

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.38 of 2016

=====

Smt. Krishna Chatterjee, W/o R.K Chatterjee, R/o Mohalla Khas Mahal, Road No.3, Chiraiya Tand, P.S Jakkanpur, P.O. GPO, Town and District - Patna.

Defendant 2nd Set/Petitioner

Versus

1. Shankar Prasad Gupta, S/o Late Baidyanath Prasad, R/o Mohalla Rikabganj, Patna City, P.S. - Malsalami, P.O. - Patna City, District Patna.
Plaintiff/Opposite Party 1st Set
2. M/s Indian Bank Staff, Sahkari Grih Nirman Samiti Limited Patna, bearing registration No.107/Pat/84
3. Shri Sachidanand Singh, the Honorary Secretary M/s Indian Bank Staff Sahkari Grih Nirman Samiti Limited Patna, S/o Shri Ram Swaroop Singh, R/o Binda Bhawan, Punaichak, P.S. - Shastri Nagar, P.O.- GPO, Town and District - Patna.

Defendants 1st Set/ Opposite Parties 2nd Set

4. Shri Binod Kumar Dubey.
5. Shri Manoj Kumar Dubey.
6. Shri Sanjay Kumar Dubey.
All sons of Shri Bijoy Prasad Dubey, R/o village Semari, P.O. - Semari, P.S.- Dawath, District - Rohtas, at present Mohalla - I.T.I. Colony, P.S. - Digha, District - Patna.

Defendants 3rd Set /Opposite Parties 3rd Set

with

CIVIL REVISION No. 35 of 2016

- =====
1. Sri Binod Kumar Dubey
 2. Sri Manoj Kumar Dubey
 3. Sri Sanjay Kumar Dubey
All 1 to 3 S/o Sri Bijoy Prasad Dubey, R/o Village- Senari, P.O- Senari, P.S.- Dawath, District- Rohtas, At present residing at Mohalla- I.T.I. colony, P.S- Digha, District- Patna Now Residing at Dananpur Sahjad pur Near St. Karen's School P.S.- Danapur Cantt, District- Patna-801503

Defendant 3rd Set/ Petitioners

Versus

1. Sri Shankar Prasad Gupta, S/o Late Baidyanath Prasad, R/o Mohalla- Rikabganj, Patna City, P.S. - Malsalami P.O.- Patna City, District- Patna
Plaintiff/ Opposite Party 1st Set
2. M/s Indian Bank Staff Sahkari Grih Nirman Samiti Limited Patna bearing registration no-107/Pat/84



3. Sri Sachidanand Singh, the Honorary Secretary M/s India Bank Staff Sahkari Grih Nirman Samiti Limited, S/o Sri Ram Swaroop Singh, R/o Binda Bhawan at Mohalla- Punaichak, P.S.- Shastri Nagar, P.O.- G.P.O. Patna, District- Patna

Defendant 1st Set/ Opposite Party 2nd Set

4. Smt. Krishna Chatterjee, W/o Sri R.K. Chaterjee (Ranjeet Kumar Chatterjee) R/o Mohalla- Khas Mahal, Road No.-03, ChiraiyaTand, P.S.- Jakkanpur, P.O.- G.P.O. Patna, District-Patna

Defendant 2nd Set/ Opposite Party 3rd Set

Appearance :

(In CIVIL REVISION No. 38 of 2016)

For the Petitioner/s : Mr. Laxmi Narayan Das

For the Respondent/s : Mr. Ravi Bhatia

(In CIVIL REVISION No. 35 of 2016)

For the Petitioner/s : Mr. Md. Waliur Rahman

For the Respondent/s : Mr. Ravi Bhatia

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

CAV JUDGMENT

Date : 18-08-2022

These Civil Revision petitions have been preferred against the order dated 06.02.2016 passed in Title Suit No. 134 of 2007, by the court of learned Sub-Judge 2nd, Danapur, whereby and whereunder the petition of defendant's 3rd Set under Order VII Rule 11 (d), read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') and under Sections 48 and 57 (inadvertently typed as 54) of Bihar Co-operative Societies Act, 1935 (in short 'the Act') has been rejected.

2. The plaintiff has filed a Title Suit for declaration of title of the plaintiff and non title of the defendants over the suit land and to hold and declare that sale deed dated 14.12.1988, said to be executed by defendants 1st Set in favour of defendants 2nd Set and sale deed dated 01.03.2002 purported to be executed by defendants



2nd Set in favour of defendants 3rd Set are illegal, invalid and inoperative and also to appoint the Survey knowing Commissioner for carving out for Society Plot No. 6 B, measuring 1800 square feet and also for recovery of possession with other ancillary relief.

3. The defendants after appearance filed their written statement. The defendants 3rd Set have filed a petition dated 23.06.2011 under Order VII Rule 11 (d) read with Section 151 of the Code of Civil Procedure and Sections 48 and 54 (appropriate Section 57) of Bihar Co-operative Societies Act, 1935 for rejection of the plaint.

4. The learned Trial Court after hearing the parties and considering the material available on record and relying upon the decision of this Court in CWJC No. 4593 of 2001 reported in 2007 (2) PLJR 525 rejected the said petition vide the impugned order dated 06.02.2016.

5. Learned counsel for the petitioners submits that in accordance with the provision under Sections 48 and 57 of the Bihar Co-operative Societies Act, 1935, the plaintiff ought to have approached the Registrar of the Co-operative Society for his grievances and the Civil Court do not have any jurisdiction to entertain the suit of the plaintiffs and ought to have rejected the plaint and direct the plaintiff to take appropriate forum for redressal of his grievances. It is further submitted that conjoint reading of Sections 48 and 57 of the Bihar Co-operative Societies Act, 1935 shows that in



case of any dispute, touching the business of a registered societies arise among the members shall be decided by the Registrar Co-operative Societies and no Civil or Revenue Courts have any jurisdiction with regard to the same.

6. Counter affidavit has been filed on behalf of the opposite party no. 1. It is submitted by the learned counsel for opposite party that the suit filed by the plaintiff does come within the purview of the Sections 48 and 57 of the Bihar Co-operative Housing Society Act, as a relief sought in the plaint filed by the opposite party no. 1 is in regard to declaration of his title and recovery of possession on the basis of registered sale deed dated 07.07.1988, executed in favour of the plaintiff and cancellation of subsequent sale deed dated 14.12.1988, executed by defendant 1st Set in favour of defendant 2nd Set and sale deed dated 01.03.2002 executed by defendant 2nd Set in favour of defendant 3rd Set which cannot be done by the Registrar of the Co-operative Society and it requires adjudication by the Civil Court of competent jurisdiction which has the power to cancel the forged and fabricated sale deeds and declare the same to be null, void ab-initio, non-operative and not binding upon the parties.

7. Learned counsel for the opposite parties further submits that the learned Trial Court rightly relied upon the ratio laid down in **Smt. Swati Pandey and Ors. Vs. The Registrar Co-operative Societies, Bihar, Patna and Ors. reported in 2007 (2) PLJR 525** and there is no jurisdictional error and there is no illegality and / or



irregularity while passing the impugned order and the petitioners have not made out any valid ground for interfering into and setting aside the impugned order.

8. Having heard learned counsel for the parties, it appears that the learned counsels for the petitioners have based their argument on the point that Sections 48 and 57 bars the jurisdiction of civil court with respect to the matters related to registered cooperative societies and the Registrar has only jurisdiction to decide the dispute between the members of Society accordingly, suit of the plaintiff is barred by law and liable to be rejected under Order VII Rule 11 (d) of CPC. It is pertinent to mention here that Section 48 of Bihar Co-operative Societies Act, 1935 provides jurisdiction of Registrar with respect to disputes touching the business of a registered society whereas Section 57 of the said Act relates to bar of jurisdiction of Court i.e. Civil or Revenue Court.

9. In the said judgment **CWJC No. 4593 of 2001, reported in 2007 (2) PLJR 525** it was observed:-

“Although the Registration Act, 1908, does not specifically provide any mode or manner by which any deed of transfer earlier registered before the Registrar of document could be cancelled by a subsequent deed of annulment, but even if the Registrar of document had the power to admit such a deed of annulment for registration, it had to be done as per the requirement of principles of natural justice and cannot be done to the detrimental of the person in whose favour the earlier deed of transfer was registered. Furthermore, once a property is transferred by a registered document, a vested civil right devolves



upon the transferee and to nullify such vested right only a Civil Court of competent jurisdiction has the authority and the Registrar has no such power or authority of a civil court to decide right and title of a party.”

10. It is further observed that Section 48 of the Act provides that Registrar acts as a Court in respect of disputes between the parties, but the said provision cannot be extended beyond the limits of the Act, nor the Registrar has been authorized to exercise the jurisdiction vested in a Civil Court of competent jurisdiction for the determination of right and title of the person with respect to a property.

11. A conjoint reading of Section 48 and 57 of the Act clarified that any dispute touching the business of a registered society arises amongst the members shall be decided by the Registrar and no Civil or Revenue Court shall have any jurisdiction with regard to the same.

12. The execution and registration of a sale deed involves a question of right, title and interest which is beyond the competence of Registrar. In the common judgment dated 24.06.2016 of this court in CWJC No. 12255 of 2007 with CWJC No. 3277 of 2009 and also in judgment dated 30.04.2019 of this Court in CWJC No. 17984 of 2015, the aforesaid judgment passed in CWJC No. 4593 of 2001 was referred. It was observed therein that Registrar is also vested with the power of Civil Court while adjudicating on a dispute under Section



48 of the Act but such adjudication is restricted to a dispute touching a business of a society but where it come to interpretation of a document e.g. registered sale deed especially on its validity or legality or to set it aside then such jurisdiction stands transferred with the court of competent jurisdiction.

13. As discussed above, it is clear that the Registrar of the Co-operative Society has no jurisdiction to annul sale deed executed in favour of the petitioner or opposite party, accordingly, the Civil Court has the jurisdiction to decide and declare the sale deed as null and void.

14. The Civil Procedure Code, 1908 provides for the remedy of rejection of plaint under Order VII Rule 11, on certain specifically stated grounds. Rejection of plaint weeds about frivolous, vexatious and improper plaint at the very outset, thus, saving judicial time and resources. The entire purpose of conferment of such powers under Order VII Rule 11 is to ensure that a litigation, which is meaningless and bound to prove abortive is not permitted to occupy the time of courts. Such a remedy is necessary to put an end to the sham litigation, so the further judicial time is not wasted.

15. Order VII Rule 11 of CPC, provides that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. In the present case, the Trial Court has found that the plaint is not barred by any law and accordingly, rejected the application.



16. After hearing the learned counsel for the parties, as discussed above, this court does not find any infirmity or jurisdictional error in the impugned order requiring any interference by this Court in its revisional jurisdiction. The reasoning given by the learned trial court cannot be said to be suffering from any patent illegality or irregularity.

17. Accordingly, both these revision petitions i.e. Civil Revision No. 38 of 2016 and Civil Revision No. 35 of 2016, are dismissed as being devoid of merit, but make no order as to cost.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	NAFR
CAV DATE	06.07.2022
Uploading Date	23.08.2022
Transmission Date	

