, attachment before judgment was ordered on 3.1.1997. The plaintiff is the father of 3rd defendant and he filed objection petition before

the 1st defendant on 7.1.1998 under Rule 135 of the Act claiming that the schedule mentioned property exclusively belong to him and it is not

liable for attachment. The plaintiff was also not served with any notice and he was not a party in the disciplinary proceedings. Moreover, for the

dues, if any payable by the 3rd defendant, the property of the plaintiff cannot be attached.

6. Per contra, the learned counsel for defendants 1 and 2 contended that the properties were purchased by the plaintiff as Head of the family and

infact, the 3 defendant and the plaintiff are living under one and the same roof. The properties do not exclusively belong to the plaintiff. Apart from

this, the plaintiff had already moved the 1st defendant and filed objection on 7.1.1998 and according to the Rules, he has to wait till the disposal of

the objection petition and thereafter only, he can move the civil court by filing a suit. Defendants 1 and 2 relied upon Section 156 of the Act that

there was a bar for institution of a suit before the Civil Court and in short, the Civil Court has no jurisdiction to entertain the suit.

7. Admittedly both the Courts below have rejected the contentions of the plaintiff. The learned Counsel for the appellant contended that the

reasonings that the Civil Court can be approached only after the determination of Ex.A. 4 proceedings is erroneous. The jurisdiction of the Civil

Court is not ousted in cases where the authorities under the Act have not complied with the provisions of the Act. Admittedly, the property stands

in the name of the appellant and respondents 1 and 2 claim to have attached the same without any notice to the appellant and without hearing him.

The appellant is a third party to the transaction between respondents 2 and 3. The separate property of the appellant cannot be proceeded with

and the plaintiff has not offered the property as security also for the acts and omissions of the 3rd defendant.

8. The main contention put forward by the learned counsel for respondents 1 and 2 is that the Civil Court has no jurisdiction to entertain the suit in

view of the bar u/s 156 of the Act. The 3rd defendant was aged about 8 years when the properties were purchased by P.W.1. The old house was

demolished and the superstructure was put up by the plaintiff. Section 156 of the Act relates to Bar of jurisdiction of Civil Court and it reads as

follows:

Bar of jurisdiction of civil courts:- Notwithstanding anything contained in any other law for the time being in force no order or award passed,

decision or action taken or direction issued under this Act by an arbitrator, a liquidator the Registrar or an Officer authorized or empowered by

him, the Tribunal or the Government or any Officer subordinate to them, shall be liable to be called in question in any court and no injunction shall

be granted by any Court in respect of anything which is done or intended to be done by or under this Act.

9. Section 167 deals with furnishing of security and attachment of property. According to this section, where the authorities are satisfied, the whole

or any part of the property can be attached. Now, according to the learned counsel for the appellant, the 3rd defendant has no right, title and

interest in the property and it exclusively belongs to the appellant alone. Rule 137 relates to attachment in execution of decrees of several courts

and ratable distribution of assets. Rule 140 relates to mode of making attachment before judgment. Rule 135 relates to Investigation of claims and

objections to attachment of property. Rule 135(1) reads as follows:-

Where any claim is preferred to, or any objection is made to the attachment of any property attached under these rules on the ground that such

property is not liable to such attachment, the sale Officer shall investigate the claim or objection and dispose of it on merits:

Provided that no such investigation shall be made when the sale officer considers that the claim or objection is frivolous.

According to this Rule the sale Officer shall investigate the claim or objection and dispose of it on merits. Section 135(3) indicates that where a

claim or an objection is preferred, the party, against whom an order is made by the Sale Officer, may institute a suit within six months from the date

of the order to establish the right which he claims to the property in dispute. Now, the learned counsel for respondents 1 and 2 relied upon Rule

135(3) and contend that the present suit is not maintainable since the objection raised by the appellant is yet to be disposed of by the competent

authorities.

10. The learned Counsel for the appellant, however, contended that the authorities constituted under the Act have no power to decide the question

of title. Exs.A-1 and A-2 are the documents of title standing in the name of the appellant. The assessment was made in his name and Ex.A.3 is one

of the receipts. P.W.1 also filed an objection under Ex.A.4 relating to the attachment. Ex.A.7 is the birth extract relating to the 3rd defendant.

Ex.A.10 is the copy of statement sent by P.W. 1 to the government relating to immovable property. No doubt, the Rules provide for deciding the

claim or objection made by a property. Now the plaintiff had filed documents to show that he had purchased the property and after demolition of

the superstructure, he had put up construction out of his own funds and during that point of time, his son, the 3rd defendant was only aged about 8

years. Now, respondent 1 and 2 had taken a plea that the appellant purchased the property in his capacity as Head of the Family and both of them

are living under one and the same roof. It is only when there an ancestral nucleus, then it can be presumed that the appellant could have purchased

the property out of the said funds and hence, the entire property can be construed as a joint family property. If there are no ancestral nucleus and if

the property was purchased out of the exclusive funds of the appellant. Then it becomes the separate and self acquired property and under the

circumstances, the department is not entitled to attach the property of the appellant for the debts payable by the 3rd defendant. The question

relating to joint family or ancestral nucleus and all these details cannot be gone into by the authorities constituted under the Act Necessarily the

question of title relating to the property can be gone into only by a civil Court. Further, a reading of Rule 137 would itself indicate that only the

property of the judgment debtor is liable for attachment and not the property of a third party. So far as this case is concerned, the appellant is a

third party and as such, the bar u/s 156 of the Act cannot be used against him.

11. The learned counsel for the appellant relied the decision reported in *Ujjam Bai v. State of U.P.* AIR 1962 SC 1621, wherein it is stated as

follows:-

Where a quasi judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion, whether it is

wrong in law or in fact. The question whether a tribunal has jurisdiction depends not on the truth or falsehood of the facts into which it has to

enquire, or upon the correctness of its findings on these facts, but upon their nature, and it is determinable at the commencement, not at the

conclusion, of the inquiry."

12. Reliance is also placed on *Mattadhari Primary Agricultural Co-op. Bank Vs. Saroja Ammal and Another*, relating to statutory bar on civil

Court jurisdiction u/s 156 of the Act. A suit filed against a Primary Agricultural Cooperatives Bank claiming declaration that suit property belongs

to plaintiff and for permanent injunction. Application filed to decide preliminary issue in regard to maintainability of suit in view of statutory bar

contained in Cooperative Society Act and Rules. The Court came to the conclusion that the plaintiff not a member of Primary Agricultural

Cooperative bank and therefore statutory bar would not operate. Revisional court cannot interfere with finding given on such preliminary issue. The

analogy in this decision can be made applicable to the case on hand and if that be so, the appellant was not a member in the bank and he was not a

party to the attachment proceedings and as such, it is applicable.

13. Reliance is also placed upon *Dhulabhai v. State of Madhya Pradesh*, AIR 1969 SC 781 u/s 9 of Civil Procedure Code, wherein certain

guidelines have been provided regarding exclusion of jurisdiction of Civil Court. One of the guidelines is that where the particular Act contains no

machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies. An exclusion of jurisdiction of the Civil Court

is not readily to be inferred unless the conditions are met.

14. It is therefore clear from the aforesaid decision and discussion that the Civil Court will have jurisdiction to decide into the title of the appellant

relating to the property and this complicated question cannot be gone into by the forum constituted under the Act. Although it is a concurrent

finding, in view of the erroneous application of law, interference is called for. The appellant had sought the relief of declaration that the property

exclusively belong to him and such a relief cannot be granted by that forum. It is also not necessary for the appellate to wait till his objection

petition is disposed of by the 1st defendant. The provisions under the Act cannot be made use of against the appellant, who is a stranger to the

attachment proceedings. Hence, I am of the view that the bar u/s 156 of the Act is not applicable to the case and in view of the erroneous dismissal

of the suit, interference is called for. There is also no evidence to show that the family of the 3rd defendant own any ancestral property to come to

the conclusion that the property acquired by the appellant is a joint family property. As adverted to, the 3rd defendant was only aged about 8,

when the properties were purchased and superstructure was put up by the appellant.

15. For the reasons stated above, the Second Appeal is allowed and the judgment and decree of the Courts below are set aside and the suit is

decreed as prayed for. However, there will be no order as to costs.