

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.671 of 2019

In

Civil Writ Jurisdiction Case No.17984 of 2015

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Ajit Kumar Son of Late Ram Kishore Lal R/o Mohalla-Raipura, P.O. and P.S.-
Fatuha, District-Patna, presently residing at C/o Sri Vineet Kumar, Flat No. J-
938, Gaur Sports Wood, Sector-79, Noida-201301.

... .. Appellant/s

Versus

1. The State of Bihar through Secretary, Co-operative Department, Bihar, Patna
2. Registrar, Co-operative Societies, Bihar, Patna
3. Deputy Registrar, Co-operative Societies, Patna Division, Patna
4. Alok Sahkari Grih Nirman Samiti Limited having its office at New A.G.
Colony, West of Saguna More, Khagaul Road, P.S.-Danapur, District-Patna
through its Honorary Secretary
5. Janki Raman Nidhi S/o Late Madhusudan Nidhi R/o Mohalla-New A.G.
Colony, Saguna, Khagaul Road, P.S.-Danapur, District-Patna
6. Narendra Kumar Singh Former Secretary, Alok Sahkari Grih Nirman Samiti
Limited, R/o Mohalla-New A.G. Colony, Saguna, Khagaul Road, P.S.-
Danapur, District-Patna
7. Anil Kumar Singh, Former Secretary, Alok Sahkari Grih Nirman Samiti
Limited, R/o Mohalla-A.G. Colony, Saguna, Khagaul Road, P.S.-Danapur,
District-Patna at present post as AAO, Pension VII, Office the Accountant
General (A and E), Birchand Patel Path, Patna

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Arvind Kumar Jha, Advocate
For the Respondent-State:		Mr. A.K.Dubey, A.C. to AAG-11
For the Respondent no.5 :		Mr. Rakesh Kumar Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 11-07-2023

1. Heard Mr. Ramakant Sharma, learned Senior
counsel assisted by Mr. Arvind Kumar Jha, learned counsel for
the appellant, Mr. A.K.Dubey, learned Assistant Counsel to



Additional Advocate General no.11 for the State of Bihar and Mr. Rakesh Kumar Jha, learned counsel for the respondent no.5.

2. The instant appeal has been preferred against the judgment dated 30.4.2019 passed in CWJC no.17984 of 2015.

3. The case of the appellant in brief is that the Managing Committee of the Alok Sahkari Grih Nirman Samiti Limited ('the Samiti' in short) allotted a piece of land bearing Plot no.21A measuring an area of 4000 sq. ft. in favour of the appellant. As directed, the appellant deposited a sum of Rs.1,10,000/ in UCO Bank, Birchand Patel Path and on the said deposit, the allotment was confirmed. As per the appellant's case, he was posted at Ranchi but was regularly pursuing the Samiti to execute a registered deed in his favour with respect to the land in question.

4. It is further case of the appellant that subsequently the respondent nos.5 and 6 became the President and Secretary of the Samiti and the respondent no.5 got a registered sale deed executed in his favour with respect to the plot in question. He hurriedly constructed a building thereon. The appellant on learning about the above, filed Dispute Case no.18/2009 wherein order dated 6.10.2010/27.11.2010 was passed. The said order was challenged before the Registrar, Co-



operative Societies in Misc. Appeal no.9/2011. The Registrar, Co-operative Societies by order dated 2.7.2015/21.8.2015, in terms of section 48(8) of the Bihar Co-operative Societies Act, 1935 ('the Act' in short) referred the dispute to the District Judge in view of the fact that the subject matter of the lis relates to allotment of plot as also the execution and registration of the sale deed of the same and thus it involved a question of right, title and interest which was beyond his competence. This order dated 2.7.2015/21.8.2015 passed in Misc. Appeal no.9/2011 by the Registrar, Co-operative Societies was challenged by the appellant by filing CWJC no.17984 of 2015.

5. A counter affidavit was filed on behalf of Registrar, Co-operative Societies, Bihar in the writ application. By order dated 30.4.2019, the learned Single Judge finding no merit in the writ application was pleased to dismiss the same.

6. Learned Senior counsel appearing for the appellant submitted that the sale deed executed in favour of respondent no.5 with respect to the plot in question which was originally allotted to the appellant, was void ab initio. The Registrar, Co-operative Societies under the Act was himself competent to decide the matter in issue. He should have decided the appeal on merits and not referred the same to the District



Judge, Patna. The Registrar committed an error in referring the matter to the District Judge in terms of section 48(8) of the Act and further the learned Single Judge erred in not appreciating the points raised by the appellant and dismissed the writ application.

7. The submissions made on behalf of the appellant were opposed by learned counsel appearing for the respondents. It was submitted by learned counsel appearing for the respondent no.5 that the land in question was rightly allotted to the respondent no.5 for which the registered sale deed was executed on 20.7.2002. The respondent no.5 has constructed a residential house thereon and is residing therein for the last nearly 20 years. It was submitted that there is no merit in the instant appeal and the same be dismissed.

8. Having heard learned counsel for the parties, the relevant facts as per the appellant's case are that he was allotted a plot bearing Plot no.21A measuring an area of 4000 sq. ft. by the Managing Committee of the Samiti. As directed, he deposited a sum of Rs.1,10,000/ on 20.2.1992 and further a sum of Rs.1,000/ for demarcation and putting up of pillars. In spite of his request to the Samiti to execute a registered deed in his favour with respect to the plot in question, the same was not



executed. On the respondent nos.5 and 6 becoming the President and Secretary of the Samiti, a registered sale deed was executed in favour of respondent no.5 with respect to the plot in question. The registered sale deed has been brought on record as Annexure-3 to the writ application.

9. It further transpires that the appellant raised a dispute which was numbered as Dispute Case no.18/2009 which was allowed with certain directions as contained in order dated 6.10.2010/27.11.2010. The respondent nos.5 and 6 challenged the said order by filing a miscellaneous appeal before the Registrar, Co-operative Societies which was registered as Misc. Appeal no.9/2011. In terms of section 48(8) of the Bihar Societies Act, 1935, by order dated 2.7.2015/21.8.2015, the Registrar, Co-operative Societies referred the matter to the District Judge, Patna. It is this order passed by the Registrar, Co-operative Societies which was challenged by the appellant in the writ application and the same having been dismissed, the instant appeal has been filed.

10. At this stage, it may be relevant to point out that the fact of a registered sale deed having been executed as far back as on 20.7.2002 in favour of the respondent no.5 is not in dispute. Also not in dispute is the fact that the respondent no.5



has constructed a residential house and is living thereon for the last almost 20 years.

11. So far as the Bihar Co-operative Societies Act, 1935 is concerned, section 48 thereof deals with disputes. Section 48(1) provides that if any dispute touching the business of a registered society arises amongst person mentioned therein, such dispute shall be referred to the Registrar. Section 48(8) of the Act further provides that the Registrar may where it appears to him advisable, either on an application or of his own motion, refer the case to the District Judge for decision and whose decision shall be final. It is in exercise of this power as provided under section 48(8) of the Act that the order impugned in the writ application was passed by the Registrar.

12. It may be mentioned here that learned Single Judge in considering the case of the parties placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Gorakhnath Dube vs. Hari Narain Singh, AIR 1973 SC 2451**, paragraph no.5 of which is quoted herein below for ready reference:

“The existence and quantum of rights claimed or denied will have to be declared by consolidation authorities which would be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to



adjudicate upon such rights and interests in land, to declare such documents effective or ineffective, but, where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it. In the case before us, the plaintiff's claim is that the sale of his half share by his uncle was invalid, inoperative, and void, such a claim could be adjudicated upon by consolidation courts. We find ourselves in agreement with the view expressed by the Division Bench of the Allahabad High Court in Jagarnath Shukla's case, 1969 All LJ 768 (supra), that it is the substance of the claim and not its form which is decisive.”(emphasis supplied)

13. In view of the above decision of the Hon'ble Supreme Court and undisputedly a registered sale deed dated 20.7.2002 executed in favour of respondent no.5 with respect to the plot in question being in existence, the only recourse available to the appellant is for getting the registered sale deed set aside by a Civil Court of competent jurisdiction and for this reason, the Court finds that the action of the Registrar, Co-operative Societies in referring the case/dispute under section 48(8) of the Act to the District Judge, Patna to be just, proper



and in accordance with law.

14. In the opinion of this Court, the appellant has not made out any case for interference in the order of the learned Single Judge. There being no merit in the instant appeal, the same is dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Saurabh/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.07.2023
Transmission Date	

