

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

**RSA-5029-2019 (O&M)
Date of decision: 20.09.2022**

M.R. Gupta and others

....Appellants

Vs.

The Luxmi Cooperative Group Housing Society Ltd. and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

**Present: Mr. Vaneet Soni, Advocate
for the appellants.**

**Mr. Aayush Gupta, Advocate
for respondent No.1.**

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this appeal is for setting aside the judgment and decree dated 16.08.2019 passed by the lower appellate Court, vide which, while allowing an appeal filed by respondent No.1-plaintiff, the order dated 28.04.2014 passed by the trial Court, rejecting the plaint, was set aside.

The question of law, involved in this appeal, is whether in view of Section 102 read with Section 128 of the Haryana Cooperative Societies

Act, 1984 (for short 'the Act'), the jurisdiction of the Civil Court is barred?

Learned counsel for the appellants has argued that in a suit filed by respondent No.1-plaintiff/Society, prayer is to grant a decree of mandatory injunction directing defendant No.1 to hand over the complete documents with a consequential relief of declaration that conveyance deed in favour of defendants No.1 to 3 is illegal and liable to be set aside. It is further submitted that the appellants filed an application under Order 7 Rule 11 CPC for rejection of the plaint, as in terms of Section 102 of the Act, jurisdiction of the Civil Court is barred. The trial Court allowed the application, however, in appeal, the order was set aside vide impugned judgment and decree.

In this regard, learned counsel has relied upon a judgment of this Court passed in **CWP-10560-2012 (Lakhmi Chand Vs. Financial Commissioner and Principal Secretary to Govt. of Haryana, Cooperation Department, Chandigarh)**, decided on 29.05.2012, wherein, with regard a dispute decided by the Arbitrator under Section 102 of the Act, this Court held that the disputed question cannot be raised in the writ jurisdiction.

Learned counsel has also relied upon an order dated 11.12.2014 passed in **CR-5838-2013 (Primary Cooperative Agricultural Rural Development Bank Ltd. Vs. Karnail Singh)**, in which again the question was whether the Civil Court has jurisdiction in view of provisions of

Sections 102 & 128 of the Act and this Court observed that since the dispute is with regard to allotment of the share, the Civil Court will have no jurisdiction.

In reply, learned counsel for respondent No.1-plaintiff has referred to para No.5 of the plaint, in which a specific plea has been taken that the conveyance deed, which was prepared by defendants No.2 & 3, is in fact in collusion with defendant No.1 M.R. Gupta and documents like possession letter and NOC in favour of defendant No.2 were fraudulently forged and fabricated by all the defendants with common intention to cheat the plaintiff-Society. It is further submitted that since the suit is filed challenging the action of the defendants on the basis of fraud, therefore, the Civil Court will have jurisdiction. Learned counsel has relied upon judgments of this Court in **Jairveer Vs. Balraj and another, 2015 (9) RCR (Civil) 68** and **The Primary Cooperative Agri. and Dev. Bank Ltd. and others Vs. Smt. Rama Rani, 2018 (4) PLR 467**, wherein, while dealing with the question of rejection of plaint under Order 7 Rule 11 CPC, this Court held that when a suit is filed on the ground of fraud and misrepresentation, jurisdiction of the Civil Court is not barred under Section 128 of the Act.

After hearing the counsel for the parties, I find no merit in the present appeal, for the following reasons: -

- (a) Though the trial Court allowed the application, however, the

lower appellate Court recorded a finding that since in the civil suit, there is pleading of fraud with regard to execution of the conveyance deed, on the basis of certain documents, which were prepared by the defendants in collusion with each other, therefore, the Civil Court will have jurisdiction and the plaint is not liable to be rejected under Order 7 Rule 11 CPC.

- (b) The lower appellate Court also recorded a finding that Section 102 read with Sections 128 & 130 of the Act deals with reference of the dispute to an Arbitrator and regarding bar of jurisdiction of the Courts, however, nothing is stated under Section 128 of the Act that jurisdiction of the Civil Court will be barred, if a suit is filed on the basis of fraud.
- (c) There is no dispute with regard to judgments relied upon by learned counsel for the petitioner. The judgment in **Lakhmi Chand's** case (supra) is not relevant to facts of the present case, as it was a case arising out of arbitration dispute, in which this Court held that writ jurisdiction cannot be invoked on disputed facts. In **Karnail Singh's** case (supra), again this Court held that in the suit, there is no pleading of fraud, therefore, the plaint is liable to be rejected. However, to the contrary, this Court finds that judgments in **Jairveer's** case (supra) and **Smt. Rama Rani's** case (supra) are directly

applicable to facts of the present case.

- (d) Needless to say that at the stage of deciding the application under Order 7 Rule 11 CPC, the Court is primarily to see the pleadings in the plaint or the documents attached with the plaint. In para No.5 of the plaint, it is specifically pleaded that conveyance deed has been executed in favour of defendant No.2 by playing fraud. Therefore, question of law is decided in favour of respondent No.1-plaintiff.

In view of the reasons recorded above, finding no illegality or infirmity with the impugned judgment and decree passed by the lower appellate Court, present appeal is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

20.09.2022

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Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No