

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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(Through Video Conferencing)

RSA-493-2022 (O&M)

Date of decision: 14.03.2022

Dharam Singh

.....Appellant

Versus

Mukhtiar Kaur through her LR's and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Balbir Singh Saini, Advocate for the appellant.

MANJARI NEHRU KAUL, J. (ORAL)

Heard learned counsel for the appellant at length and perused the paper book with his able assistance.

The appellant-plaintiff assails the correctness of the concurrent findings of fact arrived at by the Courts below while dismissing the suit for declaration to the effect that the appellant-plaintiff was member of respondent No.3/defendant No.3 i.e. Scheduled Caste Co-operative Land Owning Society Limited, Behal (hereinafter referred to as 'Society') being the legal heir of S. Sampuran Singh son of Sh. Dulla Ram, who was Member of defendant No.3-Society in the land measuring 7 bighas i.e. 1/3 share in the total land measuring 20 bighas 14 biswas comprised of khewat khatoni No.40/100 khasra Nos.55 min(4-2), 56 min(1-12), 145 min(1-5), 146 min(1-5), 147(6-5), 148(6-5), total measuring 20 bighas 14 biswas situated in village Behal, Tehsil and District Patiala (hereinafter referred to as 'suit property') with consequential relief of joint possession and permanent injunction.

Learned counsel for the appellant claims that both the Courts below erred in dismissing the suit of the appellant-plaintiff for

declaration, joint possession and permanent injunction without appreciating the evidence in the right perspective. Still further, learned counsel submitted that the Courts below fell into error by dismissing the suit of the appellant-plaintiff on the ground that the jurisdiction of the Civil Court to try disputes pertaining to Co-operative Societies was barred under Section 55 of the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as 'the Act'). The appellant-plaintiff also sought declaration to the effect that Sampuran Singh had executed a registered will in his favour and on the basis of the said will he had become owner of the suit property which was being cultivated by said Sampuran Singh.

Heard and perused the material on record.

The learned counsel for the appellant has placed much reliance on the Will to substantiate his claim, however, from the evidence adduced during trial, there is no manner of doubt that Sampuran Singh had no authority to transfer the suit property to the appellant/plaintiff by executing the Will. Sampuran Singh was just a cultivator of the land being a member of the Society, whereas, the ownership of the suit property was with the Society.

Still further, it would be apposite to mention that the entries in the jamabandi Ex.P1 of the year 2000-2001 reveal that there is a note to the effect that the land therein, which was in the ownership of the Society could not be sold or mortgaged. Not only this, the mutation proceedings which were filed before the Assistant Commissioner, Ist Grade (hereinafter referred to as 'AC, Ist Grade') by the appellant-plaintiff were dismissed on the ground that ownership of

the suit property vested with the Society and not Sampuran Singh. The order of AC, Ist Grade dated 14.10.2004 was duly proved vide Ex.DW1/4. Though the appeal was preferred by the appellant-plaintiff against the order of AC, Ist Grade, however, it was dismissed right uptil that of the Divisional Commissioner. Since the order of the Commissioner rejecting the appeal, was not impugned, it attained finality.

Section 19 of the Punjab Cooperative Societies Rules 1963 deals with the nomination of heir and it finds explicitly mentioned therein that every member of the Society shall nominate a person to whom his share or interest as referred to, in Section 21 of the Cooperative Societies Act, shall be transferred on his death. Section 21 of the Cooperative Societies Act also deals with the transfer of interest on the death of the members of the Society wherein it has been clarified that on the death of a member of the Cooperative Society, share or interest of the deceased member may be transferred to the nominee of the deceased member in accordance with rules. The evidence on record which was produced during trial substantiates that Sampuran Singh had appointed respondent No.1/defendant No.1-Mukhtiar Kaur as his nominee and not the appellant/plaintiff. Hence, as per Section 21 of the Cooperative Societies Act and the bye-laws of the Society, the interest of the deceased member i.e. Sampuran Singh could have been transferred only in the name of his nominee i.e. defendant No.1-Mukhtiar Kaur. It would not be out of context to observe that respondent No.1-defendant No.1-Mukhtiar Kaur was duly enrolled as a member of the 'Society' vide its resolution dated 14.07.2004 and has

been in possession of the suit land thereafter. Even the application against membership of respondent No.1 moved before the Registrar, Co-operative Societies, was dismissed by the Assistt. Registrar, Co-operative Societies and thereafter, no appeal was filed against that order.

Moreover, Section 55 of the Act, specifically bars the jurisdiction of the Civil Court to entertain disputes pertaining to Co-operative Societies. Still further, the suit of the appellant/plaintiff was also barred by limitation, as it was filed much beyond the specified limitation period of three years from the day i.e. 14.05.2002, when cause of action arose.

Keeping in view the aforesaid facts, this Court expresses its inability to accept the arguments of the learned counsel representing the appellant-plaintiff and does not find any infirmity, much less, illegality in the concurrent findings of fact recorded by both the Courts below.

Accordingly, the instant appeal being devoid of any merit is dismissed.

14.03.2022

Vinay

(MANJARI NEHRU KAUL)

JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No