

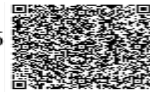
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****116****RSA-963-2022 (O&M)****Date of decision: 23.07.2025****Mukesh Kumar****...Appellant(s)****Vs.****Monika****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Raman Chawla, Advocate for the appellant.

NIDHI GUPTA, J.

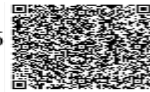
The plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned Courts below whereby the suit for possession filed by the appellant, has been dismissed by both Courts below.

2. It is the pleaded case of the appellant/plaintiff that the plaintiff had purchased a plot No. 747 measuring 160 sq. yards situated at Tara Nagar, behind Sector 9-11 at Hisar (hereinafter referred to as "Suit Property") carved out by Virat Cooperative House Building Society Ltd. Hisar from Ajay Kumar vide membership No. 3947/4 dated 06.06.2017 and ownership certificate-cum-allotment letter issued by Virat Co-operative House Building Society Ltd. Hisar. Defendant was already residing in the said house and requested the plaintiff to give the said house on license for three months with the promise that she will vacate the same on 31.08.2017. Plaintiff accepted the said request, however,



after expiry of said period, defendant had not vacated the house in dispute despite notice dated 03.10.2017. Hence, the present suit had been filed on 23.10.2017 for possession and mesne profits @ 10,000/- per month.

3. Upon notice, defendant had appeared and filed written statement resisting the suit stating therein that the plaintiff had filed the present suit in collusion with Sumer Singh, Ajay Kumar and President/ Secretary of Virat Co-operative House Building Society Ltd. Hisar to grab the house in question without any right. It was pleaded that the defendant is owner in possession of the suit house since 18.12.2012 (wrongly typed as 18.10.2012) as she purchased the same as vacant plot on 18.12.2012 and raised construction thereupon in 2016; and since then, she is residing there with her family. It was further stated that Sumer Singh who was known to the defendant, had borrowed Rs.24-25 lacs on different occasions vide written receipts and had obtained signatures of the defendant on blank printed forms and papers in good faith. The said Sumer Singh had not returned the money of the defendant. However, Sumer Singh had issued a cheque for an amount of Rs.24 lacs which was dishonoured, and the defendant had initiated proceedings under Section 138 of Negotiable Instruments Act against him. It was contended that in order to take revenge of the above complaint, that the present suit came to be filed on 23.10.2017 by the plaintiff in collusion with Sumer Singh and Ajay Kumar by misusing the blank signed papers given by the defendant.



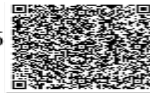
Defendant came to know about the said fraud when she received notice of the present suit. Accordingly, dismissal of the suit was prayed for.

4. On the basis of the pleadings of the parties, the learned trial Court framed the following issues on 08.03.2018: -

- “1. Whether the plaintiffs are entitled for decree of possession of residential house mentioned in the plaint and mesne profits, as prayed for? OPP*
- 2. Whether suit of the plaintiff is not maintainable in the present form? OPD*
- 3. Whether the plaintiff has no cause of action or no locus standi to file the present suit? OPD*
- 4. Whether plaintiff is estopped by his own act and conduct? OPD*
- 5. Whether plaintiff has not come to the Court with clean hands? OPD*
- 6. Whether suit of the plaintiff is bad for want of proper court fee? OPD*
- 7. Relief.”*

5. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court vide judgment and decree dated 17.08.2019, dismissed the suit of the plaintiff. Appeal filed by the plaintiff was also dismissed with costs by the learned Additional District Judge Hisar vide judgment and decree dated 28.09.2021. Hence, the present Second Appeal by the appellant/plaintiff.

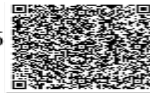
6. It is *inter alia* submitted by learned counsel for the plaintiff that it is an admitted fact on record that plaintiff was a member of the said Building Society vide membership No. 3947/4. The plaintiff had paid good money for the allotment of the said plot. In passing the impugned



judgments, the Ld. Courts below has not considered the document Ex. P-1 and P-2. The ownership of the plaintiff is borne out from the allotment letter Ex.P1. As per Ex.P-2, the plot measuring 160 Sq. Yards having dimension 24x60 was allotted to Sh. Ajay Kumar vide membership No. 3947/3 and certificate with regard allotment was issued on 02.04.2016. Thereafter, the competent person Ajay Kumar had sold the plot to present appellant on 06.06.2017 vide membership Number 3947/4. It was specific term and condition in column-5 that the transferee shall be absolute owner and in possession of the land allotted to him.

7. It is further submitted that the learned Courts below failed to appreciate the evidence produced by PW-2 who came from the side of Society and reiterated the same version and condition of para No. 5 & 6 of allotment and relying on the same the register of the Society was also attached and proved before the Ld. Trial Court as Ex. P-11. But these aspects of the matter have not been considered by both the Ld. Courts while giving the finding in the present case.

8. It is submitted that defendant is in illegal possession of the suit property, and, therefore, she is liable to pay mesne profits @ Rs.10,000/- p.m. from the date of filing of the present suit till its vacation for use and occupation by the appellant. The learned Courts below were in error in rejecting the said allotment letter being an unregistered document without appreciating that as the same was issued by the Building Society, and was not required to be registered. It is accordingly prayed that the present

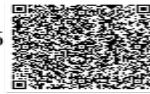


Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

9. No other argument is raised on behalf of the appellant/plaintiff.

10. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellant. Despite repeated Court queries as to the sale amount paid by the appellant for purchase/allotment of the suit property by the Building Society to the plaintiff, learned counsel for the appellant has no information. Learned counsel is also unable to inform the mode of payment; or on what date payment was made, in what manner, and at what place. As such, no information whatsoever is forthcoming from the plaintiff regarding the alleged payment made by him upon which allotment letter was issued to him. This itself casts a shadow of doubt on the alleged ownership of the plaintiff over the suit property.

11. Furthermore, as per the evidence on record, the plaintiff has failed to prove his title over the suit property. In attempting to do so, plaintiff has placed great reliance upon the allotment letter (Ex.P1) issued by the Building Society. However, admittedly the said letter is an unregistered document. As noted above, when confronted with this fact, learned counsel for the plaintiff has stated that since the said letter was issued by the Building Society, it was not required to be registered. However, the said argument of the plaintiff appears to be faulty and legally unsound. It is established position in law that the property having value of



more than Rs.100/- can be transferred only by way of registered document. Even otherwise, no right of title is transferred to the plaintiff as Ex.P1 is merely a letter of allotment.

12. Furthermore, I find no error in the impugned judgments and decrees for non-suiting the plaintiff also on the ground of non-joinder of necessary parties. Keeping in view the facts and nature of the dispute as noted above, it was necessary for the plaintiff to implead Virat Co-operative House Building Society Ltd. Hisar as a party-respondent especially when it is claimed by the plaintiff that the plot was allotted by the Building Society. Even the plaintiff has failed to mention the exact description of the suit property i.e. the khasra No. or the dimensions. As such, in fact suit property cannot even be identified. Plaintiff has also failed to produce any revenue record or any other document of title in his favour or in favour of Virat Co-operative House Building Society Ltd. Hisar to prove their ownership over the suit property.

13. On the other hand, defendant had purchased the plot in the year 2012 and had constructed a house upon it. Needless to say, the said house can be sold only by way of Sale Deed. I find no error in the reasoning of the learned Courts below that merely by showing the letter of membership of one Society, plaintiff cannot claim ownership over the plot No. 747.

14. It was also pleaded by the plaintiff that the defendant had transferred the suit property to Ajay Kumar. However, plaintiff has not even examined Ajay Kumar to prove that he had purchased the suit house from



the defendant after making payment of sale consideration. Even no document of sale was produced by the plaintiff. Merely on the basis of a membership certificate and allotment letter, it cannot be held that the plaintiff was owner of the suit house. The said documents are not sufficient to prove transfer of ownership. On the other hand, admittedly, defendant is residing in the said house with her family. As such, it is clear that the plaintiff has been unable to prove any title to the suit property.

15. In view of the above, I find no ground is made out to interfere in the concurrent findings of learned Courts below.

16. The present Regular Second Appeal is hereby **dismissed**.

17. Pending applications, if any, stand disposed of.

23.07.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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