

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5531 OF 2001@@
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(Arising out of SLP(C) No. 11804/2000)

Poornapragna Housing Building ...Appellant
Co-Operative Society

Versus

Yashodamma & Ors. ...Respondents

O R D E R

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.SP2

Leave granted.

A suit was brought by the respondents against appellant-society (for short the 'society') and in that suit an application was filed by the appellant for rejection of the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure for having not complied with the provisions of Section 125 of Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the 'Act').

The respondents contended that the issue in the suit is in respect of right relating to property and the appellant having interfered with the peaceful possession of the property of the respondents, such an act is not covered by Section 125 of the Act and therefore, the application is not maintainable.

The trial Court considering the nature of the grievance raised in the suit which is in respect of an immovable property and relief sought for is an injunction

from enjoyment of the same falls outside the scope of the expression constitution, management or business of society and suit is purely of civil nature and is maintainable even in the absence of notice under Section 125 of the Act. Against that order a Revision Petition was filed before the High Court. The High Court rejected the same on the ground that whether there is an interference with the property or not has to be gone into irrespective of the fact that whether it is a society or it is an individual and did not examine the question that was posed before the Court.

Considering the nature of the pleadings raised and the dispute, we think, it appropriate that the trial Court ought to have exercised its powers under Order 7 Rule 11 (d) and rejected the plaint but that will not debar the respondents from working out their rights in a separate suit. Setting aside the order of the trial Court and

that of the High Court, we allow this appeal. The plaint in the suit shall stand rejected under order 7 Rule 11(d) by allowing I.A. 8 in O.S. 9417/98 on the file of the V Additional City Civil Judge, Bangalore.

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.....J
[S. RAJENDRA BABU]

.....J
[DORAISWAMY RAJU]

New Delhi,
August 17, 2001