

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

REGULAR SECOND APPEAL No.3952 of 2018 (O&M)

DATE OF DECISION: 04.03.2020

Sarup Singh alias Sarup Ram

....Appellant

versus

Dev Singh and others

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. R.K. Chaudhary, Advocate for
Mr. Sukhdeep Parmar, Advocate for the
appellant

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ALKA SARIN, J.:

CM-10505-C-2018:

For the reasons stated in the application,
delay of 28 days in re-filing the appeal is condoned.

C.M. stands disposed of.

RSA-3952-2018:

The unsuccessful plaintiff is in second
appeal against the dismissal of his suit for
declaration and permanent injunction by both the
Courts below vide judgments and decrees dated
27.05.2015 and 10.10.2017.

The plaintiff-appellant and defendant-
respondent No.1 are brothers. The dispute in the suit
was regarding the 1/12th share of their father in land
measuring 68 biswas - 14 biswas owned by the Harijan

Co-operative Society Limited, defendant-respondent No.2. As per the plaintiff-appellant, he was the nominee of his father regarding his 1/12th share in the land owned by the defendant-respondent No.2 and as such after the father's death was entitled to the same. His brother defendant-respondent No.1 had got father's 1/12th share in the land owned by defendant-respondent No.1 mutated in his name on the basis of a registered Will in his favour which Will only related to the land of their father and not the land owned by defendant-respondent No.2. The plaintiff-appellant, thus, filed the instant suit seeking a declaration that he has been in cultivating possession of the suit land to the extent of 1/12th share being member of the defendant-respondent No.2 and the defendant-respondent No.1 had neither been a member nor been in possession of any part of the suit land and the name of defendant-respondent No.1 was liable to be deleted/expunged from jamabandi. The plaintiff-appellant also sought relief of permanent injunction to restrain defendant-respondent No.1 from alienating the land of the society by taking benefit of the wrong entry.

The defendant-respondent No.1 filed the written statement averring that he had looked after and served his father and also performed his last rites as the plaintiff-appellant did not take care of his parents as he was residing separately for many years. The father of the parties had executed a registered Will dated 11.05.1989 while in sound disposing mind and had bequeathed his estate in favour of defendant-

respondent No.1. He also averred that defendant-respondent No.1 became a co-sharer in the 1/12th share of the father being member of defendant-respondent No.2 in place of his father on the basis of the said Will. The Trial Court framed eight issues and, vide its judgment and decree dated 27.05.2015, *inter alia* held that the plaintiff-appellant had failed to prove his becoming a member of the defendant-respondent No.2 in place of his father and that even otherwise the civil Court had no jurisdiction to confer membership upon any person or to deny any person as member of the defendant-respondent No.2. The Trial Court also held that the plaintiff-appellant had no cause of action or *locus standi* to file the suit and that he was not entitled to relief of injunction. The appeal of the plaintiff-appellant was dismissed by the lower Appellate Court vide judgment and decree dated 10.10.2017 affirming the findings recorded by the Trial Court.

I have heard the learned counsel for the plaintiff-appellant who contended that the findings recorded by the Courts below are against the pleadings of the parties and the evidence on the record. According to the counsel, the Civil Court had the jurisdiction to decide the dispute regarding membership in a co-operative society. He also argued that it was amply proved on the record that the plaintiff-appellant had succeeded to the 1/12th share of his father in the land owned by defendant-respondent No.2 and his suit ought to have been decreed. Section

82(1) of the Punjab Co-operative Societies Act, 1961, deals with the bar on jurisdiction of the Court.

Section 82(1) of the said Act reads as under:-

"82. Bar of jurisdiction of courts.-(1) *Save as provided in this Act, no civil or revenue court shall have any jurisdiction in respect of-*

- (a) *the registration of a co-operative society or its bye-laws or of an amendment of a bye-law;*
- (b) *the removal of a committee;*
- (bb) *any matter relating to service conditions of employees of co-operative societies;*
- (c) *any dispute required under section 55 to be referred to the registrar; and*
- (d) *any matter concerning the winding up and the dissolution of a co-operative society."*

Section 55 of the Act referred to in Section 82(1), reproduced above, deals with the disputes which may be referred to arbitration. Section 55(1) of the said Act reads as under:-

**"CHAPTER VIII
SETTLEMENT OF DISPUTES**

55. Disputes which may be referred to arbitration.-(1) *Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises-*

- a) *among members, past members and persons claiming through members, past members and deceased members, or*

- (b) *between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present, or*
- (c) *between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or*
- (d) *between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society, such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute."*

A conjoint reading of Section 82(1) and Section 55 (1) of the said Act, reproduced above, makes it clear that the Civil Court does not have jurisdiction to adjudicate disputes amongst members, past members and persons claiming through members, past members and deceased members which disputes touch the constitution, management or the business of the co-operative society. Such a dispute has to be referred to the Registrar for adjudication. In the present case also, the dispute is between the sons of a deceased member of a co-operative society (defendant-respondent No.2) which dispute is qua the share of their father

in the said Society. This dispute has to be decided by the Registrar and the Civil Court would have no jurisdiction in the matter, there being an express bar in section 55(1) of the Act. Thus, no fault can be found with the findings of the Courts below on the point of jurisdiction of the Civil Court.

On merits, learned counsel for the plaintiff-appellant has been unable to point out any illegality in the findings recorded by the Courts below. The plaintiff-appellant has failed to produce any evidence to prove that he was the nominee of his father in the father's 1/12th share in the land owned by the co-operative society (defendant-respondent No.2). In any event, a nominee only holds a property in Trust and nomination does not amount to bestowing ownership. The learned counsel for the plaintiff-appellant has also not been able to dislodge the finding that the suit was barred by limitation.

No other point was raised.

Finding no infirmity with the judgments and decrees passed by the Courts below, the present regular second appeal is dismissed.

(ALKA SARIN)
JUDGE

04.03.2020
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NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES