

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.390 of 2014****Reserved on 05/10/2021****Pronounced on 25/10/2021**

- Sanat Kumar Agrawal S/o Late Sarju Prasad Agrawal Aged About 81 Years R/o Agrawal Hardware, Lohar Chowk, Purani Basti, Raipur, Tah. And Distt. Raipur, Chhattisgarh (Defendant No.1)

---- Appellant**Versus**

1. H.S.Kalarthi (**Died and deleted**) Through Legal Representatives,
1A. Urmila Kalarthi w/o Late H.S. Kalarthi,
1B. Navin Kumar Kalarthi s/o Late H.S. Kalarthi,
1C. Nilima Kalarthi, D/o Late H.S. Kalarthi,
1D. Anju Anima Kalarthi, D/o Late H.S. Kalarthi,
All the respondents 1A to 1D, are resident of house No. 64, 65 Hanuman Nagar, Durg, Tahsil & District Durg (CG)
2. Krishna Kumar S/o H.S. Kalarthi R/o House No. 64, Hanuman Nagar, Durg, Tah. And Distt. Durg C.G. (Plaintiffs)
3. Rajkiya Sahkari Karmachari Uppanjiyak Sahkari Samitiya, Durg C.G., Which Is Being Run By Chhattisgarh Rajya Sahkari Awas Sangh Maryadit, Raipur, C-191, Tagore Nagar West, Raipur, District : Raipur, Chhattisgarh (Defendant No.2)
4. Vasuli Adhikari Evam Atirikt Tahsildar Sahkari Samitiya, Durg C.G., Sahkari Kendriya Bank, G.E. Road, In Front Of Jila Aspatal, Tah. And Distt. Durg C.G.(Defendant No.3)

---- Respondents

For Appellant	:	Shri Sanant Kumar Agrawal appears in person
For L.Rs. of Respondent No.1 and for Respondent No. 2	:	Shri N.K. Malviya, Advocate
For Respondent Nos. 3 and 4	:	None, though served

Hon'ble Shri Justice Sanjay S. Agrawal**CAV Judgment**

1. This appeal has been preferred by the Appellant/Defendant No.1- Sanat Kumar Agrawal under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC, 1908'),

questioning the legality and propriety of the judgment and decree dated 23.7.2014, passed in Civil Appeal No.08-A/2014, whereby the learned appellate Court, while reversing the judgment and decree dated 03.02.2014, passed by the 8th Civil Judge, Class-II, Durg in Civil Suit No.63-A/2013, has decreed the plaintiffs' claim. The parties to this appeal shall be referred hereinafter as per their description before the trial Court.

2. Briefly stated the facts of the case are that the plaintiffs instituted a suit claiming declaration to the effect that Defendant No.1-Sanat Kumar Agrawal is not entitled to obtain the possession of the plots in question being plot Nos. 64 and 65, situated at Hanuman Nagar, Durg as it was allotted and registered in their favour by Defendant No.2-Rajkiya Sahkari Karmchari Grih Nirman Samiti Maryadit, Durg (hereinafter referred to as the 'Society') and praying further for the issuance of injunction against the said Defendant No.3-Recovery Officer-cum-Additional Tahsildar, from obtaining the possession of it. It is pleaded in the plaint that earlier the suit plots were allotted to Defendant No.1 by the Society, upon which he had deposited a sum of Rs.9,000/- and Rs.20,000/- for the construction of the house over it, and the loan amount of Rs. 34,000/- was sanctioned to him by the State Sahakari Awas Sangh. According to the plaintiffs, the said Defendant has subsequently, moved an application on 5.6.1984 before the said Society seeking withdrawal of his membership and also for the refund of his amount and accordingly, a sum of Rs.30,000/- has been refunded to him by the said Society through its Cheque dated 10.12.1984. Further contention of them is that the alleged suit plots were thereafter allotted and registered in their names on 22.10.1984 by two different Sale Deeds, who have not only deposited the entire

loan amount along with its interest totalling a sum of Rs.1,10,346.15, but also has paid the membership amount of Rs.46,010/- to the Society and has constructed a house after expending the huge amount for it.

3. Further contention of the plaintiffs is that Defendant No.1, after 6 years of the cancellation of his membership, initiated a proceeding before the Deputy Registrar, Co-operative Societies, Durg, registered as Case No.64-15/1989 seeking declaration to the effect that his membership has been cancelled illegally by the Society and also for the declaration to the effect that the alleged registered deeds of sale as executed in favour of the plaintiffs on 22.10.1984 be declared as null and void. The proceeding so initiated was rejected by the said Authority, but it was reversed ex-parte by the Joint Registrar, Cooperative Societies, Durg (hereinafter referred to as the 'Registrar') vide its order dated 29.7.1995 in appeal, being Appeal No.77-823/R-1994, preferred by the said Defendant with a direction that on depositing a sum of Rs.30,000/- by him with the Society, he would be entitled to obtain the possession of the suit plots from them. The said orders were affirmed further by the Board of Revenue and also by the High Court vide its order dated 30.4.2010 in Writ Petition No.792/1997. It is pleaded further that since Defendant No.1 has never questioned the alleged registered deeds of sale nor has complied with the directions issued by the Registrar as contained in the order dated 29.7.1995 by depositing the requisite amount of Rs.30,000/- with the Society, therefore, he is not entitled to get the vacant possession of the suit plots from them. It is pleaded further that since the High Court vide its order dated 30.4.2010 has directed the plaintiffs to institute a Civil Suit based upon the registered deeds of

sale in order to get redressal of the reliefs, therefore, the suit in the instant nature has been filed.

4. While contesting the claim, it is pleaded by Defendant No.1 that in compliance of the order dated 29.7.1995, as passed by the Registrar, the requisite amount of Rs.30,000/- has been paid by way of "Demand Pay Order" dated 28.8.1995 with the Society. It is contested further on the ground that since the alleged suit plots have already been allotted to him, therefore, the Society has no right to re-allot the same to the plaintiffs and the claim as made by them is even otherwise barred by time and deserves to be dismissed.
5. The Defendants 2 and 3 in their written statements have stated that Defendant No.1 has not paid the said amount of Rs.30,000/- to the Society.
6. After considering the evidence led by the parties, it was held by the trial Court that the suit as framed is within time and held further that since the alleged suit plots were already allotted to Defendant No.1 by the Society, therefore, it has no right to transfer it again to the plaintiffs and thereby arrived at a conclusion that the registered deeds of sale dated 22.10.1984 as executed in their favour is void *ab initio* from its beginning and plaintiffs are not entitled to the relief of injunction as prayed for and accordingly dismissed the suit vide its judgment and decree dated 3.2.2014.
7. In appeal preferred by the plaintiffs, the aforesaid judgment and decree as passed by the trial Court has been reversed by the lower appellate court by holding, *inter alia*, that since Defendant No.1 has failed to establish the fact that he has deposited the requisite amount of Rs.30,000/- in compliance of the directions issued by the Registrar

by its order dated 29.7.1995, therefore, it cannot be said that his membership has been restored by the Society. It held further that the plaintiffs have acquired right, title and interest over the alleged plots in question by virtue of the registered deeds of sale on 22.10.1984 and in consequence, decreed the claim. This is the order which has been challenged by Defendant No.1.

8. While admitting the appeal preferred by Defendant No.1 by order dated 12.3.2015, the following substantial questions of law have been framed:

(i) *Whether the judgment of the appellate Court reversing the judgment/decreed of the trial Court is perverse and illegal as it did not appreciate the evidence properly?*

(ii) *Whether the Court below was justified in holding that the appellant has waived his right despite the fact that he has prosecuted the proceeding under Section 64 of the Cooperative Societies Act, 1961?*

9. Appellant/Defendant No.1 appearing in person submits that since the plots in question were allotted earlier to him, therefore, the Society had no right whatsoever to transfer the same to the plaintiffs under the alleged registered deeds of sale dated 22.10.1984. It is contented further that the membership of him has been restored by the Registrar vide its order dated 29.7.1995 and the requisite amount of Rs.30,000/- as directed to be deposited with the Society was made by "Demand Pay Order" dated 28.8.1995, therefore, the plaintiffs' claim ought not to have been decreed.

10. On the other hand, learned counsel appearing for the Respondents/ plaintiffs has supported the impugned judgment and decree as passed by the lower appellate court.

11. I have heard learned counsel for the parties and perused the entire record carefully.

12. Admittedly, the plots in question, being plot Nos. 64 and 65 situated at Hanuman Nagar, Durg were allotted earlier to Defendant No.1-Sanat Kumar Agrawal, who was the member of the said Society. It, however, appears that he moved an application on 5.6.1984 before the Society seeking withdrawal of his membership and also for the refund of entire amount as deposited by him for the allotment of the alleged suit plots. After considering his said application, it was accepted by the Society vide its letter dated 08.08.1984 and cancelled his membership and returned the amount as deposited by him and in the meantime, the alleged suit plots were transferred to the plaintiffs vide registered deeds of sale, both executed on 22.10.1984 (Ex.P69).

13. It appears further that the amount of Rs.30,000/- as returned to Defendant No.1 was admittedly, deposited by the Society in his own account. It appears further that after purchasing the suit plots under the registered deeds of sale, the plaintiffs have constructed the house after incurring huge amount for it.

14. Perusal of the record would show further that Defendant No.1, after 6 years of the cancellation of his membership from the said Society, has raised a dispute under Section 64 of the Chhattisgarh Cooperative Societies Act, 1960 (hereinafter referred to as the 'Act of 1960') before the Deputy Registrar, Co-operative Societies, Durg to the effect that the order of cancellation of his membership dated 08.08.1984 as well as the registered deeds of sale as executed in favour of the plaintiffs on 22.10.1984 be declared as null and void and for the restoration of possession of the plots and house constructed thereon.

15. The aforesaid dispute as raised was dismissed by the Deputy Registrar vide its order dated 11.01.1994 (Ex.C-4) in Case No.64-15/1989 and, the appeal preferred thereagainst by the said Defendant No.1 was, however, allowed ex-parte by the Registrar vide its order dated 29.7.1995 (a copy of this order has not been placed on record), wherein, as stated by both the parties, the direction was issued for the restoration of his possession, if he deposits a sum of Rs.30,000/- with the Society while declaring the alleged registered deeds of sale as null and void. The revision preferred against it by the plaintiffs was dismissed by the Board of Revenue vide its order dated 28.9.1996 (a copy of it has also not been placed on record) and, a Writ Petition preferred thereagainst was decided by the High Court vide its order dated 30.4.2010 (Ex.D22) in Writ Petition No.792/1997, wherein, it has been observed that in so far as the membership of the said Defendant No.1 and his possessory right are concerned, the same are certainly a dispute touching the constitution, management or business of the Society and is triable by the said Authority under the Act of 1960. It observed further therein that even if it is held that the relief of declaration of the registered deeds of sale as void and ineffective is within the domain of Civil court nevertheless, it cannot be said that the Authorities under the Act of 1960 have no jurisdiction to declare the alleged order of cancellation of his membership as null and void and the order of restoration of his possession is illegal. While dismissing the petition to the said extent, it observed further that the plaintiffs are, however, at liberty to pursue their remedies based upon the alleged registered deeds of sale before the competent court of civil jurisdiction. It is not out of place to observe here that till date, both the registered deeds of sale as executed in their favour were neither questioned by the Society nor by Defendant No.1 before any of the court having its

territorial jurisdiction.

16. However, that may be the cancellation of the alleged membership of Defendant No.1 and the restoration of his possession was made conditionally by the Registrar vide its order dated 29.7.1995 that it will take its effect only if he re-deposit a sum of Rs.30,000/- with the Society. According to the said Defendant, it was deposited by him, however, it was denied specifically by the Society in their written statements. In order to establish the said fact, Defendant No.1 has produced a photocopy of "Pay Demand Order" dated 28.8.1995 of the Central Bank of India, marked as Ex.C-3. A bare perusal of it would, however, reveal the fact that it was deliberately not issued in proper name of the said Society nor any acknowledgment of it has been furnished by the said Defendant so as to hold that it was given to the said society. That apart, neither any of the concerned Bank officer was examined nor any material witness was produced by him, though the burden to establish the fact with regard to the compliance of the said order as passed by the Registrar, was upon him. In absence thereof, the appellate court has rightly arrived at a conclusion that the alleged amount of Rs.30,000/- as directed to be deposited, was not deposited by him. It is, thus, evident that the finding of the trial Court has been reversed properly by the appellate court upon due and proper appreciation of the evidence led by the parties. The first substantial question of law framed is, thus, answered accordingly, in negative.

17. As observed herein above, Defendant No.1, has not only got the entire amount of Rs.30,000/- refunded by the Society as deposited by him with regard to the allotment of the suit plots, but has failed to re-deposit the same with the Society in strict compliance of the order dated 29.7.1995 as passed by the Registrar. It is, thus, apparent as

reflected from his conduct that Defendant No.1 has waived his right over the plots in question and only thereafter, the plaintiffs have acquired their right, title and interest based upon the alleged registered deeds of sale, both dated 22.10.1984 and would, therefore, be entitled to get the protection of it from Defendants No. 1 and 3. The second substantial question of law framed is, thus, answered in positive.

18. Consequently, the appeal being devoid of merits is hereby dismissed and the plaintiffs are held to be entitled to get the reliefs as prayed for in the plaint. No order as to cost.

19. A decree be drawn accordingly.

Sd/-

(Sanjay S. Agrawal)
JUDGE