

SUPREME COURT OF INDIA

Satya Pal Anand

Vs.

Punjabi Housing Co-operative Society

(P.sathasivam and J.Chelameswar JJ.)

17.07.2013

JUDGMENT

CHELAMESWAR, J.

1. This petition arises out of the final judgment and order dated 03.08.2011 passed in Writ Petition No.14548 of 2008 by the High Court of Madhya Pradesh at Jabalpur.

2. It is rather difficult to cull out the facts accurately because of the inadequacy of the record. Be that as it may, the broad and undisputed facts are as under:

3. The petitioner's mother was allotted a plot of land (hereinafter referred to as 'the property in dispute') by the first respondent – the Punjabi Housing Co-operative Society Ltd. Pursuant to such an allotment, the sale-deed dated 22.03.1962 came to be executed, which deed was registered on 30.03.1962 before the Sub-Registrar, Bhopal. It appears that the petitioner's mother died on 12.06.1988. The petitioner claims to be the sole successor-in-interest though we find from the record (from the alleged compromise deed dated 06.07.2004 executed by the petitioner herein) that he has a sister.

4. It appears that after lapse of about 40 years, the first respondent purported to have cancelled the sale made in favour of the petitioner's deceased mother. On 09.08.2001, a deed styled as Extinguishment Deed came to be executed by the first respondent before the Sub-Registrar, Bhopal - the legality of which deed is required to be examined separately. However, we do not propose to say anything at this stage.

5. Subsequently, the first respondent executed another sale deed with respect to the property in dispute in favour of the second respondent on 21.04.2004.

6. A document styled as Compromise Deed dated 06.07.2004 came to be executed by the petitioner herein, the substance of which is that the petitioner agreed to receive a sum of Rs.6,50,000/- only and put an end to all the disputes in respect of the disputed property. It appears from the recital of the document that out of the abovementioned amount, a sum of Rs.4.50,000/- was paid by draft issued by the State Bank of Indore, Bhopal Branch and the balance by a post dated cheque. We may state here that the petitioner does not dispute either the execution of the abovementioned document or the receipt of the abovementioned amounts. As it can be seen from the synopsis filed in this appeal at page 'J', it is stated as follows:

“Amount was not returned as the petitioner had been advised by the learned advocates having expertise in civil litigation and of the Indian Contract Act, 1872 that the agreement secured upon misrepresentation & upon the facts in his case on 06.07.2004 was in law null and void & amount had been paid for unlawful purposes & in violation of the provisions of the Indian Contract Act and the return of the amount paid there under could not be claimed in law and the suit if filed shall meet its dismissal.”

However, the petitioner now maintains that the said compromise was obtained under duress. Subsequently, the petitioner raised a dispute by approaching the Additional Registrar, Cooperative Societies.

7. It appears from the record that subsequently the petitioner herein raised a dispute before the Registrar under Section 64 of the M.P. Cooperative Societies Act questioning the legality of the execution of the abovementioned unilateral Extinguishment Deed and allotment of the property in dispute in favour of the second respondent. Vide order dated 1.2.2006, the Deputy Registrar passed an order injunctioning the defendants from raising any construction or transferring by way of sale etc. of the property in dispute.

8. However, the said interim injunction appears to have been vacated by an order dated 12.4.2006. Aggrieved by the same, the petitioner preferred an appeal before the Registrar, Cooperative Society. It appears that the Registrar vide order dated 29.08.2006 set aside the order dated 12.04.2006. Unfortunately, the order dated 29.08.2006 is not available on record completely, only part of the order is annexed to the paper book.

9. On 02.02.2008, the petitioner herein filed an application under Order 40 Rule 1 CPC before the Deputy Registrar for appointment of receiver in respect of the property in dispute. On 04.02.2008, an ex-parte order appointing receiver was passed which was modified on 18.2.2008 and it was further directed to the receiver to take physical possession of the property in dispute. It appears that by another order dated 25.03.2008 the Deputy Registrar directed the receiver to take symbolic possession, instead of physical possession, of the property in dispute. (Copy of this order is not available on record). Aggrieved by the same, the petitioner filed a revision before the Joint Registrar. Simultaneously, the second respondent also filed two revisions challenging the orders of appointment of the receiver dated 04.02.2008 and 18.02.2008 whereby the receiver was directed to take physical possession of the property in dispute.

10. By order dated 08.11.2008, the Joint Registrar allowed the revisions of the second respondent and remitted the case back to the Deputy Registrar to decide the matter afresh. Aggrieved by the said order, the petitioner herein preferred a second appeal before the Cooperative Tribunal which appeal was treated as revision filed under Section 77 of the Act but dismissed vide order dated 22.11.2008. (Neither of the two orders is available on record).

11. Aggrieved by the decision of the Tribunal, the petitioner approached the High Court by way of a writ petition from which the present appeal arises.

12. By the impugned judgment, the writ petition was dismissed.

13. We must also mention herein that during the pendency of these proceedings, the second respondent sold the property in favour of respondent nos. 4 and 5 by sale deed dated 11.07.2006. It appears that the Sub-Registrar on inspection of the disputed plot found that there were two constructed duplex and two more near completion as on the date of inspection i.e. on 13.03.2007 of which one was occupied by respondent no.4.

14. It must be remembered that the instant proceedings arise out of the interlocutory proceedings seeking appointment of the receiver at the instance of the petitioner herein. Having regard to the fact that respondent no.4 was in possession of the property in dispute at least since 13.03.2007 admittedly and also having regard to the fact that the petitioner received an amount of Rs.6,50,000/- we do not see any justification for the appointment of the receiver. We see no reason to interfere with the judgment under appeal. We accordingly dismiss the special leave petition.