

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

RSA No.4935 of 2017 (O&M)

Date of decision : 25.10.2017

Daljit Singh and another

...Appellants

Versus

Ravinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek K. Thakur, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM No.12965-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 434 days in refiling the appeal is condoned.

Application is allowed.

CM No.12966-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 90 days in filing the appeal is condoned.

Application is allowed.

Main Case

Defendant Nos.3 and 4 are in Regular Second Appeal against the judgment passed by the learned First Appellate Court.

At the outset, it must be noticed that the plaintiff had filed a suit

for declaration, permanent injunction and joint possession claiming that he is owner in possession of the properties mentioned under the headings (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k).

Learned trial Court decreed the suit filed by the plaintiff with respect to the remaining properties except properties mentioned under the heading (h) and (j). Defendant Nos.3 and 4 did not file any appeal. In fact, none of the defendant had filed any appeal. The plaintiff had filed the appeal with respect to dismissal of his suit qua properties under the headings (h) and (j).

During the pendency of the first appeal, an application under Order 41 Rule 27 CPC was filed for permission to produce additional evidence. The First Appellate Court allowed the application.

After examining the additional evidence produced on the file, the Court recorded a finding that the property (j) i.e. a flat in Central Government Services Cooperative Land and Group Housing Society Limited, Vikas Kunj, Vikas Puri, New Delhi was also allotted originally to Sh. Jagdish Kumar Singh, the predecessor-in-interest of the parties on the basis of the natural succession. The Court held that with respect to the property mentioned as under the heading (j) i.e. a flat would also be inherited by all the legal heirs alongwith properties mentioned under the headings (a), (b), (c), (d), (e), (f), (g), (i) and (k). The plaintiff is entitled to declaration and joint possession.

Learned counsel for the appellants has vehemently argued that the Delhi Cooperative Societies Act, 2003 provides that on the death of a member, a Cooperative Society shall transfer the share or interest of the

deceased member through nomination. He submits that since the father of the parties i.e. defendant Nos.3 and 4 had nominated, therefore, the ownership vested with only defendant Nos.3 and 4.

I have considered the submission of the learned counsel. I have also gone through the judgments passed by the Courts below.

It is well settled that the nomination does not confer title on the nominee. It has been held that by nomination, the nominee is entitled to receive the property. However, such nominee holds the property in trust on behalf of legal heirs. Nomination cannot be treated as an instrument of transfer. Reference in this regard can be made to the judgments passed by Hon'ble Supreme Court in (1984) 1 SCC 424 titled as *Sarbati Devi Vs. Usha Devi*, and (2016) 6 SCC 440 titled as *Indrani Wahi Vs. Registrar of Cooperative Societies and others*.

Taking into consideration the aforesaid fact, once it is established that the plaintiff is one of the Class-1 heir being son of Late Sh. Jagdish Kumar Singh, therefore, he is entitled to the declaration.

In these circumstances, I do not find any good ground to interfere with the findings of fact arrived at by the First Appellate Court.

Regular Second Appeal is dismissed.

25.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No