

**Neta Vs. New Pink City Grah Nirman Sahkari Samiti Ltd., Jaipur**

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**SooperKanoon Citation :** [sooperkanoon.com/750719](http://sooperkanoon.com/750719)

**Court :** Rajasthan

**Decided On :** May-22-1996

**Reported in :** AIR1997Raj28; 1996(3)WLC58

**Judge :** Arun Madan, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115(2) - Order 12, Rule 6 - Order 39, Rules 1 and 2; Rajasthan Tenancy Act, 1955 - Sections 42

**Appeal No. :** Civil Revn. Petn. Nos. 605 and 884 of 1992

**Appellant :** Neta

**Respondent :** New Pink City Grah Nirman Sahkari Samiti Ltd., Jaipur

**Advocate for Def. :** R.K. Agarwal, Adv.

**Advocate for Pet/Ap. :** S.N. Kumawat, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**Arun Madan, J.**

1. Revision Petition No. 605/92 has been preferred to this Court against the order, dated 3-3-1992 passed by Addl. Civil Judge-cum-Addl. Chief Judicial Magistrate

No. 3, Jaipur City, Jaipur in Civil Suit No. 405/82 whereby the application filed under Order 14, Rule 5, C.P.C. by the non-petitioner-Samiti has been allowed.

2. Revision Petition No. 884/92 has been preferred to this Court against the order, dated 14-9-1992 passed by Addl. Civil Judge-cum-Addl. Chief Judicial Magistrate No. 3, Jaipur City, Jaipur in Civil Suit No. 405/82 whereby the application filed by the non-petitioner-Samiti under Order 12, Rule 6, C.P.C. has been allowed.

3. Since both the revision petitions are arising out of the same suit and the parties are the same and the subject matter and dispute pertains to the same property, I deem it proper to decide the same by this common order.

4. Briefly stated the facts are that the non-petitioner-Samiti (plaintiff) filed a suit before the trial Court for claiming the relief of permanent injunction wherein the plaintiff had sought the relief inter alia that it should not be disturbed in its development by the defendant petitioner and also be restrained from creating any hindrance in use and occupation of the land in question which had been sold to the plaintiff-Samiti by the defendant-petitioner for consideration of Rs. 8,27,500/- vide agreements of sale dated 1-5-1975 and 21-10-1981 respectively which was purchased by the Samiti for development of residential colony for its members. In para 6 of the plaint it has been specifically pleaded that on 1-5-1975 the defendant-petitioner had received a sum of Rs. 10,000/- in lieu of pumping set which was installed on the land measuring 27 bighas 5 biswas situated in village Getore, Tehsil Sanganer, District Jaipur bearing Khasra Nos. 63, 65 to 67, 171, 172, 176 to 188. The said agreements are duly signed by the parties.

5. It was contended by the plaintiff in the plaint that it had purchased the aforesaid agricultural land of the defendant, details of which are mentioned in para 2 of the plaint and that the Samiti is a registered Samiti under Rajasthan Co-operative Societies Registration Act, 1956 having its head office at Jaipur. In para 2 of the plaint it was contended by the plaintiff that the land in question was agreed to be sold by the defendant to the plaintiff-Society for a sum of Rs. 8,27,500/- vide agreement dated 1-5-1975 for the development of residential colony for its members. It has been further pleaded in para 6 of the plaint that on 1-5-1975 the defendant-petitioner had received a sum of Rs. 10,000/- in cash and on 6-3-

1981 had received a sum of Rs. 8,17,500/- by way of account payee cheques on different dates w.e.f. 1-5-1975 to 24-9-1981 and had thus received a total sale consideration of Rs. 8,27,500/- in lieu of sale of the land in question at the rate of Rs. 30,000/- per bigha. It has been further contended in the plaint that after the receipt of full consideration of the sale amount the defendant-petitioner handed over physical possession of the land in question to the Samiti.

6. It has been further contended by the plaintiff that it is only subsequent to the sale in favour of the Samiti that the defendant-petitioner started creating obstructions and causing hindrance in use and occupation of the land in question by the members of the Samiti and hence the plaintiff was constrained to file a suit for permanent injunction.

7. In the written statement filed by the defendant-petitioner it was contended inter alia by way of specific denial that neither he had received the sum of Rs. 10,000/- in cash nor executed the agreements of sale dated 1-5-1975 as well as 21-10-1981. The petitioner had further denied the averments regarding handing over physical possession of the land in question to the Samiti and has specifically contended that the land in question was an ancestral property in which the defendant-petitioner was a mere shareholder and as such had no right to transfer or sell the said property and the sale deed had been executed fictitiously. The petitioner had also specifically denied the receipt of Rs.8,27,500/- notwithstanding the fact that the payment had been made to him by account payee cheques drawn by the 'Samiti on Oriental Bank of Commerce, Jaipur and the said payment had been duly credited to the petitioner's account.

8. In para 6 of the written statement the petitioner has specifically denied the sale of the land in question and the receipt of the sale consideration. He has further contended that the sale was effected fraudulently. It was further contended by the petitioner in the written statement that he is a member of Schedule Tribe and the Samiti had intended to unlawfully deprive a member of Schedule Tribe of his property against the law of the land and had forged and concocted the agreements of sale on plain papers on which the signatures of the petitioner with connivance of someone were obtained. In the written statement it was further contended by the

petitioner that the property in dispute is an agricultural land of which the petitioner is a khatedar tenant, agreements are forged and against the provisions of Rajasthan Tenancy Act, particularly Section 42(b) of the Act and the Civil Court has no jurisdiction to deal with the matter or to pass orders contrary to the provisions of law. The petitioner also denied the possession over the land in dispute of the Samiti on the basis of the report of the local Commissioner, dated 19-1-1992 which has not been challenged by the Samiti nor the Samiti demanded a fresh site inspection which amounts to admission on the basis of which the trial Court vide its order, dated 15-3-1984 arrived at the conclusion that the plaintiff does not have a prima facie case and as such it refused to grant temporary injunction. In its order, dated 3-3-1992 passed in Civil Suit No. 405/82 whereby the application filed by the plaintiff-Samiti under Order 14, Rule 3, C.P.C. had been allowed, the learned trial Court has specifically observed that admittedly there is no dispute regarding the sale of the land forming part of khasra numbers as referred to above, and the sale consideration of Rs. 8,27,500/- by the Samiti in favour of defendant also stood paid. It has been further observed by learned trial Court that after the purchase of the land Samiti has spent considerable amount for development of the land before its allotment to the members of the Samiti. The trial Court has further observed in its order that the suit is pending trial and is fixed for recording the evidence of the plaintiff when an application under Order 14, Rule 5, C.P.C. was filed by the plaintiff contending therein that a lawful agreement was executed between the parties and the sale consideration was also received by the defendant, issues were framed by the trial Court, a dispute was raised by the petitioner-defendant that the issues have not been correctly framed and out of five issues some issues require deletion. The trial Court after hearing the learned counsel for the parties and after having examined their rival claims and contentions as well as the pleadings on the record, passed the impugned order which has been challenged in this revision petition. Learned trial Court has further observed that the receipt of sale consideration has not been disputed by the defendant and rather the defendant had utilised the said amount for his own advantage, while at the same time had disputed the agreements as having been fraudulently executed. With regard to issue No. 4 it has been specifically observed by the trial Court that the defendant had not disputed the receipt of sale

consideration and, therefore, it is necessary to amend issue No. 4 as presently framed to the effect whether the plaintiff had made the payment of entire sale consideration to the defendant and whether the said amount was deposited in the account of the defendant against his consent? the onus of proving this issue was placed on the defendant. Since there was no relevance regarding issue Nos. 1, 2 and 3 which had earlier been framed by the trial Court, the trial Court in its discretion thought it proper to delete the said issues and framed a new issue which was to the following effect:-

'Whether the plaintiff got executed the sale agreement from the defendant fraudulently on 1-5-1975 as alleged?'

The onus to prove this issue was on the defendant. The application filed under Order 14, Rule 4, C.P.C. was accordingly decided.

9. In Revision Petition No. 884/92 the petitioner has assailed the order dated 14-9-1992 passed in Civil Suit No. 405/82 by learned trial Court whereby the plaintiffs application filed under Order 12, Rule 6, C.P.C. had been allowed. Order 12, Rule 6, C.P.C. reads as under:

'6(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under Sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.'

From the perusal of the above provision it is clear that whenever a party makes admission either orally or in writing, the Court may at any stage of the trial, without waiting for determination of the question in controversy between the parties, may pass such an order or give such judgment which it may deem fit and proper at its discretion having regard to such admission. It is further stipulated in the aforesaid

provision that on pronouncement of the

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was pronounced.

10. In the aforesaid matter when the evidence of the plaintiff-Samiti had commenced, the Secretary of the Samiti moved an application under Order 14, Rule 5, C.P.C. to get amendment in the issues which was allowed by the trial Court on 3-3-1992 against which Revision Petition No. 605 / 92 is already pending and is being disposed of by this single common order as stated above. Since the defendant-petitioner had admitted the execution of the sale agreement dated 1-5-1975 and also subsequent agreement dated 21-10-1981 whereby he had agreed to sell the land in question to the extent of 27 bighas, 5 biswas for a consideration of Rs. 8,27,500/-, it had evidently become just and proper for the trial Court to pass an appropriate order regarding the admission of the petitioner in terms of Order 12, Rule 6, C.P.C. and the decree was accordingly drawn up based on the admission of the petitioner.

11. Perusal of para 18 of the written statement filed by the defendant in reply to the suit, reveals that the defendant has clearly acknowledged his signatures on the sale agreement. The said agreement is duly signed by both the parties in the presence of attesting witness, hence in my considered opinion, it is not open to the petitioner to challenge either the vires of the aforesaid agreements nor it is open to him to controvert or resile from admission made by him duly acknowledging the receipt of consideration amount of Rs. 8,27,500/- in lieu of sale of the land in question and further it is not open to him to take a contrary stand in view of the fact

that he has also admitted that the sale consideration was utilised by him. Perusal of the documents and the evidence tendered on the record further reveals that in view of the offer and its acceptance coupled with the payment of sale consideration of the amount as referred to above a duly valid, binding and subsisting contract had come into operation between the parties and both the parties were bound to honour the same and it was not open to either of the party to resile from its terms. From the pleadings of the parties on the record it is evident that payment of sale consideration of Rs. 8,27,500/- in lieu of sale of the land in question was duly made by the Samiti by payee's account cheques drawn on a nationalised Bank and the amount was duly credited to the account of the defendant and having once acknowledged the receipt of the amount and utilised the same to his own advantage, it is not open to him to later on agitate by way of revision petition before this Court that the said payment was not made to him or that the payment has been made against his consent. In my considered opinion all these pleas are sham, vague and illusory which have been purposely advanced with a view to riggle out of the valid, binding and enforceable agreements of sale as referred to above.

12. With regard to the contention of the learned counsel for the petitioner that the, j alleged sale of the land in question was illegal and being contrary to the provisions of Section 42(b) of the Rajasthan Tenancy Act, 1955 on the ground that the petitioner was a ' member of Scheduled Tribe, I am of the , opinion that the said contention is wholly erroneous and is not tenable in view of the fact ! that the suit which was filed by the Samiti against the petitioner was in respect of relief v for permanent injunction under Order 39,fRules 1 and 2, C.P.C. regarding which the Civil Court alone has exclusive jurisdiction and as such the plaintiff was within his rights to invoke the jurisdiction of the Civil Court instead of seeking relief before the Revenue Court as so alleged by the petitioner. During the course of hearing it was contended by the learned counsel for the Samiti that if the petitioner was aggrieved by the impugned orders passed by the trial Court, the appeal was maintainable before learned District Judge and it was open to the petitioner to have invoked the revisional jurisdiction of this Court under Section 115, C.P.C. and since he had not exhausted the remedy of appeal the revision petitions are not maintainable. This contention advanced by the learned counsel for the Samiti, in

my opinion, is well founded in view of the fact that the impugned decree is appealable under Section 96, C.P.C. and hence a revision against the said order and decree is expressly barred under Section 115(2), C.P.C. which reads as under:

'The High Court shall not, under this section vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.'

I am of the considered opinion that since appeal against the impugned order and decree of the trial Court could lie before the District Judge which is a Court subordinate to the High Court, it was not open to the petitioner to invoke the revisional jurisdiction of this Court under Section 115(2), C.P.C. without exhausting remedy of appeal in view of the express bar, since revision is expressly barred and not maintainable. In my opinion it is not proper to convert this revision into an appeal, since no sufficient cause has been shown to this Court by the petitioner for having not preferred appeal against the impugned order of the trial Court before learned District Judge. The petitioner-defendant has also not disputed the jurisdiction of the learned District Judge on his own saying.

13. With regard to the contention of the petitioner that the sale agreement in question is not a free and voluntary act of the petitioner, I am of the opinion that this contention is fully unwarranted and contrary to the spirit of the agreement itself from which it is clearly apparent that the agreement was entered into between the parties without exercise of any undue influence or coercion by either party. It is apparent from the following clause of the agreement:

'This agreement was entered into between both the parties under their signatures and in presence of the witnesses without any undue influence or coercion and out of free will and was read over and voluntarily understood by the parties and thereafter the parties had put their signatures on the same so that it may be utilised at a proper time.'

14. I have heard learned counsel for the parties at length and have also examined their rival claims and contentions and also examined relevant documents placed

on the record of the trial Court which was summoned by this Court. In my considered opinion there is no illegality, impropriety or jurisdictional error committed by the learned trial Court in passing the impugned orders dated 3-3-1992 and 14-9-1992, as referred to above, Revision petitions have no merit and the same are consequently rejected being not maintainable. Parties are left to bear their own costs.

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