

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

- 1) RSA No.3276 of 2011
Date of Decision: 23.11.2016
- Ranjit Kaur
Vs. ... Appellant
- Gurcharan Singh and others
Vs. ... Respondents
- 2) RSA No.3432 of 2011
- Gurcharan Singh
Vs. ... Appellant
- Ranjit Kaur and another
Vs. ... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Piyush Kant Jain, Advocate,
for the appellant.

Mr. I.P.S. Parmar, Advocate,
for respondent No.1.

Amol Rattan Singh, J.

These are two cross appeals filed by the plaintiff and the first defendant both, who are mother and son, in a suit filed by the former, seeking a declaration to the effect that the “alleged sale deed” dated 11.02.1994, executed by the 2nd respondent in both the present appeals, in favour of the 1st defendant (appellant in RSA No.3432 of 2011 and respondent no.1 in RSA No.3276 of 2011), is illegal, null and void and not binding upon the rights of the plaintiff (appellant in RSA No.3276 of 2011), she being the owner of the

said property, being the nominee of Jaswant Singh, i.e. her deceased husband.

The plaintiff further sought a decree of permanent injunction restraining the defendants from alienating the suit property in any manner and from changing the nature thereof.

2. As per the suit set up by the plaintiff, she was the widow of Jaswant Singh, the original allottee of House No.59 situated in Gandhi Colony, Ludhiana, registered in the name of the 2nd defendant, i.e. Ludhiana Hosiery Industrial Workers Co-op. Housing Society (hereinafter to be referred to as the Society).

Jaswant Singh unfortunately died in a road accident on 13.12.1993 and the plaintiff being his nominee, submitted an application to the officials of the Society to transfer the house in her name, which was so done.

It was further contended that the plaintiffs' name existed in the voters list at Sr. no.59, in the election conducted by the Department of Cooperation on 31.07.1994.

One Rajinder Shir was stated to be the Secretary of the Society.

Thereafter, it was further contended that though the plaintiff never alienated the property to defendant no.1, nor authorised any official of the Society to get a sale deed executed in favour of defendant no.1, qua the suit property, the Society, however, got the signatures of the plaintiff on the pretext that they were required to complete the formalities regarding change of ownership of the plot, in her name, she being the nominee of Jaswant Singh.

Still further, it was averred that the plaintiff filed an application in an ejectment petition titled as Jaswant Singh v. Gurcharan Singh, to implead her as the petitioner in place of Jaswant Singh, in which defendant no.1 filed a reply taking a plea that the application was barred by limitation and that he

had become the owner of the property by virtue of the sale deed executed by the Society in his favour. It was contended that even in the said reply, no date was given on which the sale deed was executed and therefore, there was a “malafide design” of both the defendants, i.e. Jaswant Singhs' son and the Society.

Still further, the plaintiff contended that the 1st defendant was a tenant in the property at a rent of Rs.600/- per month till 19.07.1992 and thereafter, at a rent of Rs.1200/- per month from 20.07.1992, as additional accommodation was given to him.

The ejectment petition filed by the late Jaswant Singh against defendant no.1, was dismissed by the Rent Controller, Ludhiana, (actually while deciding the application of the plaintiff to become the legal heir of Jaswant Singh). The application was held to be time barred which, as per the plaintiff, was on account of the fact that she was an illiterate lady who had failed to file the application for impleadment in her late husbands' place as his legal representative, within time.

The plaintiff further averred that it was then that she came to know that a fraud had been played upon her by defendant no.1, in connivance with the officials of the Society, i.e. defendant no.2.

3. The plaintiff is also stated have filed an application to the Society on 04.10.1994, asking it to disclose the facts pertaining to the execution of the “alleged sale deed” of House No.59, but the Society failed to give any reply.

Thereafter, she filed an application on 23.01.1994 to the Senior Superintendent of Police, Ludhiana, for registration of a case against the 1st defendant and guilty officials of the Society, with a reminder also sent thereafter. Criminal proceedings were still stated to be pending before the

“police officials of Sarabha Nagar, Ludhiana” (at the time of the filing of the suit on 31.03.1995).

4. The plaintiff also contended that it had come to her notice that defendant no.1 was trying to further alienate the suit property and that she had actually come into knowledge of the sale deed executed in favour of the 1st defendant by the Society, from the reply filed to her application on 09.09.1994, before the Rent Controller, in the ejectment petition filed by her late husband against defendant no.1.

The plaintiff had further pleaded that when defendant no.1 appeared as his own witness in the suit on 04.01.2001, he produced a certified copy of the alleged sale deed dated 11.02.1994, registered vide Vasika No.28586, with the Sub-Registrar, Ludhiana, executed by Inderjit Singh son of Jamiat Singh, resident of Gandhi Colony, Ludhiana, a member of the Society.

5. Still further, it was contended that the plaintiff herself had also thereafter filed an ejectment petition against defendant no.1, on the ground of non-payment of rent and house tax, as also for impairing the value and utility of the premises.

6. On the aforesaid pleadings, the suit of the plaintiff was filed on 31.03.1995.

7. Upon notice, both the defendants appeared but the Society thereafter having never appeared again, was proceeded against *ex parte*, vide an order dated 25.07.2000 passed by the learned Civil Judge.

The 1st defendant filed a written statement taking the usual preliminary objections, further stating that the subject matter of the suit being covered under Sections 55 and 56 of the Punjab Cooperative Societies Act, 1961 (hereinafter to be referred to as the Act), the suit was barred even under

Section 71 of the Specific Relief Act, 1963, as there existed an equally efficacious and effective remedy under the Act.

It was further contended that no notice having been served upon the Society under Section 79 of the Society Act, the suit was also not maintainable on that account. The jurisdiction of the civil Court was also contended to be barred, under Section 82 of the said Act.

Yet further, defendant no.1 contended in his reply that the plaintiff was estopped from filing the suit as she had voluntarily made an application to the President of the Society on 23.01.1994, requesting the Society to execute a sale deed in his favour (the 1st defendants' favour) and upon that application, the Society had passed a resolution and executed a sale deed in his favour.

8. On merits, it was admitted that the plaintiff was the widow of the father of defendant no.1, i.e. of Jaswant Singh, who was the allottee of the suit property. The death of Jaswant Singh in December 1993 was also admitted, alongwith the fact that being the nominee of Jaswant Singh, the plaintiff had become a member of the Society and the suit property was transferred in her favour.

Further, it was contended that he, i.e. the first defendant, being a Class-I legal heir of Jaswant Singh, alongwith the plaintiff, was entitled to a half share in the house, which was subsequently transferred in his favour on the basis of the request of the plaintiff.

9. The election of the Managing Committee having taken place as depicted by the plaintiff was also admitted, though thereafter, the contents of the plaint were denied, other than admitting that there was an application filed by the plaintiff in the ejectment petition before the Rent Controller.

10. It was also contended in the written statement that a nominee holds the property only as a trustee for other heirs of the deceased and that no fraud had been played by the defendants upon the plaintiff, especially as the sale deed was executed on her own request.

It was stated that Jaswant Singh had left behind, as his legal heirs, the plaintiff, defendant no.1, and 2 sisters of the defendant, namely Inderjit Kaur and Paramjit Kaur, who were given the other plot owned by the family.

It was also stated that some shares had been left behind by Jaswant Singh, which were transferred in the name of the plaintiff by virtue of her being a nominee, but as a matter of fact, it was contended that the said shares were also held jointly by all the Class-I legal heirs of Jaswant Singh.

11. It was next contended that the sale deed executed in favour of defendant no.1, was at the instance of the plaintiff, she being his mother and thus, the consideration was her natural love for him as her son, as also the fact that maintenance was to be given by the defendant to the plaintiff (again as her son).

It was also contended that the defendant had no intention of alienating the suit property, though being the owner thereof, he was at liberty to use and utilise it as per his free will and to utilize it likewise.

12. On the issue of the dismissal of the rent petition filed by Jaswant Singh and the subsequent rent petition filed by the plaintiff, it was admitted that the first rent petition had been dismissed but it was further contended that the one filed by the plaintiff was without merit and that the Rent Controller had no jurisdiction to entertain it, as there was no relationship of landlord and tenant between the parties.

13. Upon a replication having been filed by the plaintiff, refuting the

contents of the written statement and reiterating those of the plaint, the following issues were framed by the Civil Judge:-

- “1. Whether the suit of plaintiff is not maintainable? OPD
2. Whether suit of plaintiff is barred u/s 82 of Punjab Co-operative Society Act? OPD
3. Whether suit of plaintiff is barred u/s 41 of Specific Relief Act? OPD
4. That whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD
5. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
6. Whether the sale deed executed by defendant no.2 in favour of defendant no.1 is null, void and is ineffective? OPP
7. Whether plaintiff is entitled to seek declaration as prayed for? OPP
8. Relief.”

14. By way of oral evidence, the plaintiff examined herself, one Charan Dass and Surjit Singh as PWs1, 2 and 3 respectively (the latter two witnesses having been examined by her by way of evidence in rebuttal).

The 1st defendant examined himself, one Inder Singh, Richhpal Singh and Rajinder Kumar as DWs1 to 3 (with Inder Singh and Richhpal Singh, both shown to be DWs no.2).

15. On the first issue of maintainability of the suit, it was held by the learned Civil Judge that the plaintiff and Jaswant Singh both having filed ejectment petitions against defendant no.1, a decree for possession could not be sought from the civil Court, that being the subject matter of the petition before the Rent Controller.

Having held so, it was held further (as a consequence of the

aforesaid finding), that a suit was not barred by the provisions of Section 34 of the Specific Relief Act.

16. On the issue of it not being maintainable in view of the notice having been served under Section 79 of the Punjab Cooperative Societies Act, it was held that even as per the said provision, a notice is not required in each and every case. It was only necessary if a suit was to be filed against a Society or any of its officers, in respect of any Act touching the business of the Society, in which no suit could be filed for three months after the issuance of the notice. Hence, holding that the plaintiff actually having challenged the sale deed executed by the first defendant on the basis of a resolution of the Society, it could not be held that it was actually a suit in respect of the business of the Society, as nothing had been brought on record to show that such business was to transfer the share of members, on the basis of a resolution.

It was further held that even seen from a different perspective, a notice under Section 79 was only for the purpose of mediating with the Society to settle a claim. However, in the suit at hand, the Society not being competent to settle the dispute (between the plaintiff and the first defendant), no notice under Section 79 was necessary to be issued.

17. On whether the suit was barred by the provisions of Section 82 of the Act or Section 41 of the Act of 1963, it was held by the Civil Judge that in terms of Sections 55 and 82 of the Act, only such disputes are required to be referred to the Registrar, as touch upon the Constitution, management or business of a Cooperative Society.

The instant *lis* being a dispute regarding the registration of a sale deed by the Society in favour of the 1st defendant, allegedly without any authority by the Society, the said dispute did not touch upon the management

of the Society, the actual relief being for declaring the sale deed to be illegal, null and void.

This was so held by examining Section 55 (2) of the Act of 1961.

Thus, again holding that the dispute does not touch upon the business of the Society, the plaintiff was held not to be debarred from approaching the civil Court, due to any act of the Society.

On the aforesaid reasoning, it was held that the suit was neither barred by Section 82 of the Act of 1961, nor by Section 41 of the Act of 1963.

18. The 4th (related) issue of the plaintiff being estopped from filing the suit by her own act and conduct, was found to be not pressed upon and therefore not gone into.

19. On the actual relief sought by the plaintiff, declaring the sale deed in favour of the 1st defendant to be illegal, null and void and for grant of permanent injunction against the defendants, restraining them from further alienating the property in any manner, it was seen by the Court that the plaintiff had deposed in terms of her plaint as PW1, including the fact that an application was moved by her for transferring the plot in her name and that she had never authorised any official of the Society to execute a sale deed in favour of the 1st defendant.

It was further found by the learned Civil Judge that she was not cross-examined as regards the issue of ownership of the property, though she had specifically deposed with regard thereto in her examination-in-chief and as such, her testimony in that regard was to be accepted.

It was also found that not only PW2 but also the 1st defendant himself, in their testimonies, had admitted that the plaintiff was allotted the plot by the Society (after the death of her husband) and the first defendant had

also admitted that she was his mother.

The Court also found that the Society was fully competent to transfer the plot to the plaintiff after the death of her husband, in terms of Section 21 of the Act of 1961, in which it is stipulated that on the death of a member, the Society may transfer his share or interest to the person nominated by him, in accordance with rules.

20. On the justification given by the defendants for further transfer of the plot to the 1st defendant by way of the sale deed dated 11.02.1994, it was found that though the entire case of the defendants rested upon the fact that the plaintiff had moved an application requesting for such a transfer, upon the basis of which a resolution was stated to have been passed by the Society, no such application had come on record.

Further, the sale deed, Ex.D1, also did not speak of any consideration having been paid by the 1st defendant to the plaintiff. In his testimony, defendant no.1 had deposed that though he had not paid any consideration directly to the plaintiff, he had deposited the same in her bank, but no evidence with regard thereto had been led by him.

It was also found that even the applications produced in Court as Marks A & B, by the 1st defendant, were actually applications moved by the plaintiff, requesting the Society to transfer the property in her name after the death of her husband and nowhere in the said applications had she ever authorised the Society to execute a sale deed in favour of defendant no.1.

21. Having found as above, it was held that even the resolution passed by the Society (Ex.DW3/A), on the basis of which the registered sale deed was executed through one Inderjit Singh, who was a close relative of the 1st defendant as per the said persons' own admission as DW2, was a resolution

with no legal basis and had only been passed to deprive the plaintiff of her rights in the suit property.

22. In view of the aforesaid findings, the learned Civil Judge held the plaintiff entitled to a decree of declaration as well as permanent injunction and accordingly decreed the suit in her favour.

23. In the first appeal filed by the present appellant, the learned lower appellate Court, after noticing the facts as given in the pleadings and considering the judgment of the learned Civil Judge, first noticed that an application under Order 41 Rule 27 CPC had been filed by the appellant-defendant no.1 wishing to lead by way of additional evidence orders to show that during the pendency of the appeal, the ejectment petition filed by the plaintiff before the Rent Controller, had been decided in her favour, but in the subsequent appeal filed against that order by the present appellant, his appeal had been accepted and it had been held that there existed no relationship of landlord and tenant between the parties.

This fact was not denied by the plaintiff in her reply to the replication, though she stated that she had filed Civil Revision No.2050 of 2010 before this Court, against the order in appeal decided in favour of the appellant (in the ejectment petition).

The factum of the revision petition having been filed was also not denied by the appellant in the present *lis*, i.e. defendant no.1, Gurcharan Singh.

Holding that the issue of tenancy, if any, was sub-judice before this Court and hence, the order of the appellate authority in the ejectment petition was of no significance, the application for additional evidence filed by defendant no.1, was dismissed by the first appellate Court, in the present *lis*.

24. Moving on to the issue of non-maintainability of the suit, it was

held that as regards Section 34 of the Act of 1963, since the plaintiff had not claimed possession of the suit property in the suit filed in the present *lis*, that being subject matter of the rent petition, the bar contained (in the proviso to) Section 34, would not be applicable, as the relief of possession actually could not have been sought by the plaintiff in the present *lis*.

As regards Sections 55 and 82 of the Act of 1961, it was held by the lower appellate Court that simply because the house in dispute was allotted by the Cooperative Society, did not mean that the dispute was actually touching the business of the Cooperative Society, as the actual dispute was with regard to the sale deed executed in favour of defendant no.1.

Like the learned Civil Judge, the first appellate Court also held that Section 55(2) of the Act of 1961, specifically stipulates as to what would constitute a dispute touching the constitution, management or business of a Cooperative Society, and that the present dispute would not fall within the ambit thereof. A judgment of a Full Bench of this Court, in **Mam Raj v. State of Haryana and others** 1982 PLJ 84, cited by the counsel for defendant no.1 (appellant), was held to be not applicable to the facts of the present controversy, as there was no dispute herein with regard to interpretation of the words “person claiming through a member”, as was in that case.

On the other hand, a judgment in **Nawanshehar Central Cooperative Bank Ltd. v. M/s Sohan Lal and Sons etc.** 1982 CLJ 416, was relied upon by that Court to hold that the expression “relating to the business of the Society”, is material and if the suit does not relate to the business of the Society under winding up proceedings, the jurisdiction of the civil Court cannot be held to be barred.

25. As regards the absence of any notice issued by the plaintiff under

Section 79 of the Act of 1961, the finding of the lower Court was again upheld by the first appellate Court, holding that such a notice is required to be issued only where a suit is instituted in respect of any act touching the business of a cooperative society.

Thus, having already held (as did the lower Court), that the suit in hand did not actually touch upon the business of the Society, non-issuance of a notice under Section 79 was not held to be mandatory and therefore, the suit was held to be maintainable.

26. On the merits of the case, the first appellate Court opined that first of all, the rights of a nominee, *vis.-a-vis* the rights of the legal heirs of the deceased are to be determined. Consequently, the ratio of the law laid down by the Supreme Court in **Shipra Sengupta v. Mridul Sengupta & Ors. 2009** (4) CCC 77 was discussed, wherein it was held as follows:-

“Any beneficial interest is not conferred on the nominee after the death of the person concerned. Nomination indicates the hand which is authorised to receive the amount or manage the property. Property or the amount, as the case may be, can be claimed by the heirs of the deceased, in accordance with the law of succession governing them.”

A judgment of the High Court was also referred to in which it was held that a nominee can at best be considered to be a trustee for the legal heirs of the deceased.

27. On the ratio of the aforesaid judgment, it was held by the first appellate Court that Jaswant Singh having died intestate, all his Class-I legal heirs were entitled to a share in the house in dispute, as per the law of succession and the Society, in the present case, had no right to transfer the property only in the name of the plaintiff, simply because she filed an

application in that regard.

The finding of the Civil Judge to the effect that because the 1st defendant had not cross-examined the plaintiff as regards her ownership of the suit property and had admitted that the plot was allotted to her and as such, there was no dispute qua that, was a finding which was reversed by the lower appellate Court.

It was further held that simply because the plaintiff was shown to be a member of the Society in the year 1999, with her name figuring in the voters lists, would not make her the owner of the property and the burden was upon her to prove as to how she had inherited the house in dispute from its original allottee, which was an onus that she had not discharged.

Finding as above, it was held that the plaintiff cannot be declared to be the exclusive owner of the suit property, though she became an owner thereof upto the extent of her share therein, alongwith the other Class-I legal heirs of her late husband.

28. On the issue of whether the sale deed executed by the Society in favour of defendant no.1 was null and void, the finding of the learned Civil Judge was upheld to the effect that no application filed by the plaintiff, seeking transfer of the house to defendant no.1, had been produced (or led by way of evidence) and as such, an adverse inference had to be drawn against defendant no.1.

In any case, since Ranjit Kaur had been held not to be the exclusive owner of the suit property, it was further held that she had no authority to authorise the Society to execute a sale deed only in favour of the first defendant and in that regard, the finding of the lower appellate Court was upheld by which the impugned sale deed dated 11.02.1994, had been held to

be illegal, null and void.

29. All in all, the finding of the lower Court on issues no.1 to 6 were affirmed by the first appellate Court, whereas the finding on issue no.7, i.e. whether the plaintiff was entitled to seek a declaration that she is the owner of the suit property, was set aside, thereby partly accepting the appeal filed by the first defendant, holding that all legal heirs of the deceased Jaswant Singh were equally entitled to inherit the property as per the law of succession.

30. Thus, both the plaintiff, Ranjit Kaur as also her son Gurcharan Singh, defendant no.1, have filed two separate appeals before this Court challenging the judgment and decree of the learned lower appellate Court.

31. Mr. Piyush Kant Jain, learned counsel appearing for the plaintiff (appellant in RSA No.3276 of 2011), naturally argued in terms of the judgment of the learned Civil Judge and even that of the learned lower appellate Court, as regards the issue of maintainability, as also to the extent that the judgment of the lower Court was upheld by the higher Court.

On the main issue of the plaintiff seeking the relief of a declaration that she is the exclusive owner of the suit property, which has been denied by the learned lower appellate Court on the basis of the judgment of the Supreme Court in *Senguptas'* case (supra), holding that a nominee is only a trustee for all the legal heirs and as such, cannot claim exclusive ownership of the property, Mr. Jain to the contrary relied upon a judgment, also of the Supreme Court, in **Gayatri De v. Mousumi Cooperative Housing Society Ltd. and others** (2004) 5 SCC 90, as also in **Indrani Wahi v. Registrar of Cooperative Societies and others** (2016) 6 SCC 440, wherein it was held that as regards the heritability of a flat in multi apartment blocks owned by a

Cooperative Society, only where the deceased has not named a nominee, would the legal heirs of the deceased member of the Society be entitled to inherit the flat.

Thus, the contention of Mr. Jain obviously was that, in the present case, the late Jaswant Singh having specifically nominated his wife to be his successor to the suit property, which though not a flat, was still a dwelling unit (house) that was allotted to Jaswant Singh by a Cooperative Housing Society, which a member alone had a right to inherit, to the exclusion of all other legal heirs, including defendant no.1.

Mr. Jain submitted that in *Indrani Wahis'* case (supra), the provisions of the West Bengal Cooperative Societies Act, 1983, were referred to by their Lordships, which as per learned counsel, are very similar to the provisions of the Punjab Cooperative Societies Act, 1961.

He, therefore sought reversal of the judgment of the learned first appellate Court on issue no.7, and reinstatement of the judgment and decree of the learned Civil Judge.

32. Mr. IPS Parmar, learned counsel appearing for defendant no.1 (appellant in RSA No.3432 of 2011), first submitted that both the Courts below have failed to appreciate the fact that the suit itself was not maintainable under Section 34 of the Act of 1963, nor even under the provisions of the Act of 1961.

He submitted that even the late husband of the plaintiff (father of defendant no.1) having filed a petition for ejectment of the said defendant, before the Rent Controller, very obviously, possession of the defendant over the suit property was admitted by the plaintiff, with her again thereafter having

filed a petition for ejectment, after her application for impleadment in place of her husband in his petition, was dismissed. Hence, learned counsel contended that with possession admittedly that of defendant no.1, and the first rent petition having been dismissed, after the application of the plaintiff was rejected, a simple suit for declaration of ownership, without the consequential relief of possession sought, was not maintainable as per Section 34 of the Specific Relief Act.

Mr. Parmar submitted that this was especially so after even the appeal of defendant no.1, in the petition filed by the plaintiff herself before the Rent Controller, was accepted and he was held not to be a tenant on the suit property. He submitted that mere pendency of a revision petition before this Court, would not alter the fact that defendant no.1 has been declared by a competent Court to be not a tenant on the premises, even though in possession thereof and hence, the suit itself filed by the plaintiff deserves to be dismissed on the ground of non-maintainability.

33. Learned counsel further submitted that reliance upon Section 21 of the Act of 1961, by the lower Court, is also wholly erroneous, in view of the fact that on the death of a member of a cooperative society, though the Society is authorised to transfer the interest of the deceased member to the nominee of such deceased member, as was nominated by him during his life time, in accordance with the rules of the Society, however, learned counsel submitted that such transfer cannot be to the detriment of the other legal heirs of the deceased member.

As such, learned counsel submitted that the judgment relied upon by the lower appellate Court [*Senguptas'* case (supra)], to the effect that the

nominee was a only trustee of the other legal heirs, was correctly relied upon, though in the present case even the other legal heirs had no right to the property, the plaintiff herself having conferred all rights upon defendant no.1, after which the Society passed a resolution in his favour, upon which the sale deed in his favour was executed, based upon the resolution.

Hence, learned counsel for defendant no.1 submitted that the judgments of both the Courts below deserve to be set aside and the suit of the plaintiff dismissed with costs through out, the defendant being the rightful owner of the suit property, also in possession thereof.

34. Having considered the arguments of both learned counsel and also having considered the judgments of the Courts below, as regards the issue of non-maintainability of the suit, as contended by learned counsel for defendant no.1, I find myself wholly unable to agree with his contention.

Coming first to the argument that the suit of the plaintiff was not maintainable in terms of Section 34 of the Specific Relief Act, as no decree of possession prayed for, with only a decree for declaration and permanent injunction having been sought by the plaintiff in her suit.

Though learned counsel is correct to the extent that admittedly possession of the suit property was with defendant no.1 and for that reason, his ejectment had been sought, first by his father, i.e. the late husband of the plaintiff and thereafter by his mother, i.e. the plaintiff herself; however, I find myself in agreement with the judgment of the learned lower appellate Court, to the effect that since the contention of the plaintiff and her late husband was that their son, i.e. defendant no.1, was actually a tenant on the suit premises, initially paying them rent @ Rs.600/- per month and thereafter, Rs.1200/- per

month, possession could not have been sought by either the plaintiff or her late husband by way of a civil suit, in view of the provisions of the East Punjab Urban Rent Restriction Act, 1949, by which a tenant in a property coming within the ambit of that Act, can only be evicted by proceedings taken under the provisions of that Act, before the competent authority prescribed therein. Hence, such proceedings having been initiated first by the plaintiffs' late husband and thereafter by herself, obviously she could not have sought a decree of possession in a separate suit in which she sought a decree of declaration to the effect that she was the owner of the suit property and that the sale deed in favour of her son, i.e. the first defendant, was illegal, null and void. The suit filed by the plaintiff was, therefore, “not inadequate” even in terms of Section 34 of the Specific Relief Act, which is reproduced herein:-

“Section 34. Discretion of court as to declaration of status or right.—

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee.”

The first part of the aforesaid provision, thus entitles any person to seek a declaration that he is entitled to a particular right in a property, with no further relief needed to be prayed for; however, the proviso to the provision stipulates that where such a relief can be obtained but the plaintiff omits to do so in a suit, then even his declaration sought would not be granted

by the Court.

Though there is well settled law on this issue, declared by the hon'ble Supreme Court to the above effect itself, it is not necessary to refer to it, in view of the fact that undoubtedly, when there is a bar contained in any other statute, prohibiting the entertainment of a suit the relief in which is actually covered under the ambit of that other statute, then the proviso to Section 34 above would not come into operation, as the plaintiff would not be covered by the clause “being able to seek further relief than a mere declaration of title, omits to do so”.

Obviously, when the plaintiff was prohibited by the provisions of the Rent Restriction Act, 1949 (Section 13 thereof), from seeking ejectment of a person that she perceived to be a tenant, the only remedy available to her was under the provisions of that Act and not by way of a civil suit.

It is necessary to state here the fact that the suit property is otherwise covered within the ambit of the aforesaid Act is not denied, though of course, the contention of defendant no.1 was/is that he is not a tenant on the property. However, at the first instance, that issue itself is to be decided by the Rent Controller and the authorities provided under the Act of 1949 and only if the said authorities/Courts finally hold that defendant no.1 is not a tenant on the suit property, would the remedy of approaching a civil Court for his eviction, be available to the plaintiff.

Hence, there being a bar on seeking eviction of the first defendant, he being her tenant (even being her son), as contended by the plaintiff, the proviso to Section 34 of the Act of 1963 would not be applicable, as she was not able to seek any further relief, other than that of a declaration of

her ownership, of the illegality and nullity of the sale deed in favour of the first defendant and a decree of permanent injunction, seeking a restraint on further alienation of the suit property.

She having availed of that remedy and of the appropriate remedy as regards eviction under the Act of 1949, the contention of the learned counsel for the appellant on non-maintainability of the suit in terms of Section 34 of the Specific Relief Act is rejected, and the finding of the Courts below on that issue is upheld.

35. Though learned counsel for defendant no.1 has not specifically raised an issue in arguments, as regards the non-maintainability of the suit in terms of Section 82 of the Cooperative Societies Act, 1961, it is considered necessary to refer to the provision, as it was an issue raised before the Courts below and consequently, the said section is reproduced herein under, alongwith Section 55 of the said Act:-

“82. Bar of jurisdiction of Court:-(1)Save as provided in the Act, no civil or revenue Court shall have any jurisdiction in respect of-

- (a) the registration of a co-operative society or its bye-laws or of any amendment of a bye-law;
 - (b) the removal of a committee;
 - (c) any dispute required under Section 55 to be referred to the Registrar; and
 - (d) any matter concerning the winding up and the dissolution of a co-operative society,
- (2) While a co-operative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose .
- (3) Save as provided in this Act. No order, decision or award made under this Act shall be questioned in any court on any ground whatsoever.

55. Disputes which may be referred to arbitration –(1)

Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises-

- (a) Among members, past members and persons claiming through members, past members and deceased members; or
- (b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or
- (c) between the society or its committee and past committee, any officer, agent or employee, or any past officer, agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or
- (d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society.

Such disputes shall be referred to the Registrar for the decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

- (2) For the purpose of sub-section (1) , the following be deemed to be disputes touching the constitution, management or the business of cooperative society, namely-

- (a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;
- (b) a claim by a society against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;
- (c) any dispute arising in connection with the election of any Officer of the society.

(3) if any question arises whether a dispute referred to the registrar under this section is or not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.

[(4) No dispute arising in connection with the election of an officer of the society shall be entertained by the Registrar unless it is referred to him within thirty days from the date of the declaration of the result of election.”

36. A reading of the aforesaid provisions shows that Section 82 bars the jurisdiction of a civil Court, qua any dispute pertaining to the registration of a Cooperative Society or its bye-laws etc., the removal of the Committee, any matter concerning winding up etc. of the Society, as also in respect of any dispute required to be referred to the Registrar, by Section 55 of the Act.

Though in the opinion of this Court, the disputes referred to in Section 55 include partly the present dispute, inasmuch as, the transfer by the Society, of the suit property, from the name of a deceased member to his son, on the basis of a resolution passed by the Society, would come within the purview of Section 55(1)(b) of that Act, and in that respect, I do not agree with the observations of the Courts below that the dispute does not cover any business of the Society, however, even so, I find no reason to reverse the eventual finding of those Courts, to the effect that the suit filed in the present *lis*, by the plaintiff, was however, yet maintainable before the civil Court, despite the aforesaid bar.

This is for the reason that even though a part of the dispute is concerned with the transfer of the suit property by the Society to a new member/the son of a deceased member, and as such was a part of the business of the Society in terms of the aforesaid provision, however, the root of the

dispute was not just the Act of transfer and the sale deed executed consequent upon the resolution of the Society, but with regard to the civil rights of the parties to the *lis*, i.e. the plaintiff and her son (defendant no.1), with the plaintiff claiming title to the suit property simply as a nominee of her deceased husband and the first defendant actually seeking the right as the nominee had allegedly relinquished the right herself, by moving an application to the Society for transfer of the suit property in favour of the said defendant, i.e. her son.

Thus, the rights of a nominee and her alleged relinquishment of any such right, in the opinion of this Court, was a civil dispute that could not have been adjudicated upon by the Registrar simply on a reference under Section 55(1) of the Act of 1961.

Eventually, the learned first appellate Court went on to hold that other than the plaintiff and defendant no.1, the suit property would actually devolve upon all legal heirs of the deceased and though it was neither parties' case that anybody else had a right to the suit property, nor did the Societies or defendant no.1 seek to implead any other person in the suit, yet, the rights of a nominee on the basis of a nomination of the member of the Society, qua even only her son, especially in the face of her denial of any relinquishment made by way of any application, was a dispute that was necessarily required to be adjudicated upon by the civil Court.

Hence, the contention of learned counsel for defendant no.1 (appellant in RSA No.3432 of 2011) in that regard is also rejected and the findings of the Courts below on the maintainability of the suit filed by the plaintiff (appellant in RSA No.3276 of 2011), is upheld.

37. Coming then to the issue of the rights of a nominee of a member of a cooperative society, to the property in dispute, on the basis of such nomination alone, qua the civil rights of all legal heirs to such property. Though I am in agreement with the finding of the learned lower appellate Court on the principle itself, to the effect that a nominee is only a trustee of the rights of other legal heirs of a deceased holder of any property, who would handle affairs necessary to be handled for transfer of the property after the death of the holder of the property, and would ensure that such transfer is fairly effected in favour of all legal heirs of the deceased; however, in view of the judgment of the Supreme Court cited by Mr. Piyush Kant Jain, learned counsel for the plaintiff, specifically in respect of properties in which a deceased person had a right in, by virtue of being a member of the Society, with the property allotted or a share therein allotted to such member, it would be necessary to discuss the law settled on the subject, in detail.

Without a doubt, in *Shipra Senguptas'* case (supra), it was held by a two judge Division Bench of the hon'ble Supreme Court, that a nominee of a deceased is entitled to receive the property of the deceased but the amount so received is to be distributed according to the law of succession.

That was a case in which one Shyamal Sengupta, an employee with the Imperial Bank of India and subsequently its successor State Bank of India, had nominated his mother as the nominee for his retirement benefits. At that time, Shyamal Sengupta was unmarried. Subsequently, he having married Shipra Sengupta, after his death, she filed an application under Section 372 of the Indian Succession Act, 1925, before the District Judge, claiming that any nomination made by Shyamal Sengupta prior to his marriage, would stand

automatically cancelled after his marriage and that as a matter of fact, as his widow, she alongwith her mother-in-law, were equally entitled to succeed to the property, i.e. his retirement benefits, in terms of the Schedule to the Hindu Succession Act, 1956, they both being Class-I heirs of the deceased. Her application was allowed by the learned Civil Judge, to the extent that she alongwith her mother-in-law, i.e. the mother of the deceased, who was his nominee, was held entitled to an equal share in the total amount of life insurance, gratuity, public provident fund of the late Shyamal Sengupta. As regards other property/items referred to in the application of Shipra Sengupta, that she stated her claimed to, it was held that she alone was entitled to a succession certificate.

In the appeal filed by the mother and brother of the deceased, the learned District Judge, relying upon a judgment of the Supreme Court in **Smt. Sarbati Devi & Anr. v. Smt. Usha Devi** (1984) 1 SCC 424, modified the order of the Civil Judge and held the mother equally entitled to the other items also mentioned in the application of Shipra Sengupta, she (the mother) also being a Class-I heir of the deceased, in terms of the provisions of the Hindu Succession Act, 1956.

The mother of the deceased and another son of her still being aggrieved of the order of the District Judge, filed a civil revision before the High Court, during the pendency of which the mother died and yet another son, Mridul Sengupta, was substituted in her place on the basis of a will executed by the mother, in his favour.

As regards the general provident fund, the High Court held that Mridul Sengupta would be entitled to the entire sum deposited in the name of

his late brother (as the legatee of his mother), and as regards the other items mentioned in the application under Section 372, he alongwith Shipra Sengupta, i.e. the widow of the deceased, would be entitled to a half share each.

38. The matter having come up before the Supreme Court, their Lordships referred to the earlier decision in *Sarbati Devis'* case (supra), wherein it was held that the nomination made in a life insurance policy “only indicates the hand which is authorised to receive”, which however, “can be claimed by the heirs of the assured in accordance with the law of succession”.

A judgment of the Delhi High Court in **Ashok Chand Aggarwala v. Delhi Administration and others** (1998) VII AD (Delhi) 639, was also referred to in Senguptas' case, in which, following *Sarbati Devis'* case, the High Court held that a mere nomination in favour of a particular person does not have the effect of shutting out the claim of the legal heirs of the deceased, in accordance with the law of succession.

In the case before the Delhi High Court, the issue was with regard to a nominee of a deceased member of a cooperative society being covered under the provisions of the Delhi Cooperative Societies Act.

However, in *Senguptas'* case, there was no issue with regard to membership of any cooperative society and any property concerned with such Society, as can be made out from the judgment of the Supreme Court. Eventually, in that case, their Lordships followed the judgment in *Sarbati Devis'* case and held that the presence of a nominee would not oust the claim of the legal heirs of a deceased, in terms of the Hindu Succession Act.

39. However, it is seen that prior to the decision in *Shipra Senguptas'*

case, a three Judge Bench of the Supreme Court had dealt with the issue of heritability of a flat in a multi-storeyed apartment block owned by a cooperative society, where the deceased had not made any nomination. This was in the case of *Gayatri Des'* case (supra), where their Lordships after discussing the provision of the West Bengal Cooperative Societies Act, 1983, held that on the death of a member of a Society, his share or interest in the Society would be transferred to his legal heirs, in the absence of a nominee, named by the deceased member.

Thus, the contention of Mr. Jain, learned counsel for the plaintiff, is that the said judgment actually applies only where there was no nomination made by the deceased member of the cooperative society, but where there was a specific nomination made, it would be the nominee of the deceased member who alone would be entitled to get the membership transferred in his/her name, alongwith all interests of the member in the Society.

40. In this regard, Mr. Jain referred to *Indrani Wahis'* case (supra), wherein it was held so by their Lordships, after discussing the entire law on the subject, including the judgments in *Gayatri Des'* and *Sarbati Devis'* cases (supra). Only *Shipra Senguptas'* case does not seem to have been brought to the notice of the Court. However, as already noticed, Shipra Sengupta eventually followed the ratio of the judgment in *Sarbati Devis'* case.

In *Indrani Wahis'* case, while referring to the judgment in *Sarbati Devi*, their Lordships observed as follows:-

“14. We shall now deal with the judgment in *Sarbati Devi* case. The issue which came up for adjudication in the above judgment related to the interpretation of Section 39 of the Life Insurance Act, 1938. The rights of a nominee of a policy-holder, were

adjudicated upon in the above judgment. Paras 4, 5 and 12 of the judgment record the conclusions of this Court, with reference to the rights of a nominee of a policy-holder.”

Thereafter, after reproducing some paragraphs of *Sarbati Devis'* case, it was observed as follows, referring also to the judgment in *Gayatri Des'* case:-

“At this juncture, all that needs to be stated with reference to the judgment in *Sarbati Devi case* is, that the provisions with reference to nomination under the Life Insurance Act, 1938 are at variance from the ones which are subject-matter of consideration in the instant case, and as such, it would suffice to merely state, that the aforesaid judgment is not of much significance, insofar as the adjudication of the present controversy is concerned.

15. Insofar as the judgment in *Gayatri De case* is concerned, the same expressly dealt with the provisions of the 1983 Act. Despite the above, it would be pertinent to mention, that the said judgment is also of no relevance for the present controversy, because there was no nomination of the original member, in the said controversy. And as such, Section 79 did not come up for consideration and interpretation therein, in the manner of the dispute and controversy which has arisen herein.”

41. With reference to the case at hand before their Lordships, i.e. *Indrani Wahis'* case, it was observed that actually Sections 79 and 80 of the West Bengal Act of 1983 were of significance, which were reproduced as follows:-

"79. *Nomination of transferee.- Subject to the by-laws of a co-operative society and (sic any) member of such co-operative society may in accordance with the rules nominate a person in whose favour the co-operative society shall dispose of the share or interest of such member on his death.*

80. *Disposal of deceased member's share of interest- (1) On the death of a member of a co-operative society, other than a central society, his share or interest in the co-operative society shall, subject to the provisions of sections 57 and 78 and to the further provisions under section 79; or*

(a) to the person, if any, nominated under section 79; or

(b) if there is no nominee or if the existence or residence of the nominee cannot be ascertained by the board or if, for any other cause, the transfer cannot be made without unreasonable delay, to the person who (subject to the production by such person of probate, letter of administration or succession certificate) appears to the board to be entitled in accordance with the rules to the possession of such share or interest as part of the estate of the deceased member; or

(c) on the application of the person referred to in clause (b) within three months from the date of death of the member, to such person as may be specified in the application.

(2) If the share or interest of a deceased member cannot be transferred in accordance with the provisions of sub-section (1) or if the person to whom such share or interest is payable under that sub-section claims payment of the value of such share or interest or if the co-operative society in accordance with the rules and its by-laws decides to proceed under this sub-section -

(a) the share shall be transferred to a person qualified to be a transferee of the share, under section 78 on receipt of the value of the share from such person; and

(b) the value of the share or the interest of the deceased member determined in accordance with the rules shall be paid to the person nominated under section 79 or to the person referred to in clause (b) of sub-section (1) of this section after deducting the amount payable under this Act to the co-operative society from the estate of deceased member."

42. Having considered the aforesaid provisions, it was held that where a member of a Cooperative Society nominates a person in consonance with the provisions of the Rules, then on the death of such member, the Cooperative Society is mandated to transfer all the share or interest of such member in the name of the nominee. (Reference paragraph 17 of *Indrani Wahis'* case, SCC citation).

Their Lordships thereafter also referred to Rules 127 and 128 of the Rules framed under the West Bengal Act, 1983, pertaining to a nomination of a transferee by a member of the Society and disposal of the deceased members' share or interest.

43. Eventually having considered the aforesaid provisions of the West Bengal Act, as also the earlier judgment of the Supreme Court, it was finally concluded as follows:-

“21. Insofar as the instant aspect of the matter is concerned, there is no doubt in our mind, that even Rules 127 and 128 of the 1987 Rules, lead to the inference, that in case of a valid nomination, under Section 79 of the 1983 Act, the cooperative society is liable to transfer the share or interest of a member in the name of the nominee. We hold accordingly.

22. Having recorded the above conclusion, it is imperative for us to deal with the conclusion recorded in para 6 (already extracted above at p.448f-h and p.449a-b) of the judgment of this Court in *Usha Ranjan Bhattacharjee case*. In this behalf, it is necessary to clarify that transfer of share or interest, based on a nomination under Section 79 in favour of the nominee, is with reference to the cooperative society concerned, and is binding on the said society. The cooperative society has no option whatsoever, except to transfer the membership in the name of the nominee, in consonance with Sections 79 and 80 of the 1983 Act (read with Rules 127 and 128 of the 1987 Rules). That, would have no relevance to the issue of title between the inheritors or successors to the property of the deceased.

23. Insofar as the present controversy is concerned, we therefore hereby direct the Cooperative Society to transfer the share or interest of the Society in favour of the appellant Indrani Wahi. It shall however, be open to the other members of the family (presently only the son of Biswa Ranjan Sengupta, Dhruba Jyoti Sengupta; we are informed that his mother Parul Sengupta

has died), to pursue his case of succession or inheritance, if he is so advised, in consonance with law.”

44. Hence, though this judgment has been cited by learned counsel for the plaintiff, to contend that where there is a nomination made by the deceased member of a cooperative society, the law of succession would stop operating, with the inheritance of the share and interest of the member of the Society devolving only upon the nominee, yet the conclusion of their Lordships in the judgment, leaves no manner of doubt that though, as regards the cooperative society itself, it has no choice but to transfer the property in the name of the nominee who has been so named by the member of the Society (if such nomination is made as per rules), however, that still does not oust the right of other legal heirs to claim an interest in the property, as per their respective shares, in terms of the law of succession/inheritance.

The other judgment relied upon by Mr. Jain, in *Gayatri Des'* case, also eventually would not help the case of the plaintiff, inasmuch as, that was a case dealing with a situation where no nomination had been made by the member of the cooperative society, as regards transfer of his interest/share in the property, after his death. Hence, it was held by their Lordships that in any case, in the absence of any nomination, the law of succession would prevail. Though that may have otherwise been accepted to be an inference that where a nomination has been made, the property would devolve upon the nominee alone, however, in the light of the ratio of *Indrani Wahis'* case, Mr. Jain's argument cannot be accepted.

45. Consequently, as regards the right of inheritance to the suit property in the present case, in the absence of any will executed by the late Jaswant Singh in favour of his widow, i.e. the plaintiff, Ranjit Kaur, I find no

ground to interfere with what has been held by the learned first appellate Court in the impugned judgment and decree, to the effect that all Class-I legal heirs of the late Jaswant Singh would succeed to the suit property, by way of natural succession, the nominee only being a receiver of the property from the Society.

It however, still needs to be noticed by this Court, that the intention of the late Jaswant Singh in nominating only his wife, i.e. plaintiff Ranjit Kaur, to receive the property from the Society after his death, seen with the fact that he himself had instituted an ejectment petition against his son, i.e. defendant no.1, seeking his ejectment from the suit property, would be indication enough to reveal his intention that he actually only wanted his wife, Ranjit Kaur, to inherit the property after his death.

Yet, even in the face of such an indication, in the opinion of this Court, in the absence of a valid will actually executed by Jaswant Singh, in favour of his wife, i.e. the plaintiff, it has to be held that eventually the suit property would have to devolve upon all his Class-I legal heirs, as has been held by the learned first appellate Court.

46. Having said that, the issue of whether the impugned sale deed dated 11.02.1994 was validly executed in favour of defendant no.1 by the Society or not, needs to be examined.

On this issue also, I find no error in the judgments of the Courts below, to the effect that with no application made by the plaintiff ever having been led by way of evidence, by which she asked the Society (defendant-respondent no.2), to transfer the suit property from her name to that of her son, defendant no.1, there was no cause for the Society to have actually passed a resolution in the said defendants' favour and thereafter, to have executed the

impugned sale deed.

No relinquishment of her right in the property having been proved before the Courts below, or even before this Court in any manner, the findings of those Courts, to the effect that the impugned sale deed is null and void and not binding upon the rights of the plaintiff, are upheld.

This would be further so, in view of the fact that just as the plaintiff cannot be declared to be the exclusive owner of the suit property, similarly, defendant no.1 can also not be declared to be such exclusive owner, the suit property already having been held to be inheritable by all the Class-I legal heirs of the late Jaswant Singh.

47. Hence, to conclude, even in terms of the judgment of the Supreme Court in *Indrani Wahis'* case, with Section 80 of the West Bengal Act, seen to be in essence similar to Section 21 of the Punjab Act of 1961 (even though worded very differently), it is held that the Society (defendant-respondent no.2), was duty bound to transfer the suit property to the name of the plaintiff, Ranjit Kaur, after the death of her husband, she being his nominee in accordance with the rules of the Society (it never being the case of the Society that the nomination was not made as per rules).

However, no counter-claim having been filed by defendant no.1, seeking exclusive ownership of the suit property, but this Court having otherwise upheld the right of all Class-I legal heirs of Jaswant Singh to inherit the property, as per the ratio of the judgment in *Indrani Wahis'* case (as contained in paragraph 23 thereof), the right of such legal heirs to pursue their remedy with regard to succession or inheritance to the suit property is left open, with obviously all parties free to raise all pleas as are available to them, in any such proceedings, if filed.

48. Having held as above, finding no ground to interfere with the impugned judgment and decree of the first appellate Court, both these appeals are dismissed, leaving the parties to bear their own costs.

November 23, 2016

dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No.