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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 784/2016 and CM APPL. 37133-37135/2016

ALOK & ORS

..... Appellants

Through: Mr. Rajesh Kumar Verma, Advocate

versus

LAXMAN & ORS

..... Respondents

Through: None

**CORAM:**

**HON'BLE MS. JUSTICE HIMA KOHLI**

**ORDER**

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**04.10.2016**

1. The appellants/plaintiffs have assailed the judgment dated 27.08.2016 passed by the learned ADJ, dismissing their suit for declaration, permanent and mandatory injunction.
2. The appellant No.3/Aparna Ashram is a Society registered under the Societies Registration Act, 1860. The appellant No.2 claims to be a member of the Governing Council of the appellant No.3/Society. The appellant No.1 is the son of the appellant No.2. The basis of instituting the suit is the claim of the appellants that though the respondents are not the members of the appellant No.3/Society, they are misrepresenting to the public at large that they are members of the Governing Council of the Society and have connived and colluded with each other to misappropriate its properties.
3. The undisputed facts of the case are that the appellant No.3/Society was founded in the year 1973 by Swami Dhirender Brahamchari, who had

expired in an air crash on 09.06.1994. After the demise of Swami Dhirender Brahamchari, two clashing groups had tried to take over the control of the Society and both the groups started functioning separately. It is the version of the appellants that the respondent No.1 and his father, Shri Bir Chand Chaudhary started asserting that they are the members of the Governing Council of the appellant No.3/Society, despite the fact that they had been removed from its primary membership during the lifetime of Swami Dhirender Brahamchari. The stand of the respondent No.1 in the written statement was that he is the President of the Governing Council of the Society and the appellant No.2 is neither a member thereof, nor is he authorised to institute the suit.

4. Later on, good senses had prevailed on the warring groups who agreed to arrive at a compromise and form a single Governing Council after holding a fair and impartial election, for which purpose, Shri B.B. Khare, Advocate was appointed as an Election Officer. The election of the Governing Council was held on 24.11.1996, wherein the father of the respondent No.1, respondent No.2 and respondent No.3 and three other from the group supporting the appellant No.2 were elected as the members of the Governing Council. The Governing Council had thereafter unanimously elected the deceased father of the appellant No.1 as the President and the appellant No.2 as the Vice President of the Society. The said election result was submitted before the Registrar of Societies and thereafter, curtains were drawn on all the pending litigations between the parties.

5. The appellants instituted the present suit in the year 2012, claiming *inter alia* that the respondent No.1 had attempted to sell out the properties of the Society and had forcibly entered into and taken possession of a part of

the suit premises situated at premises No.A-50, Friends Colony East, New Delhi, where the registered office of the Society is situated. They had prayed for a decree of declaration, for declaring that the appellant No.2 and the members of his group are the real members of the General Body and the Governing Council of the Society, a decree for permanent injunction for restraining the respondents from claiming themselves to be members of the Society and from interfering in the day-to-day affairs of the Society and also from alienating the suit premises. A decree of mandatory injunction was also prayed for against the respondents, calling upon them to vacate the portion of the suit premises in their possession.

6. After the pleadings were complete, issues were framed on 11.10.2012 as below:

*“1. Whether the plaintiff No.2 and other persons, as claimed by the plaintiffs are the members of the general body as well as governing council of plaintiff No.3 society and entitled for a decree of declaration to the effect that the plaintiff No.2 Sh. Murli Chaudhary and members of his group as detailed in the plaint are the real members of the general body as well as governing council of plaintiff No.3 society ? (OPP).*

*2. Whether the plaintiff No.2 Sh. Murli Chaudhary and members of his group, are in possession of head office of the plaintiff No.3 society at A-50, Friends Colony (East), New Delhi ? (OPP)*

*3. Whether the plaintiffs are entitled for a decree of permanent injunction for restraining defendants from claiming themselves to be members of the general body/governing council of the plaintiff No.3 society, and from dealing with the day today affairs and alienating the properties of the plaintiff society? (OPP)*

4. *Whether the plaintiff are entitled to a decree for mandatory injunction against the defendants No.1 and 2, for vacation of part of premises No.A-50, Friends Colony (East), New Delhi, of which they are in occupation ? (OPP).*

5. *Relief.”*

7. To prove their case, the appellants had examined appellant No.2 as PW-1, who had filed his affidavit by way of evidence with several documents. The respondent No.1 had examined himself as DW-1, Shri B.B. Khare as DW-2 and one Shri Bimal (an employee in the office of the appellant No.2/Society) as DW-3.

8. After examining the documents and the evidence produced by the parties and hearing the arguments, the trial court had dismissed the appellants' suit on the following grounds:-

- (a) In view of the stand taken by the appellant No.2 (PW-1) that he had not participated in the elections after the year 1996, he could not claim that no elections were held thereafter or that the respondent No.1 is not the President of the Society.
- (b) The elections of the Society were held on five occasions in the years 2003, 2006, 2010 and 2014 but the appellants took no steps to challenge the said elections till they had instituted the suit in the year 2012.
- (c) The appellants did not produce any document to show that they continued to remain members of the General Body and the Governing Council of the Society.

- (d) The appellants had failed to demonstrate that they were the members of the Society and therefore appellant No.2 could not claim any authority to institute the suit, as an authorised signatory of the Society.
- (e) It was observed that the documents filed by the respondents and the testimony of the DW-1 to DW-3 had amply proved that elections to the Society were held in the years 2003, 2006, 2010 and 2014 and sufficient documents were filed by the respondents to substantiate the same and the fact that the respondent No.1 was duly elected as the President of the Society. It was observed that intimation of the said elections was disseminated to the general public through publication in the newspapers. The deposition of DW-1 was supported by Shri B.B. Khare, Advocate, who had appeared as DW-2.

9. Taking into consideration the entire evidence on record, the trial court had concluded that the appellants had failed to prove that they are the members of the General Body or the Governing Council of the appellant No.3/Society and entitled to a decree of declaration against the respondents.

10. As for issue No.2, which was framed with regard to the status of possession of the head office of the appellant No.3/Society, the trial court has observed that the appellants have failed to place anything on record to demonstrate that they were in possession of the registered office of the Society and resultantly, the said issue was decided against them. Similarly, issues No.3 and 4 were also decided against the appellants on the ground that the question of their dispossession from the head office of the appellant No.3/Society did not arise as they were never in possession thereof.

11. Learned counsel for the appellants has argued that the trial court had ignored the fact that the respondents had themselves admitted that in the year 1996, the appellant No.2 was elected as the Vice President of the Governing Council of the appellant No.3/Society and in such circumstances, it had to be assumed that he is continuing to hold the said office. The said arguments is found to be devoid of merits inasmuch as the appellants have not denied the fact that after the year 1996, five elections of the appellant No.3/Society were conducted in the years 2003, 2006, 2010 and 2014 and it is their own case that after the year 1996, the appellant No.2 did not participate in any of election proceedings of the Society. In fact, PW-1 has deposed that the respondents were members of the appellant No.3/Society and they had been holding meetings, but did not call him to participate in them.

12. The contention of the learned counsel for the appellants that the respondents have not produced any communication made by them to the Registrar of Societies intimating him about holding the elections is factually erroneous inasmuch as PW-1 has himself admitted in his testimony that the name of the respondent No.1 as the President of the Society was duly reflected in the records of the Registrar of Societies when the elections were held in the years 2003, 2006, 2010 and 2014. Without intimation of the result of the said elections to the office of the Registrar of Societies, the same could not have been communicated by the Registrar to the members of the Society. The said communications have in fact been filed by the appellants. The appellants are therefore precluded from canvassing that the results of the elections were not communicated to the Registrar of the Society.

13. Learned counsel for the appellants admits that after the year 1996, no document has been placed on record in the suit to demonstrate that the appellant No.2 had contested any election to the office of the Governing Council of the appellant No.3/Society. The appellant No.2's own admission that he did not participate in the elections disentitles him from claiming that no elections of the Society were even held or that the respondent No.1 is not the President of the Society. Nothing on this aspect was proved by the appellants before the trial court for this Court to take a contrary view. Similarly, the onus of proving issue No.2 was placed on the appellants, who have contended that they were in possession of the registered office of the Society but they have miserably failed to discharge the said onus by filing anything on record to demonstrate the said fact. It has therefore to be held that the said issue was rightly decided against the appellants.

14. No other ground has been urged by learned counsel for the appellants to assail the impugned judgment.

15. In view of the observations made hereinabove, this Court is of the opinion that there is no error on the part of the trial court in appreciating the facts or the evidence on record, that deserves interference in appeal. Accordingly, the present appeal is dismissed in *limine* alongwith the pending applications.

**HIMA KOHLI, J**

**OCTOBER 04, 2016**

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