

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 10062-10064 OF 2018  
(Arising out of SLP(C)No(s).34745-34747 OF 2016)

GOPAL NAGAR COOPERATIVE HOUSE  
BUILDING SOCIETY LTD.

Appellant(s)

VERSUS

MOHD. ASLAM @ ABU BAKAR AND ETC.

Respondent(s)

J U D G M E N T

BANUMATHI, J.:

(1) These appeals arise out of order dated 29<sup>th</sup> September, 2016 of the High Court setting aside Orders dated 29<sup>th</sup> October, 2015 and 2<sup>nd</sup> November, 2015 passed by the Trial Court in and by which the Trial Court has set aside the preliminary decree as well as the final decree passed in favour of the respondents.

(2) The appellant-Society claims to have purchased the entire 93.25 acres of land in Survey NO(s).148-155 from six joint owners including Mohd. Ismail, the father of respondent no.1, by a sale deed dated 20<sup>th</sup> May, 1980. The appellant-Society claims to have developed the said land by making the house plots numbering 1197 plots and is said to have delivered the possession of the plots to its 1197 members. The appellant-Society also claims that many of its members have built their houses on the said plots which is refuted by the respondents.

(3) Respondent No(s).1 and 3 to 8 have filed suit for partition in respect of certain extent of land in Survey No(s).148-155 in O.S. NO.21 of 2004. In the said suit, preliminary decree dated 14<sup>th</sup> November, 2005 and final decree dated 17<sup>th</sup> April, 2007 were passed. In both, preliminary and final decree stage the appellant-Society herein was set ex-parte. According to the appellant-Society, they were not served with summons and that the summons were served on a wrong person.

(4) Having learnt of the ex-parte decrees, on 22<sup>nd</sup> May, 2007 the appellant-Society filed I.A.NO(s).232/2007 and 233/2007 to set aside the preliminary and final decrees. By order dated 29<sup>th</sup> August, 2008, the Third Addl. Judge allowed both the applications-I.A.NO(s).232/2007 and 233/2007, by observing that the ex-parte decree was obtained by keeping the appellant in the dark.

(5) Even when those applications were pending, the respondents filed O.S. No.2980 of 2007 challenging the sale deed dated 20<sup>th</sup> May, 1980 and prayed for setting aside the same. In the said suit - O.S. No.2980 of 2007, the first respondent filed I.A. No.1208 of 2013 seeking extension of time to comply with the conditional order and the said application was dismissed by 25<sup>th</sup> October, 2013. Subsequently, as no evidence was adduced in O.S. No.2980 of 2007 the same came to be dismissed. Challenging the orders passed in I.A.NO(s).232/2007 and

233/2007, the first respondent filed C.R.P. No.462 of 2009 and C.R.P. No.803 of 2009 before the High Court and the same was allowed and the matter was remanded to the Trial Court on the ground that the trial court had not given detailed reasons.

(6) On remand, the Third Additional Judge by a well reasoned order dated 29<sup>th</sup> October, 2015 and 2<sup>nd</sup> November, 2015 once again set aside the preliminary and final decree dated 14<sup>th</sup> November, 2005 and 17<sup>th</sup> April, 2007 respectively. Subsequently, the appellant-Society has also filed written statement in the partition suit i.e. O.S.No.21/2004.

(7) Being aggrieved by order dated 29<sup>th</sup> October, 2015 and 2<sup>nd</sup> November, 2015 setting aside the ex-parte preliminary and final decree dated 14<sup>th</sup> November, 2005 and 17<sup>th</sup> April, 2007 respectively, the first respondent filed revision before the High Court i.e. C.R.P. NO.1214 of 2016 and C.R.P. No.1231 of 2016. The first respondent has also filed C.R.P. NO.820 of 2014 for restoration of their suit, O.S. No.2980 of 2007. By impugned order, the High Court has allowed all the three revisions and again remanded the matter to the Third Additional Judge for fresh consideration which is impugned in these appeals.

(8) We have heard Mr. C.U. Singh, learned senior counsel, and Ms. Madhvi Divan, learned counsel, both appearing for the appellant-Society and Mr. Anupam Lal Das, learned counsel

appearing for the respondents and also perused the impugned order and materials on record.

(9) By perusal of Orders dated 29<sup>th</sup> October, 2015 and 2<sup>nd</sup> November, 2015, we find that the order of the Third Additional Judge setting aside the preliminary and final decrees dated 14<sup>th</sup> November, 2005 and 17<sup>th</sup> April, 2007 respectively, is upon consideration of the averments in the application and well reasoned. The appellant-Society claims to have purchased 93.25 acres in Survey No(s).148-155 from the six joint owners including Mohd. Ismail, the father of respondent no.1. Out of the said property of 93.25 acres in Survey No(s).148-155, certain extent of land is the suit property in the partition suit in O.S. No.21 of 2004. Sine the appellant-Society is said to have purchased the extent of 93.25 acres in Survey NO(s).148-155, a reasonable opportunity has to be afforded to the appellant-Society. More so, when the appellant-Society claims to have purchased the property way back in the year 1980 by sale deed dated 20<sup>th</sup> May, 1980 and is said to have not only developed the land by forming the layout of house plots but also allotted the same to its members. When the order of the Third Additional Judge is a well considered order, in our view, the High Court ought not to have set aside the same and remanded the matter back to the trial court. In such view of the matter, the impugned order of the High Court cannot be sustained and is liable to be set aside.

(10) Mr. Anupam Lal Das, learned counsel appearing for the first respondent, submitted that the first respondent-plaintiff shall not take further adjournment in O.S. NO.21 of 2004 and will proceed with the trial. The findings of the Trial Court as well as the High Court insofar as the use of the expression 'fraud' is concerned, the same shall be construed as expression of views only for the purpose of the impugned order and shall not have any bearing on the merits of the contentions of the parties in the trial.

(11) In the result, the impugned order of the High Court in C.R.P. NO.1214 of 2016 and C.R.P. NO.1231 of 2016 are set aside and appeals arising out of SLP(C)No(s).34745 and 34746 of 2016 are allowed. Appeal arising out of SLP(C)No.34747 of 2016 which pertains to C.R.P.No.820 of 2014 is dismissed with the following directions:

(i) In the partition suit O.S. NO.21 of 2004, the trial court shall afford sufficient opportunities to both the parties and proceed with the trial in accordance with the law.

(ii) Suit filed by the first respondent i.e. O.S. No.2980 of 2007 is ordered to be restored. The Trial Court shall afford sufficient opportunities to both the parties and proceed with the same in accordance with law.

(12) There shall be no order as to costs.

.....J.  
(R. BANUMATHI)

.....J.  
(INDIRA BANERJEE)

NEW DELHI,  
SEPTEMBER 27, 2018.