

(1996) 07 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2690 of 1989

Jangir Singh

APPELLANT

Vs

The Bhaika Bag Co-operative Society Limited

RESPONDENT

Date of Decision : 29-07-1996

Acts Referred:

Citation : (1996) 114 PLR 571

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : A.S. Cheema and Ranjit Kaur, for the Appellant; T.S. Mangat and Nirmaljit Kaur, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—This judgment shall dispose of Regular Second Appeal Nos. 2690 and 2624 of 1989 as similar question of law and fact arise in both these appeals. The relevant facts are being taken from RSA No. 2690 of 1989.

2. Bhaika Bag Co-operative Society Limited, Dial Pura Bhaika (for short "the Society") filed a suit for possession of land measuring 32 Kanals as detailed in the head note of the plaint against Jangir Singh-the present appellant. This suit was filed by Pal Singh, a member of the society, who was duly authorised by the resolution of the managing committee of the society.

3. The defendant resisted the claim on a number of grounds. It is the case of the defendant that Pal Singh was not a member of the society and so had no right to file the present suit. It has further been stated that the suit property was purchased by the defendant and so in possession of the same as owner. Other objections regarding maintainability of suit; suit being bad for non-joinder of necessary parties; it being barred by limitation etc. were raised.

4. On the pleadings of the parties, a number of issues were framed relating to the authority of Pal Singh to institute the suit; defendant having become owner by adverse possession; and as to whether plaintiff society is owner of the

disputed property.

5. The trial Court on the basis of evidence finally came to the conclusion that the suit merits to be decreed. Accordingly, the suit of the plaintiff was decreed.

6. Feeling dissatisfied with the judgment and decree of the trial Court, defendant filed appeal which also met the same fate.

7. Challenging the concurrent findings recorded by the two courts below, learned counsel for the appellant termed these to be unwarranted on proved facts on record and otherwise also vitiated being contrary to statutory provisions. According to the counsel, Pal Singh who filed suit on behalf of the plaintiff-society was not validly authorised. Original resolution has not been produced in the Court. It has also not come on record as to whether Pal Singh was member of the society. Not only this, copy of resolution Exhibit P-I does not record the presence of members and signatures to the alleged resolution. According to the counsel, there has been non-compliance of Section 36 of the Punjab Co-operative Societies Act, 1961 (for short "the Act") and Rule 30 of the Punjab Co-operative Societies Rules 1963 (for short "the Rules") and so both the judgments of the Courts below deserves to be reserved. Reliance has been placed upon the decision of this Court in case reported as Surjit Singh v. The Dialpura Bhaika Co-operative Agricultural Service Society Ltd. Dialpura Bhaika 1984 P.L.J. 554.

8. Counsel for the respondent, on the other hand, argued that the Courts below on perusal of evidence adduced by the parties have come to the conclusion that the suit had been filed by a duly authorised person and so the same cannot be a matter of adjudication in the Regular Second Appeal. According to the counsel, there is ample evidence on record to prove (which has also been accepted by the Courts below) that the suit land is owned by the plaintiff society; whereas the possession of the defendant is unauthorised.. According to the counsel, neither Section 36 of the Act nor Rule 30 of the Rules is, in fact, applicable in the instant case. Vide unanimous resolution of the managing committee, Pal Singh was authorised to file the suit on behalf of the society. Certified copy of resolution placed on record, records this fact. The counsel further argued that the judgment relied upon by the counsel for the appellant, in fact, supports the case of the respondent-plaintiff and so he too relies upon the judgment cited.

9. I have heard learned counsel for the parties as well as perused the judgments. of the courts below and other documents referred to by them during their submissions. Main challenge is to the authority of Pal Singh to institute the suit i.e. whether Pal Singh had been validly authorised to file the present suit or not. The plaintiff with a view to prove this issue has adduced in evidence copy of the resolution passed by the managing committee of the society. This document is Exhibit P-I. Admittedly, no objection was raised with regard to reception of this document by the defendant. Resolution Exhibit P-I bears the signatures of the Chairman of the society. In the body of the document it has been stated that it has been unanimously resolved to appoint Sh. Pal Singh, a member of the

society, authorising him to file the present suit. Whether such like resolution has to conform with the provisions of Section 36 of the Act and Rule 30 of the Rules before a copy of such a resolution is admissible in evidence is the sole question which has been strenuously urged. According to the counsel for the appellant, unless the copy of resolution is duly certified in the manner prescribed, the same could not be received in evidence and in the instant case there has been non-compliance of Rule 30 of the Rules.

10. On considering the matter and especially in view of the earlier decision of this Court in Surjit Singh's case (supra), I have no hesitation in holding that Section 36 of the Act along with Rule 30 of the Rules are, in fact, not applicable. A perusal of Section 36 of the Act makes it abundantly clear that the same pertains to a copy of entry in a book of co-operative society regularly kept in due course of its business. It is only in such a case when copy from such a book is to be produced, the same has to be certified in the manner as prescribed and thereafter to become admissible in evidence.

11. This Court in Surjit Singh's case (supra) examined the applicability of Section 36 of the Act and Rule 30 of the Rules and held that passing of a resolution by the managing committee authorising a person to institute suit or proceedings on behalf of the society in a court of law is not a matter which would come within the meaning of "keeping books of a co-operative society regularly in the course of its business" and so the resolution passed by the managing committee authorising Pal Singh to institute the suit, without there being evidence that no such resolution is passed, is per se admissible and the Courts below rightly held it so.

12. Counsel for the appellant also argued that since Pal Singh was not a member of the society, Managing Committee could not authorise an outsider to institute the suit. Both the Courts on appreciation of evidence have come to the conclusion that Pal Singh was a member of the society. The matter can be examined from another angle also. As per Bye-Law 20(14) of the Bhayeeka Bagh Co-operative Society Limited, Dialpura Bhayeeka, Managing Committee can authorise any member or officer or employee of the society or any other person specially authorised to institute, conduct, defend, compromise etc. So even this objection of the appellant is without any merit.

13. Thus finding no merit in the appeals, the same are dismissed. No order as to costs.