(2013) 09 P&H CK 0331

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 122 of 2013 (O and M)

Roshan Lal	APPELLANT
Vs	
Additional Registrar, Co-operative Societies (Credit) Exercising The Powers of Registrar of The State of Punjab and Others	RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Citation : (2014) 174 PLR 260

Hon'ble Judges : Jaspal Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Judgement

Ajay Kumar Mittal, J.—The appellant has filed the present Letters Patent Appeal against the judgment dated 25.9.2012 passed by learned Single-Judge whereby the writ petition filed by him has been dismissed. A few facts relevant for the decision of the controversy involved, as available on the record, may be noticed. Respondent No. 4-The Legragaga Cooperative Land Owing Society Limited (in short, "the Society") was established in the year 1960 and land was got purchased by the said society. Initially, the land was not very cultivable and 17 members were there to contribute towards the price of the land and the labour to make the said land cultivable. One Munshi Ram was enrolled as member of the said society and he mentioned one Nek Singh as his nominee. Since Munshi Ram was not in a position to contribute towards the price of the land and other expenses, he agreed to put Jethu Ram, father of the appellant as member of the society in his place and a resolution was passed in this regard on 9.1.1960. Since then Jethu Ram was continuously shown as such in the record of the society. In the share register of the society, it was shown that Munshi Ram''s share had been transferred to Jethu Ram. According to the appellant, Jethu Ram was allotted about one acre of land vide resolution dated 15.7.1963 and he continued to cultivate the said land and Munshi Ram never raised any dispute during his life time till his death in the year 1992. Jethu Ram after 1960 continued to make payments towards installments and other dues to the society and he remained active member of the society till his death in the year 1984. He was even elected as Treasurer of the society in the year 1973. After the death of Jethu Ram, his son Roshan Lal came in possession of the property in dispute being his nominee and legal representative. He was also enrolled as member of the society by resolution dated 13.2.1995. Against the said resolution, no dispute was ever raised by any person. Thereafter, Smt. Beero-respondent No. 5 (since deceased-now represented by her legal representatives) alleging herself to be the daughter of Munshi Ram filed a civil suit at Sunam alleging that she was entitled to become member of the society in place of Munshi Ram. The said suit was dismissed on 7.5.1998 and the appeal filed by her was also dismissed by the District Judge, Sangrur on 10.6.1992. Thereafter, respondent No. 5 moved an application for change of Khasra girdawari and also for becoming member of the society. The said application moved before Naib Tehsildar, Lehgragaga was later on transferred to the Assistant Registrar, Cooperative Societies, Lehragaga to give a finding as to who was entitled to become member in place of Munshi Ram. Vide order dated 15.12.1986, the application was allowed by the Assistant Registrar. The appellant filed appeal against the said order which was declined by the Deputy Registrar, Cooperative Societies, Sunam on 30.5.1989. The appeal filed before the Joint Register, Cooperative Societies, was also declined vide order dated 25.9.1989. Still not satisfied, the appellant filed revision petition before the Additional Registrar, Co-operative Societies (Credit), Punjab, who allowed the same vide his order dated 5.4.1991 and gave a direction to the Assistant Registrar, Cooperative Societies, Sunam to hear the matter afresh. The matter was again heard by the Assistant Registrar, Cooperative Societies, Sunam. Vide order dated 24.5.1999, it was held that Munshi Ram was the original member of the society and the resolution passed in favour of Jethu Ram on 9.1.1960 was not correct. It was further ordered that Smt. Beero was entitled to become member in place of Munshi Ram. The appellant filed appeal against the said order which was dismissed by the Deputy Registrar, Cooperative Societies, Sunam on 22.10.1999. Dissatisfied with the order, the appellant filed revision petition before respondent No. 1, who dismissed the same vide order dated 3.8.2000. Aggrieved by the order, the appellant filed writ petition in this Court. The writ petition was contested by the respondents by filing separate written statements controverting the averments made therein. Vide order dated 25.9.2012, impugned herein, the learned Single Judge dismissed the petition Hence the present Letters Patent Appeal.

2. Learned counsel for the appellant submitted that the land was allotted to Munshi Ram on 9.1.1960 which was transferred in the name of Jethu Ram, father of the appellant on 15.7.1963. The land in dispute was sought to be transferred to the appellant on the demise of his father Jethu Ram. The society respondent No. 4 declined the same on the ground that the resolution No. 60 by virtue of which the land was transferred in the name of the father of the appellant, was forged and fabricated document and, thus, no valid title passed on to Jethu Ram. Learned counsel further submitted that the appellant would not have known

whether the resolution by virtue of which property was transferred to his father Jethu Ram was manipulated. Furthermore, it was submitted that the said resolution should have been set aside within reasonable time and the same having not been done, the property in dispute could not be taken away by annulling the said resolution. Reliance was placed on the judgments in Er. Darshan Singh Bhullar v. Punjab State Electricity Board 2011(3) S.L.R. 287, Balwinder Singh v. Punjab State Electricity Board and another, 2011(4) S.L.R. 732 and State of Madhya Pradesh Vs. Bhailal Bhai and Others, .

3. We have heard learned counsel for the appellant and perused the record.

4. Learned Single Judge while dismissing the writ petition had noticed that it was a result of fraud and manipulation that the predecessor-in-interest of the appellant, Jethu Ram had claimed the ownership of the property which would not give any substantive right to the party. The resolution by virtue of which property was sought to be transferred on 15.7.1963 in favour of Jethu Ram, father of the appellant was not a genuine resolution and thus, could not be legally acted upon. Once that was so, it cannot be said that the authorities below and the learned Single Judge were in error in dismissing the petition.

5. Adverting to the judgments relied upon by learned counsel for the appellant, it may be noticed that in Er. Darshan Singh Bhutlar''s case (supra), the appeal of the appellant was dismissed on the ground of delay and laches. It was held that the appellant should have approached the court within reasonable time not exceeding three years from the date cause of action had arisen to him. It was further held that in the writ proceedings also, the period of limitation could not be more than the period prescribed for filing a civil suit. In Balwinder Singh''s case (supra), it was recorded by this Court that if an order passed by the public authority had not been challenged in a writ petition within a period prescribed for filing of suit, the principles of limitation would apply. In Bhailal Bhai''s case (supra), it was observed by the Apex Court as under:--

21.....It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956 the delay in making these applications should be considered unreasonable...

6. None of the aforesaid pronouncements were relating to cases where fraud had been practiced claiming legal right. A Division Bench of this Court in Natha Singh v. The Financial Commissioner, Haryana and others, 1982 Current Law Journal

526 had held that no length of period that may elapse would improve the situation where fraud is the foundation of any right as fraud vitiates everything from the very inception. Similar view had been taken in Jasbir Singh and Another Vs. Financial Commissioner (Co-operation), Punjab, Chandigarh and Others Thus, no advantage can be derived by the appellant from the judgments relied upon by learned counsel for the appellant.

7. In view of the above, we do not find any ground to interfere with the judgment passed by learned Single Judge. Consequently, the appeal is dismissed.

8. Before parting, it may be noticed that an application under order 41 Rule 27 read with section 151 of the CPC being C.M. No. 3642-LPA of 2013 has been filed by the appellant alongwith an affidavit for placing on record additional evidence in the form of ledger Khata of all the 23 members of the society, audit report for the cooperative years 1.7.1961 to 30.6.1962 and the cash book dated 21.4.1957 showing the share money and admission fee of the members of the society, Annexures A.1 to A.3 respectively, to show that the amount was paid by the father of the appellant. In view of the conclusion which we have arrived that no substantive right had accrued in favour of the father of the appellant and as a consequence to the appellant, the question of deposit of any amount would not confer any legal right. Therefore, these documents cannot be allowed to be taken into consideration. Consequently, the application is dismissed.