

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.633 of 2017 (O&M)

Date of Decision:21.09.2018

Amit Kumar

...Appellant

Versus

Abhay Gupta and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Lokesh Sinhal, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-1369-C-2017

For the reasons supported in the application, which is supported by an affidavit, delay of 141 days in refiling the appeal is condoned.

CM stands disposed of.

Main appeal

Defendant No.3-appellant has filed this appeal against the judgment passed by the learned first appellate court, directing the Deputy Commissioner to take over the affairs of the Society and restraining all the parties from selling the land of M/s Haryana Country Farms Housing Society by passing any resolution.

Concluding part of the judgment passed by the learned first appellate court is extracted as under:-

“In the connected civil appeal which was also pending before this court, it appeared that one of the present plaintiff RB Jain also sold the land by executing Sale Deed in favour of Modern Vidya Niketan, on the basis of purportedly forged & fabricated resolution. Under this situation, I am of the view

that the plaintiffs and defendant no.1 are both committing the fraud with the other members of the society, who have either no knowledge, or are sitting behind helplessly as silent spectators without any ray of hope. Under these circumstances, both the parties are directed to file fresh suit for rendition of accounts and proportionate distribution of the assets of society by liquidating the same, and to further disclose how the sale proceed was applied/disbursed, within 3 months of this judgment. On failure to file such suit, Deputy Commissioner is hereby authorised to take-over all the unsold assets of the unregistered society M/s Haryana Country Farms Housing Society comprised in Khewat no.436 & 723 in village Mehwa Maharajpur, and Khewat no.247 in village Anangpur, to protect the interest of the other members, or, alternatively to escheat the same in favour of the state in absence of any claimant. All the parties are hereby directed to permanently restrain from selling the land of Haryana Farms Housing Society by passing any resolution, with respect to the remaining land situated at Village Mewla Maharajpur & Village Anangpur without permission of the court, or District Collector.”

Three plaintiffs, claiming to be members of an unregistered Society namely M/s Haryana Country Farms Housing Society, filed a suit for declaration and permanent injunction. The suit was filed in the representative capacity. It was pleaded that the Society was founded after getting contribution from all its members in the year 1980 and defendant No.1 was nominated as promoter of the Society. An open current account was opened in the name of the Society with Indian Overseas Bank, Faridabad. With the funds collected from the members through various sale-deeds, land detailed in para 4 of the plaint was purchased in the name of the Society. Thereafter further contribution of Rs.5,000/- each was collected for securing the land with barbed fencing. The plaintiffs claimed

that defendant No.2, claiming himself to be general power of attorney of defendant No.1-Baljit Singh, executed a sale-deed with respect to land measuring 37 kanal which belonged to the Society on 17.7.2002 subject matter of challenge in the present suit.

Defendant No.1 contested the suit and pleaded that the plaintiffs are not members of the Society. He pleaded that the plaintiffs had made some deposit for being considered for membership. However, the aforesaid amount has been refunded. Defendant No.1 claimed that he is exclusive owner of the property and he had every right to deal with the property in the manner he likes. He further claimed that he conceived the idea to form a Society but the plaintiffs were never inducted as its members. He further claimed that the Society never came into existence and therefore whatever property was purchased in the name of the Society, it is his individual property. However, he submitted that defendant No.2 was only authorized to create mortgage of the property for better management but he sold the property.

Defendant No.2 filed separate written statement, pleading that he was authorized by general power of attorney executed by defendant No.1 to deal with the property on the basis of resolution passed by the Society and, therefore, defendant No.2 has sold the property measuring 37 kanal to defendant No.3.

Defendant No.3 contested the suit and pleaded that some other members of the Society have also sold 104K-14M of land vide sale-deed dated 8.10.2004. He further claimed that he is a bonafide purchaser.

The learned trial court dismissed the suit after recording following findings:-

(i) Since the Society is unregistered, therefore, defendant No.1 being promoter is owner of the property;

(ii) The suit has been filed only for declaration without consequential relief of possession, thus not maintainable;

(iii) Plaintiff No.2 himself has sold 67 kanal and 4 marla of land, therefore, he is estopped from challenging the sale-deed executed by defendant No.1 through defendant No.2 in favour of defendant No.3.

Before the learned first appellate court, application for additional evidence was filed and various documents were produced including list of members, receipts of payments made by the members of the Society and statement made by Mankaran Singh, general power of attorney of defendant No.1. Copy of the plaint in the other suit was also filed. Another application for amendment of the plaint was also filed, which was dismissed.

The learned first appellate court found that the property was purchased in the name of the Society, although unregistered, from the funds withdrawn from the account of the Society is the property of the Society. Hence, the first appellate court held that defendant No.1-Baljit Singh cannot claim to be exclusive owner of the property in dispute. The court held that the reason assigned by the learned trial court that defendant No.1 being promoter is owner of the property as the society is unregistered, is erroneous. The learned first appellate court further found that the alleged resolution passed by five members of the Society among all only authorized defendant No.1 to mortgage the property so as to generate funds. He was never given power by the resolution of the Society to sell the property of the

Society. Since, general power of attorney executed by defendant No.1 in favour of defendant No.2, authorising defendant No.2 to sell the property is beyond the power given, therefore, sale by defendant Nop.2 in favour of defendant No.3 is also not sustainable. The learned first appellate court has recorded a finding that defendant No.3 was aware about the resolution.

This Court has heard the learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the courts below.

Learned counsel for the appellant has submitted that since the Society was never registered, therefore, it would be considered as still-born plan which never matured. Hence since Society is not a legal entity, therefore, defendant No.1 is exclusive owner of the property. He further submitted that plaintiff No.2 has also sold some part of the property and therefore, he has no locus standi to file the suit.

As regards the first argument of learned counsel for the appellant, it will be noted that although no doubt Society has not been registered, but nonetheless, a Society has been formed. Exhibit PY is the resolution of the Society signed by five members, authorizing defendant No.1 to mortgage the property, whereas he executed a general power of attorney in favour of defendant No.2, authorising him to sell the property, is clearly illegal, null and void. Still further, defendant No.1 cannot claim himself to be exclusive owner of the property in question. It is not in dispute that entire property has been purchased in the name of the Society. In such circumstances, even if defendant No.1 was a promoter or he had conceived the idea of floating the housing society, still defendant No.1 cannot claim himself to be exclusive owner of the property. Hence, there is

no substance in the first argument of the learned counsel for the appellant.

Second argument of learned counsel for the appellant is also to be noticed and rejected, as the learned first appellate court has considered this aspect and for that reason only Deputy Commissioner/ District Magistrate has been directed to take over the assets of the Society and protect the interest of other members, as is clear from the directions issued by the learned first appellate court reproduced above.

Keeping in view that the property is in the name of the Society and efforts are being made to squander the property of the Society by various members by misusing their position, therefore, the Deputy Commissioner, Faridabad, is further directed to carry out an investigation into the affairs of the Society and if ultimately Deputy Commissioner reaches at a conclusion that some members have tried to misuse their position, he would be well within his powers to get the cases registered against erring official(s)/members of the Society.

In view of the above, the appeal is found without merit and hence dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

21.09.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No