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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-4952-2014 (O&M)
Date of decision : 17.03.2017**

Sukhdev Singh and another

... Petitioner(s)

Versus

State of U.T. Chandigarh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vijay Sharma, Advocate
for the petitioner.

Mr. Raghav Goel, Advocate for
Mr. Harkesh Manuja, Advocate
for respondent Nos.1 and 2.

Mr. Amit Jain, Advocate
for respondent No.3.

Mr. Ashwani Prashar, Advocate
for respondent No.4.

AMIT RAWAL, J. (ORAL)

The grievance of the petitioners is to the impugned order dated 03.03.2014 (Annexure P-18) rendered by the Secretary Cooperation, U.T. Chandigarh, by accepting the appeal preferred by respondent No.4 against the order dated 26.08.2013 (Annexure P-13), whereby the reference sought under Section 55 of the Punjab Cooperative Societies Act, 1961 (for short 'the 1961 Act') as applicable to the U.T. Chandigarh, has been dismissed.

Mr. Vijay Sharma, learned counsel appearing on behalf of the petitioner submits that Ved Wati, originally was having a share in the Pink

Rose Cooperative House Building, First Society Ltd., Plot No.12, Sector 49-D, Chandigarh (hereinafter called 'Society'), consisting of 151 members. She, on 22.05.2000, vide various documents i.e. Will (Annexure P-1), Power of Attorney (Annexure P-2) and Affidavit (Annexure P-3), had transferred the share in favour of the petitioners. The documents were submitted to the Society, however, the Society called upon the petitioners to obtain a probate from the Court and resultantly, the probate petition bearing No.3 of 21.05.2010 was filed, which resulted into passing of the judgment and decree dated 09.04.2012 (Annexures P-7 & P-8). All the aforementioned transactions were got done through Joginder Pal, the husband of respondent No.4, namely, Aruna Devi. She preferred a reference under Section 55 of the 1961 Act, alleging herself to be nominee of Ved Wati as Ved Wati expired on 04.01.2007. The aforementioned reference was dismissed in default vide order dated 22.01.2013. During interregnum, Chandigarh Administration had allotted the land and even the construction of the flats had been done. The allotment letter was issued to the petitioner vide letter dated 07.01.2013 (Annexure P-9) and the possession letter was also offered vide letter dated 07.01.2013 (Annexure P-10). However, the second reference was sought under Section 55 of the 1961 Act, as noticed above, which was dismissed vide order dated 26.08.2013 (Annexure P-13), but the revision petition has been accepted vide impugned order dated 03.03.2014 (Annexure P-18).

The contention of Mr. Vijay Sharma is that the Secretary, Cooperation U.T. Chandigarh, has not taken into consideration the stand of the Cooperative Society, much less, of the petitioner with regard to the aforementioned fact i.e. probate and all other attenuating circumstances,

much less, the documents.

He further submits that even the finding of the Secretary, Cooperation U.T. Chandigarh with regard to the bar of sale would be having no force of law as by the time the share was sold away, the land was not allotted to the Society. In fact the petitioners are the original allottees as per the allotment letter dated 07.01.2013 (Annexure P-9), thus, urges this Court that the impugned order under challenge is not only perverse, but is result of misdirection and misreading of the oral and documentary evidence.

Mr. Raghav Goel, Mr. Amit Jain and Mr. Ashwani Prashar, learned counsel appearing on behalf of respondent Nos.1 & 2, 3 and 4, respectively, submits that there is no illegality and perversity in the impugned order under challenge and the same is based upon the preponderance of oral and documentary evidence, thus, urges this Court for dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the impugned order dated 03.03.2014 (Annexure P-18), under challenge, is not sustainable in the eyes of law, for, there is no reference to the judgment and decree dated 09.04.2012 (Annexures P-7 & P-8), much less, draw of plots held on 21.11.2011 or any reference to the bye-laws as the petitioners are the original allottees, which fact is evident from the allotment letter dated 07.01.2013 (Annexure P-9). The factum of documents have already obtained the stamp of the Court, whereas respondent No.4 has not been able to establish any relation with Ved Wati or any other document i.e. by way of testamentary or by other mode regarding her appointment as nominee. All these documents were required to be gone into.

Keeping in view the aforementioned facts, the impugned order under challenge suffers from illegality and perversity, much less, is a result of misdirection and misreading of the documentary evidence.

It is a fit case where the matter is required to be remanded back to the Secretary, Cooperation U.T. Chandigarh for deciding the controversy afresh.

Accordingly, the impugned order dated 03.03.2014 (Annexure P-18) is hereby set aside and the matter is remitted back to the Secretary, Cooperation U.T. Chandigarh with a direction to decide the controversy afresh by taking into consideration the aforementioned facts, much less, observations given hereinbefore.

Learned counsel for the parties and as well as the parties are directed to appear before the Secretary, Cooperation U.T. Chandigarh on 17.04.2017.

With the aforesaid observations, the present writ petition stands disposed of.

17.03.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No