

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Judgment: 19.4.2011

+ **RSA No.220/2007 & CM Nos.12559/2005, 14676/2005**

SHRI GIRDHARI LAL (DECEASED) THROUGH LRS.

Through: Mr.J.P.Sengh,Appellant
Sr.Advocate with
Mr.Vivek Sharma, Advocate.

Versus

MS.NIVEDITA MANE & ORS.Respondents

Through: Mr.S.K.Kaushik, Advocate for R-2.
Mr.K.B.Rastogi and Mr.Mahesh
Kasana, Advocates for R-4.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

RSA No.220/2007

1. Admit.
2. Following is the substantial question of law:
Whether the findings in the impugned judgment dated 23.7.2005 are perverse? If so, its effect ?
3. This appeal has impugned the judgment and decree dated 23.7.2005 which had endorsed the finding of the trial judge dated 10.12.2003 whereby the suit filed by the plaintiff Girdhari Lal seeking a permanent injunction against the defendants had been dismissed; the plaint had been rejected under Order VII Rule 11 of the Code of Civil Procedure (hereinafter referred to as 'the Code')
4. The facts as emanating are:-

i. R.S.Mane was the father-in-law of defendant no.1. He was allotted a flat by defendant no.2 (Cooperative Group Housing Society). R.S.Mane had sold this plot to defendant no.4 namely Rajan Gupta. Plaintiff in turn had purchased this plot from Rajan Gupta. This was on 18.6.1991. Thereafter defendant no.1 who is the daughter-in-law of R.S.Mane started threatening the plaintiff qua dispossession from the aforementioned suit flat. She being a member of parliament, the plaintiff had apprehended threat from her. Present suit was accordingly filed.

ii. After filing of written statement, an application under Order VII Rule 11 of the Code had been filed by the defendants. The contention was that under Sections 60 and 90 of Delhi Cooperative Societies Act 1972 (hereinafter referred to as 'the DCSA') suit of such a nature is not maintainable; it can only be tried by the Registrar of Societies. The averments made in the said application had been accepted; both the Courts below were of the view that the plaint is liable to be rejected and it was accordingly rejected.

5. This is a second appeal. It is yet at the stage of admission. Learned counsel for the appellant has placed reliance upon a judgment of this Court reported in AIR 1976 Delhi 299 Chander Nagar Co-operative House Building Society Ltd. Vs. Ashok Ohri to substantiate his submission that the provision of Section 60(2) of the DCSA are exhaustive and not illustrative; only those disputes which have been enumerated in clause-2 of Section 60 of the DCSA, the Registrar is competent to decide those disputes; all

other disputes would fall within the domain of the Civil Court.

6. Arguments have been rebutted.

7. Bare reading of Section 60(2) of the DCSA shows that there are three sub-clauses which make a reference to disputes touching the constitution, management and business of a cooperative society. Present suit is a suit for permanent injunction. The averments made in the plaint have been perused. Plaintiff had sought permanent injunction against the defendants restraining them from dispossessing him and not to interfere with his peaceful possession of the suit property. His averment was that he is in possession of the suit property.

8. The dispute raised by the plaintiff is prima facie not covered under Section 60(2)(b) of the DCSA; the plaint could not have been rejected without permitting the parties to adduce evidence as a prima facie reading of the averments made in the plaint would not oust the jurisdiction of the Civil Court. In view thereof, this is a fit case for remand.

9. It is accordingly remanded back to learned District & Sessions Judge (Central) with a direction to assign the case to the concerned civil judge who will decide the same on its merits and in accordance with law. For the said purpose, the parties are directed to appear before the learned District & Sessions Judge (Central) on 26.4.2011 at 10.30 PM. Appeal is disposed off.

10. Record be returned.

CM Nos.12559/2005, 14676/2005

11. Applications are dismissed being infructuous.

APRIL 19, 2011
nandan
RSA No.220/2007

INDERMEET KAUR, J