

(2020) 12 CHH CK 0014
Chhattisgarh High Court
Case No: First Appeal No. 118 Of 2006

Usha Agrawal

APPELLANT

Vs

Anupam Sahkari Grih Nirman
Samiti Maryadit And Ors

RESPONDENT

Date of Decision: Dec. 14, 2020

Acts Referred:

- Code Of Civil Procedure 1908 - Section 96
- Chhattisgarh Co-operative Societies Act, 1960 - Section 64
- Code Of Criminal Procedure, 1973 - Section 145

Hon'ble Judges: Sanjay S. Agrawal, J

Bench: Single Bench

Advocate: B. P. Sharma, Vaibhav Tiwari, Abhishek Sharma, Udhaw Sharma

Final Decision: Allowed

Judgement

Sanjay S. Agrawal, J

1. This Appeal has been preferred by the Plaintiff under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'),

questioning the legality and propriety of the judgment and decree dated 17.03.2005 passed in Civil Suit No.5-A/2004, whereby the the learned 12th

Additional District Judge (FTC), Raipur has dismissed the suit holding it to be barred by time. The parties to this appeal shall be referred hereinafter as

per their description before the Court below.

2. Briefly stated the facts of the case are that the Plaintiff instituted a suit claiming possession, injunction, damages and also for the declaration to the

effect that the order passed by the Registrar, Co-operative Societies, Raipur (hereinafter referred to as the Registrar) on 06.06.1998 is invalid and non-est in the eye of law and the registered deed of sale dated 29.10.1996 executed in favour of Defendant No.2 Vaibhav Bathiya is not binding upon her. According to the Plaintiff, Plot No.I/27 admeasuring 5480 sq. ft. described in red colour in plaint map was allotted to her by the Society known as Anupam Sahkari Grih Nirman Samiti Maryadit (hereinafter referred to as the 'Society') by executing a registered deed of sale on 18.09.1991. In pursuance of said sale, the Plaintiff was put in possession and according to the terms and conditions stipulated therein, the construction work was required to be carried out within the period of 3 years from its execution. Since it was not carried out, therefore, as per her request, time was extended by the Society from time to time and was to be carried out by 11.08.1997 and a map for construction of the house was sanctioned by the Municipal Corporation, Raipur on 24.07.1996. It is pleaded further that as per the sanctioned map, she has initiated the construction work by installing the requisite materials on the spot. The said construction work has, however, been stayed in compliance of the order dated 22.01.1997 passed by the Registrar in a proceeding initiated by Defendant No.2 under Section 64 of the Chhattisgarh Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act of 1960'). Further averments of the Plaintiff are that when she appeared before the said authority then only she came to know that her allotment of the said Plot has been cancelled by the Society without her knowledge on 29.10.1996 and was reallocated to Defendant No.2 by executing the registered deed of sale on the same day and the validity of the same has been legalised by the Registrar vide its order dated 06.06.1998, giving rise to the institution of the suit in the instant nature, instituted on 17.09.2003.

3. Despite service of summons of the suit, the Defendants were absent and were proceeded ex parte and that by considering the ex parte evidence of the Plaintiff, the trial Court has dismissed the claim holding it to be barred by time, as it has been filed for the cancellation of the alleged deed of sale, dated 29.10.1996 beyond the period of 3 years from its execution.

4. Mr. B. P. Sharma learned counsel appearing for the Appellant/Plaintiff submits that the finding of the trial Court dismissing the claim holding it to be

barred by time is apparently contrary to law. According to him, the claim was made for the possession of the suit Plot along with other reliefs as the

allotment of it has been cancelled illegally without her knowledge and the limitation for filing such a suit would be 12 years under Article 65 of the

Limitation Act, 1963 and therefore, it cannot be held to be barred by time. In support, he placed his reliance upon the decision rendered by the

Supreme Court in the matter of Ghewarchand and others vs. Mahendra Singh and others reported in (2018) 10 SCC 588.

5. On the other hand, learned counsels appearing for Respondents 1 & 3 have supported the impugned judgment and decree as passed by the trial

Court.

6. I have heard learned counsel for the parties and perused the entire record carefully.

7. Undisputedly, Plot No.I/27 admeasuring 5480 sq. ft. described in red colour in plaint map was allotted to the Plaintiff by the Society under the

registered deed of sale dated 18.09.1991 (Ex.P-1) by putting her in possession thereof. According to para 2 of the alleged sale, the construction work

was required to be carried out within a period of 3 years, else the same shall be cancelled by the Society. It appears that since the construction work

was not carried out in time, therefore, a notice dated 01.07.1995 (Ex.P-2) was issued by the Society. In pursuance thereof, the Plaintiff appeared

before it and after considering the application filed by her, the time was extended for the period of one year for carrying out the construction work by

the Society vide Order dated 03.08.1995 (Ex.P-3) and, then upto 11.08.1997 vide its further order dated 12.08.1996 (Ex.P-12). The construction work

was initiated as per the said permission, however, it was stayed by the Registrar vide Order dated 22.01.1997 in a proceeding, registered as Case

No.E-64-4/1997, initiated by Defendant No.2 under Section 64 of the Act of 1960. The said proceeding was initiated by the said Defendant for the

validation of the sale executed in his favour on 29.10.1996 by the Society with regard to the said suit Plot.

8. According to the Plaintiff, since the alleged sale was executed during the aforesaid extended period for carrying out the construction of the house,

therefore, neither the sale (Ex.P-1) executed in her favour could be cancelled nor she is bound by the sale executed in favour Defendant No.2. The entire action of the Society, therefore, appears to be unlawful.

9. Be that as it may, the execution of the alleged sale dated 29.10.1996 was held to be a valid one by the Registrar vide its Order dated 06.06.1998

(Ex.P-13). The Plaintiff has, therefore, been constrained to file the suit in the instant nature as neither her sale could be cancelled by the Society as

such nor could the plot in question be allotted to Defendant No.2 on the same day i.e. on 29.10.1996.

10. What is, therefore, reflected from the aforesaid facts and circumstances is that the main relief claimed in the suit based upon the sale (Ex.P-1)

was for possession and, limitation for filing such a suit would, therefore, be governed by Article 65 of the Limitation Act, 1963, which provides

limitation of 12 years in filing such a suit. The Plaintiff's suit, therefore, cannot be held to be barred by time. At this juncture, the principles laid down

by the Supreme Court in the matter of Ghewarchand and others vs. Mahendra Singh and others (supra) are to be seen, where both Plaintiff and

Defendants were claiming their independent right, title and interest including their possession over the suit property which was attached by the

concerned Magistrate in a proceeding under Section 145 of the Code of Criminal Procedure, 1973. In that factual scenario, it was observed by the

Supreme Court at paragraphs 19 to 21 as under:-

“19. As per the allegations in the plaint, the defendants' possession, according to the plaintiffs, became adverse when the defendants in Section 145

CrPC proceedings asserted their right, title and interest over the suit property to the knowledge of the plaintiffs for the first time and which eventually

culminated in passing of an attachment order by the City Magistrate on 23.12.1966. This action on the part of the defendants, according to the

plaintiffs, cast cloud on the plaintiffs' right, title and interest over the suit property and thus furnished a cause of action for claiming declaration of their

ownership over the suit property and other consequential reliefs against the defendants in relation to the suit property. (See Para 23 of the plaint)

In our opinion, the plaintiffs, therefore, rightly filed the civil suit on 19.12.1978 within 12 years from the date of attachment order dated 23.12.1966.

The assertion of the right, title and interest over the suit property by the defendants having been noticed by the plaintiffs for the first time in proceedings of Section 145 CrPC before the City Magistrate, they were justified in filing a suit for declaration and possession. It was, therefore, rightly held to be within limitation by the trial court by applying Article 65 of the Limitation Act.

In order to decide the question of limitation as to whether the suit is filed within time or not, the Court is mainly required to see the plaint allegations and how the plaintiff has pleaded the accrual of cause of action for filing the suit.....â€

11 By applying the aforesaid principles to the case in hand, where a specific claim for possession of suit Plot, along with other reliefs, has been made,

it cannot be held that the suit as framed is barred by time. The finding of the trial Court in this regard is, therefore, liable to be and is hereby set aside.

12. It is true as evidenced by the terms and conditions stipulated in the deed of sale dated 18.09.1991 (Ex.P-1) executed in favour of the Plaintiff that

she had to construct a house within the period of three years, else she will have to face the consequences of it. It, however, appears from a bare

perusal of the terms as stipulated therein, particularly, at Para-2, that the said period for the construction could be extended by the Society for one year

based upon the written application and this power can be exercised by the Society not more than twice. The said term stipulated in the said para is

relevant for the purpose and reads as under:-

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13. In exercise of the aforesaid power, the time for construction of the house was extended by the Society vide its order dated 03.08.1995 (Ex.P-3)

and extended further upto 11.08.1997 vide its order dated 12.08.1996 (Ex.P-12). Acting upon such permission, the construction work was initiated by

the Plaintiff after obtaining the requisite sanction from the Municipal Corporation, Raipur, which was, however, directed to be stayed by the Registrar

vide its order dated 22.01.1997 in a proceeding initiated by Defendant No.2 under Section 64 of the Act of 1960.

In such circumstances and particularly, when the time for construction of the house has already been extended, neither the sale executed in favour of

the Plaintiff could be cancelled by the Society nor could it be re-allotted to Defendant No.2 as such on 29.10.1996. The entire action of the Society,

therefore, appears to be of without jurisdiction, unlawful and was exercised in a mala fide intention in order to provide undue advantage to Defendant

No.2.

14. That apart, a bare perusal of the order dated 06.06.1998 passed by the Registrar in Case No.E-64-4/1997 would show that the proceeding initiated

by Defendant No.2 under Section 64 of the Act of 1960 was for the legalisation of the deed of sale dated 29.10.1996 executed in his favour with

regard to the said suit Plot. However, no proceeding as such could be initiated under the said provision. Be that as it may, the Registrar, in the said

proceeding, has not only legalized the alleged sale, but has declared Defendant No.2 as the owner of the said Plot. Although, Defendant No.2 has

been held to be the owner of the Plot in question as such, however, as observed hereinafter, the Society by its order dated 12.08.1996 (Ex.P-12) had

already permitted the Plaintiff for carrying out the construction work upto 11.08.1997 as per the condition stipulated in the alleged deed of sale dated

18.09.1991 (Ex.P.1). In view of that, the Society had no authority whatsoever to cancel the said sale prior to expiry of the said period nor was

authorised to re-allot the Plot in question to Defendant No.2 on 29.10.1996. The entire exercise of the Society thus appears to be of inherent lack of

jurisdiction and would, therefore, not confer any right, title or interest upon Defendant No.2 by stretch of any imagination. As a consequence of it, the

order dated 06.06.1998 (Ex.P-13) passed by the Registrar legalising the alleged sale executed in favour of Defendant No.2 on 29.10.1996 cannot be

upheld being non- est in the eye of law and could not be legalized as such by the Registrar in exercise of the power enumerated under Section 64 of

the Act of 1960. Consequently, Defendant No.2 would not get any interest whatsoever over the Plot in question on the strength of the alleged sale

dated 29.10.1996

In so far as the claim for damages to the tune of Rs.50,000/- is concerned, I do not find any cogent and reliable evidence on record so as to hold that

the Plaintiff is entitled for any amount of compensation in this aspect.

In view of the foregoing discussions, the appeal is allowed in part and the judgment and decree dated 17.03.2005 passed by the 12th Additional

District Judge (FTC), Raipur in Civil Suit No.5-A/2004 is hereby set aside and the Plaintiff is entitled to;

the possession of the suit Plot bearing No.I/27 admeasuring 5480 sq.ft. as described in red colour in the plaint map, from Defendant No.2 within a

period of 2 months from today else he shall be liable to pay damages to the tune of Rs.2,000/- per month in lieu of its utilisation illegally from the date

of passing of this order;

2. the order dated 06.06.1998 (Ex.P-13) passed by the Registrar, Cooperative Societies, Raipur, in case No.E-64-4/1997 legalising the registered deed

of sale dated 29.10.1996 executed in favour of Defendant No.2 by conferring title upon him is held to be null and void;

3. Defendant No.2 is restrained by way of permanent injunction from interfering in peaceful possession of the Plaintiff.

17. No order as to costs and a decree be drawn accordingly.