

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

CR No.1081 of 2021

Date of decision: 6th September, 2022

Gulshan Kumar

... Petitioner

Versus

Thapar Industrial Workers Co-Operative Society Ltd. & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. S.S. Dinarpur, Advocate for the petitioner.

Mr. Manoj K. Pundir, Advocate
for the caveator/respondent No.1.

MANJARI NEHRU KAUL, J.

The petitioner is impugning order dated 08.12.2020 (Annexure P-3) passed by the learned Civil Judge (Junior Division), Yamuna Nagar, whereby application under Order 39 Rules 1 and 2 CPC filed by respondent No.1 was allowed.

Learned counsel for the petitioner/defendant No.5 has submitted that the impugned order on the face of it is contrary to the settled principles of law as the suit itself was not maintainable for the reasons to follow. Firstly, it had been filed by a person who was not competent as admittedly the Managing Committee of the Society had been placed under suspension by the Registrar, Cooperative Societies and in the circumstances, it was only the Administrator of the Society

who could have filed a suit. Secondly, respondent No.1/Cooperative Society had admitted that it had been dispossessed by the petitioner and other defendants, therefore, the suit in question for mandatory injunction was not maintainable and instead a suit for possession would have been the right remedy available to the petitioner.

Learned counsel has further argued that the courts below while granting temporary injunction, primarily placed reliance upon the judgment dated 16.01.2003 arising out of Civil Suit No.409 of 1994, vide which sale deed in favour of Gulzar Singh was set aside. However, both the courts below failed to appreciate the fact that neither the petitioner was a party to the said suit nor the sale deed vide which he had become owner had been set aside. It has been urged by the learned counsel that the respondent/plaintiff had failed to challenge the sale deed dated 17.11.1998 vide which defendant No.5 had inherited his share in the suit property, hence the suit had been filed much beyond the prescribed period of limitation of three years, which in the instant case should have been calculated from the date of registration of sale deed i.e. 17.11.1998.

It has lastly been urged that the construction raised by the petitioner was nearing completion, and even prior to the filing of the suit, a shop already stood constructed over a portion of land which was in the joint ownership of the petitioner. Hence, in the circumstances,

the injunction granted vide impugned order was unreasonable and unjustified. In support, learned counsel placed reliance upon **‘Seenivasan vs. Peter Jebaraj & another’ 2008(12) SCC 316;** **‘Larsen & Toubro Ltd. (M/s) vs. Ashok Sukhija’ 2006(19) RCR (Civil) 786 etc.**

Per contra, learned counsel appearing for the caveator/respondent No.1 has contended that the impugned order had been passed after the courts below had minutely dealt with each and every aspect of the case. He has further submitted that in suit No.409 of 1994 titled as ‘Thapar Industrial Works v. Gulzar Singh’, sale deeds No.3726 dated 28.08.1983; No.6352 dated 13.02.1984; No.7057 dated 30.03.1984 and No.244 dated 12.04.1984 executed in favour of Gulzar Singh were declared null and void. The said suit was not only decreed in favour of respondent No.1 but the above mentioned sale deeds and all other sale deeds subsequent to them were also declared null and void. Hence, it is argued that once the vendor himself had no title over the suit property, then how could he transfer the same in favour of the petitioner. He has thus, urged that the courts below had not erred in any manner whatsoever and had rightly observed that when the foundation of the title itself had been declared void, the petitioner could not claim any rightful title. Learned counsel has also submitted that the malafides of the petitioner were evident from the fact that despite getting the

notice of suit on 06.11.2020 and putting an appearance on 09.11.2020, whereby till that time, only minimal construction had taken place, petitioner continued to raise construction to significant extent over the property in dispute at his own risk.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court would be reluctant to invoke its revisional jurisdiction to set aside concurrent dismissal of an application under Order 39 Rules 1 and 2 CPC unless of course the impugned order has been passed after ignoring the relevant facts and in an arbitrary manner. Still further, Court of superior jurisdiction should not delve into re-appreciation of the material on record when conclusions arrived at by the courts below come across as being reasonably plausible.

The submission of learned counsel for the petitioner that the suit in the present form was not maintainable, does not carry force. The question of the maintainability of the suit cannot be effectively decided while deciding an application under Order 39 Rules 1 and 2 CPC, as at this stage prima facie assessment has to be made qua the material on record.

It is a matter of record that the respondent/Society had filed a Civil Suit No.409 of 1994 titled 'Thapar Industrial Works v. Gulzar Singh', which was decreed in its favour vide judgment and decree

dated 16.01.2003. The respondent Society was declared as owner in possession of the land covered under sale deeds No.6352 dated 13.02.1984; No.7057 dated 30.03.1984; No.3726 dated 26.08.1983 and No.244 dated 12.04.1984, and further the abovementioned sale deeds as well as the subsequent sale deeds based upon the abovementioned sale deeds were declared null and void. It is also a matter of record that the said judgment and decree was not challenged and hence, it attained finality.

The petitioner is claiming his ownership through sale deed dated 17.11.1998, however, this sale deed was executed and registered in pursuance of sale deed bearing No.6352 dated 13.02.1984, which was declared null and void vide judgment and decree dated 16.01.2003. Therefore, the courts below did not err in any manner by observing that once the basic foundation of the title had been declared null and void, then subsequent owners would also prima facie have no rightful title. Further, merely because the petitioner has raised construction, it cannot be a ground to set aside the impugned orders.

In the aforementioned facts and circumstances, the courts below cannot be faulted with for recording the aforesaid findings in view of the material placed on record. Furthermore, it goes without saying that the petitioner would get ample opportunity in the suit to

rebut the case of the respondent Society and prove his title when evidence is led by the parties.

The case laws relied upon by the learned counsel for the petitioner would not come to his rescue as in the facts and circumstances of the instant suit, the findings of the courts below do not suffer from any material irregularity much less perversity.

As a sequel to the above, no error has been committed by the courts below while passing the impugned order. The revision petition being devoid of any merit is dismissed. However, nothing contained hereinabove shall be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

September 6, 2022
rps

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