

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

1919.

November 25.

GANPAT RAMRAO MASUR, LIQUIDATOR OF THE CHANDAWAR CO-OPERATIVE STORES (ORIGINAL DEFENDANT), APPELLANT v. KRISHNADAS PADMANABH CHANDAWARKAR AND ANOTHER, MINORS, BY THEIR GUARDIAN MOTHER GIRJABAI KOM PADMANABH CHANDAWARKAR, HEIRS OF PADMANABH GOPAL CHANDAWARKAR (ORIGINAL PLAINTIFFS), RESPONDENTS*.

Co-operative Societies Act (II of 1912), section 42, sub-clauses (2) (e), (4) and (6) — Winding up—Order passed in the course of winding up—Order in connection with dissolution—Suit to set aside order—Civil Court—Jurisdiction.

A Liquidator of a Co-operative Stores Society, in the course of the winding up of the Society, made certain orders against persons who he thought were responsible to account to him for the assets. These persons having filed suits for a declaration that the orders were null and void,

Held, that the orders by the Liquidator were matters in connection with the dissolution of a registered Society, and therefore the Civil Court had no jurisdiction to entertain the suits under clause (6) of section 42, Co-operative Societies Act, 1912.

Mathura Prasad v. Sheobalak Ram⁽¹⁾, referred to.

SECOND appeal against the decision of E. H. Leggatt, District Judge of Kanara, reversing the decree passed by S. K. Patkar, Subordinate Judge at Kumta.

Suit for a declaration and injunction:

The plaintiff was a registered share-holder of the Chandawar Agricultural Co-operative Stores Society.

The Society having gone into liquidation, the defendant was appointed Liquidator of the Society. The defendant held the plaintiff liable for the price of the articles which were handed over by the plaintiff to one Nagesh on the death of the salesman of a branch shop of the Society and in the course of the winding up

* Second Appeal No. 294 of 1918.

(With Second Appeals Nos. 881, 882 and 888 of 1918.)

⁽¹⁾ (1917) 40 All. 89.

passed an order for the recovery of Rs. 144-7-3 from the plaintiff. This amount was recovered by the defendant by executing the order through the Civil Court. The plaintiff sued to have it declared that the defendant had no authority to pass the order in dispute and for an injunction restraining the defendant from enforcing that order or in the alternative for a refund of the amount.

The defendant contended, *inter alia*, that the order made against the plaintiff for the recovery of the dues of the Society was legally valid and that the jurisdiction of the Court to cancel or revise the order was barred by Act II of 1912.

The Subordinate Judge held that the Court had no jurisdiction to entertain the suit by reason of section 42, sub-section (6) of the Co-operative Societies Act II of 1912. He, therefore, dismissed the plaintiff's suit.

On appeal, the District Judge reversed the decree holding that the order made by the defendant was an order making the plaintiff liable for the value of the assets lost through negligence and therefore it did not fall under clause 2 (e) of section 42 and there was no other clause under which it would possibly come.

The defendant appealed to the High Court.

S. S. Patkar, for the appellant.

S. N. Karnad, for the respondent.

MACLEOD, C. J.:—These are four companion Second Appeals. In the original suits certain parties against whom orders had been passed by the Liquidator of the Chandawar Agricultural Co-operative Stores Society filed the suits for a declaration that the orders passed by the Liquidator were null and void. The facts are that this Society was in the process of being wound up; and a Liquidator had been appointed. He made certain orders against these various plaintiffs in the course of

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the winding up, in order that he might get in the assets of the Society.

Section 42 (2) (e) of Act II of 1912 gives the Liquidator power to give such directions in regard to the collection and distribution of the assets of the Society, as may appear to him to be necessary for winding up the affairs of the Society. Sub-section (4) provides that "where an appeal from any order made by a Liquidator under this section is provided for by the rules, it shall lie to the Court of the District Judge." As a matter of fact an appeal is not provided for by the rules. Then sub-section (6) provides "save in so far as is hereinbefore expressly provided, no Civil Court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered Society under this Act." That sub-section ousts the jurisdiction of a Civil Court entirely. It is impossible to see how we can deal with a matter which is connected with the dissolution of a registered Society. As was pointed out in *Mathura Prasad v. Sheobalak Ram*⁽¹⁾, though the Liquidator may be probably wrong in passing an order, still, if the order was one within section 42 of the Act, the Civil Court has no option but to enforce it, and no appeal lies to the District Judge nor a second appeal to the High Court. Of course if the Liquidator passes an order which does not come within section 42, that is a different matter altogether. Here these are orders made by him in order to collect certain assets of the company from persons who he thought were responsible to account to him for such assets. Therefore all these orders were matters connected with the dissolution of a registered Society and the Civil Court has no jurisdiction. Therefore second appeal No. 294 of 1918 must be allowed, the decree set aside and the suit

(1) (1917) 40 All. 89.

dismissed with costs throughout, and second appeals Nos. 881, 882 and 888 of 1918 are dismissed with costs.

HEATON, J. :—I concur. It seems to me that the Legislature could hardly have expressed themselves with greater force and greater clearness than they have done in clause (6) of section 42 of Act II of 1912. They intended to exclude the jurisdiction of the Civil Courts, and they have made it quite plain by the words used what their intention was. It is not for us to try and evade or stultify the intention of the Legislature so clearly expressed, by hairsplitting arguments as to whether a particular act or order of the Liquidator is or is not concerned with the dissolution of a registered Society. There can be no doubt that all his acts as Liquidator, at any rate in all ordinary cases, are concerned with the dissolution of a registered Society, and it is only if a Liquidator's act or order is shown to be clearly *ultra vires*, that is outside the powers conferred upon him by law as a Liquidator, that the Civil Court could possibly intervene. What the Liquidator has done in these cases is a very ordinary kind of thing for the purpose of liquidation. He has done his best to get in the assets of the Society, which he is expressly empowered to do by clause (2) (e) of section 42 of the Act, and he has given such directions, or made such orders, as seemed to him in the circumstances of the case to be the most effective way of getting in, what after inquiry he had come to the conclusion were, the assets of the Society. It seems to me that it would be both against the law and against our conscience to hold anything else than that these suits are excluded from the jurisdiction of the Civil Court.

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Decree reversed.

J. G. B.