

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2335/2017

(NARESH CHAMPATRAO ITANKAR **VERSUS** MANGLA CHAMPATRAO PATIL)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri H.S. Rahangdale, counsel for petitioner.
Shri C.A. Anthony, counsel for R-1.
Shri A.H. Joshi & Shri D. Gabhane, counsel for R-2..

CORAM : A.S. CHANDURKAR, J.

DATE : MARCH 18, 2019.

The original opponent no.2 in the dispute filed by the respondent no.1 herein under Section 91 of the Maharashtra Cooperative Societies Act, 1960 has filed this writ petition challenging the concurrent orders passed by the Cooperative Court in favour of the respondent no.1 which have been affirmed by the appellate Court.

The respondent no.1 is the original disputant and it is his case that on 01.03.1987 an agreement was entered into with the respondent no.2-Cooperative Society for purchase of plot of land being Plot No.24. Earnest amount of Rs.2,000/- was paid out of total consideration of Rs.9,000/-. The disputant claimed that possession was received on 27.09.1987. As the petitioner herein claimed title to the said plot on the basis of the sale-deed dated 23.11.2005 executed by the respondent no.3 herein, the aforesaid dispute was filed seeking declaration that the petitioner as well as the Society had no right to interfere with the possession of the disputant and that the transactions between the Society and the petitioner as well as the respondent no.3 were not binding on the disputant. A further relief of execution of a registered sale-deed in favour of the disputant was prayed for.

In the written statement filed by the Society as well as the petitioner herein, it was pleaded that the agreement dated 01.03.1987 in favour of the petitioner had been cancelled by issuing a notice on 07.01.1989 under Certificate of Posting. It was further pleaded that on 25.03.1991, said plot was sold to the respondent no.3 who in turn sold the said plot on 23.11.2005 to the petitioner. The Cooperative Court after considering the evidence on record held that the disputant was entitled to the reliefs as sought. The defence as raised with regard to the cancellation of the agreement in her favour was held to be not proved. The Society was directed to execute the sale-deed in favour of the disputant. The appeal filed by the petitioner herein was dismissed by the appellate Court. Hence, this writ petition.

Shri H.S. Rahangdale, learned counsel for the petitioner submitted that the disputant could not have claimed any relief on the basis of an unregistered agreement of sale dated 01.03.1987. Placing reliance on the decision in *G.Ram Versus Delhi Development Authority* [AIR 2003 Delhi 120], it was submitted that the disputant was claiming title on the basis of the said agreement which was unregistered and which conferred no title on the disputant. Further the petitioner had become owner of the said plot by virtue of registered sale-deed dated 23.11.2005 and hence no relief could have been granted to the disputant. Though the agreement in question was dated 01.03.1987, the dispute was filed in the year 2006 which was quite belated. In the light of the fact that the society had cancelled the transaction that was entered into with the disputant, no relief could have been granted in his favour.

Shri A.H. Joshi, learned counsel for the respondent no.2 supported the stand of the petitioner.

Shri C.A. Anthony, learned counsel for the respondent no.1-disputant on the other hand supported the impugned judgment. He submitted that pursuant to the agreement dated 01.03.1987, the disputant was handed over possession after which she had made construction thereon. A finding to that effect has been recorded by both the Courts. The cancellation of that agreement dated 01.03.1987 has not been proved in view of the fact that there is no resolution passed by the society to that effect and the letter of cancellation sent in the year 1989 was under Certificate of Posting. It is thus submitted that in the light of findings recorded by both the Courts, no interference is called for.

Heard the learned counsel for the parties and perused the impugned judgment. It is seen that pursuant to the agreement dated 01.03.1987 it has been found that the disputant was put in possession of the plot in question wherein she has undertaken construction. Though the society claims that the said agreement was cancelled in the year 1989, there is no resolution passed by it cancelling the said agreement. The intimation with regard to cancellation of that agreement has been sent under Certificate of Posting which itself has been found to be doubtful. Moreover, the endorsements made on the agreement dated 01.03.1987 at Exhibit 32 indicate the entire payment being made by the disputant till 13.12.1993 and the same being accepted by the Society. If the allotment was cancelled in the year 1989, the balance consideration could not have been accepted thereafter. It is on these counts that both the Courts have held in favour of the disputant. As regards the aspect that the agreement dated 01.03.1987 being unregistered, that fact would not disentitle the disputant to get the relief of execution of sale-deed. Such specific prayer having been made in

the dispute, same has been rightly granted by the Cooperative Court and maintained by the Appellate Court. No other contention has been raised. Hence, there is no jurisdictional error in the impugned judgment and the same does not call for any interference.

The writ petition is dismissed with no order as to costs.

JUDGE

APTE