

RSA Nos.1963 & 1829 of 2017 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 27.11.2018

1.

RSA-1963-2017 (O&M)

Gopal Krishan and another

... Appellants

Versus

Kuril Baradari Society (Regd.) and others

... Respondents

2.

RSA-1829-2017 (O&M)

Gopal Krishan and another

... Appellants

Versus

Rakesh Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Raj Kumar Kakkar, Advocate
for the appellants.

AMIT RAWAL, J.

This order of mine shall dispose of two regular second appeals bearing RSA No.1963 of 2017 titled as "Gopal Krishan and another V/s Kuril Baradari and others" and RSA No.1829 of 2017 titled as "Gopal Krishan and another V/s Rakesh Kumar and others" arising out of the decision of one civil suit filed by the plaintiffs as against the judgment and decree of the trial Court decreeing the suit, defendant Nos.1 and 2 filed the appeal separately, whereas defendant No.3 independently.

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The plaintiffs claiming to be Members of the respondent(s)-Society filed a suit by invoking the provisions of Section 92 of the Code of Civil Procedure accompanied by a separate application seeking leave of the Court, challenging the sale deed dated 10.08.2009 executed by the Society in favour of defendant No.3 on various grounds including the sale deed was without consideration and want of legal necessity.

The defendants opposed the suit by relying upon the resolution authorizing the President of defendant No.1/Society to sell the super-structure and not the land.

On the basis of the preponderance of the evidence, the trial Court decreed the suit, but remained oblivious of the fact that no permission under Section 92 of the Code of Civil Procedure was granted or noticed the *locus standi*. The lower Appellate Court reversed the findings on the ground that simpliciter suit for declaration, in the absence of the possession, was not maintainable.

Learned counsel appearing on behalf of the appellants-plaintiffs has raised the following submissions:-

1. The property of the Trust, in the absence of legal necessity, cannot be transferred.
2. The defendants have miserably failed to place on record any material regarding the receipt of consideration and deposit in the account of the Society.
3. The permission under Section 92 CPC, as per the settled law, can be granted at any stage.
4. In the absence of such permission, the Court below can always call upon the report of the trial Court.

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I am afraid the aforementioned arguments are not sustainable, for, concededly, defendant No.1 is a Society and Section 92 CPC deals with the maintainability of a suit viz-a-viz the Trust's property. Since the sale was said to be without consideration, it was obligatory upon the plaintiffs to summon the record of the Society in order to bring truth on surface. No such effort was ever made. Assuming respondent No.1-Society registered under the Societies Registration Act, 1860, was a Trust, the permission was also not sought. Going further, the suit as such was not maintainable, relief for mandatory injunction qua restoring the possession back to the defendant, ought to have sought. The plaintiffs alleged themselves to be a Member of the Society and failed to establish *locus standi* as how and under what circumstances, the Member can challenge the sale deed as the Society runs through resolution. All these factors are against the plaintiffs and in such circumstances, could not succeed in a suit.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the regular second appeals are dismissed.

27.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**