
(1999) 03 P&H CK 0095

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 4274 of 1997

Shamshad Shafi and Others

APPELLANT

Vs

Sale Officer and Another

RESPONDENT

Date of Decision : 11-03-1999

Acts Referred:

Citation : (1999) 123 PLR 70 : (1999) 2 RCR(Civil) 314

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : B.S. Khoji, for the Appellant; Sanjiv Walia, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—Shamshad Safi and others filed a suit against the defendants for permanent injunction restraining them from auctioning the land, subject matter of the suit. According to the plaintiffs, their grand father Mohd. Sadiq was the owner of the property and during his life time, he had gifted the same by means of oral gift in November 1992 and thereupon the possession of the land was handed over to the plaintiffs and mutation was recorded in their favour on the basis of the gift deed. However, when they Obtained copy of the jamabandi, they came to know that the land in dispute has been shown to be attached by the defendant society on the basis that some loan was taken by Mohd. Sadiq. They pleaded that no loan was taken and the order of attachment and the alleged auction held on 7.1.2.1995 was illegal and void and prayed that they should not be dispossessed from the land in question. The suit was contested by the defendants, who pleaded that no gift deed, as alleged, was executed. In fact this is an instrument which has been created to defeat the interest of the defendant society, from whom the loan was taken by Mohd. Sadiq and there was an award to the extent of Rs. 3,73,383/- and as such in furtherance to the recovery certificate they had attached the property which was validly auctioned on 15.12.1995. Ownership of the plaintiffs was denied. It was stated that the suit was bad for non-service of notice u/s 79 of the Cooperative

Societies Act and jurisdiction of the civil court was stated to be barred u/s 82 of that Act. Application filed under Order 39 Rule 1 and 2 of the CPC was allowed by the learned trial Court vide its order dated 14.12.1995 and restrained the respondents (defendants in the suit) from auctioning the said property. Being aggrieved from the said order, an appeal was preferred by the society. Learned Additional District Judge, Sangrur, vide its judgment dated 5.8.1997, accepted the appeal and while vacating the injunction granted by the learned trial Court dismissed the injunction application of the plaintiffs.

2. Aggrieved from the judgment of the learned first appellate Court, the plaintiffs (petitioners herein) filed the present revision petition. The learned counsel appearing for the petitioners, while relying upon the judgment of this Court in the case of Santosh Kumar Vs. Bhai Mool Singh, , argued that the impugned order is liable to be set aside and the plaintiffs/petitioners herein, are entitled to the injunction, as action has not been taken by the competent officer.

3. At the stage of considering an application for injunction, the Court has to balance the equities between the parties but the applicant must satisfy the basic three ingredients for seeking such a relief. There should be a prima facie case in favour of the plaintiffs, balance of convenience should be in their favour and the suit apparently should not be barred under any law. In the present case, the revenue record does not support the case of the plaintiffs at this stage, as in the revenue record, the land has been shown as attached in the hands of the defendant society. Secondly, the plea in relation to gift deed is also not sustainable. The gift deed is stated to be of 27.3.1993 while the oral gift and possession is claimed on the basis of November, 1992. Thus, the case of the plaintiffs is certainly not founded on facts which prima facie could be free of suspicion.

4. Another legal impediment in the way of the applicants is that no notice was served upon the society Section 79 of the Co- operative Societies Act. The learned counsel for the petitioners intended to argue that the provisions of Section 79 of the Act were not attracted because this was not a dispute between the members of the society touching upon the business of the society. This contention is totally without merit. The father of the petitioners had taken loan from the society and the land was attached in favour of the defendant society. Any financial matter in this regard prima facie would be in course of business of the society because that amount was due to the society. As such the date of auction was fixed in accordance with law and no such provisions has been brought to my notice which could show that the attachment was legally vitiated. In a judgment in C.R. No. 2535 of 1997 - Mohd. Shafi Zubery v. The Malerkotla Coop. Marketing-cum-Processing Society, decided by Hon'ble Justice V.S. Aggarwal on 19.2.1998, it was considered that notice u/s 79 of the Cooperative Societies Act in such matter would be a pre-requisite. The Court held as under:-

"Therefore, it has also rightly been concluded that no notice u/s 79 of the Act has been served and thus the suit was not maintainable. There is no ground to

interfere in the impugned order."

5. Keeping in view the above facts and circumstances, I am of the considered view that the impugned order does not suffer from any error of jurisdiction or otherwise which would justify interference by this Court in exercise of its revisional jurisdiction. Resultantly, this revision petition is dismissed. However, leaving the parties to bear their own costs.