

RESERVED

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW

APPEAL NO. 2258 OF 2009

(Against the judgment/order dated 03-12-2009 in Complaint
Case No.757/2003 of the District Consumer Forum-I, Lucknow)

Sri Raj Krishna Mishra

.....Appellant

Vs.

U.P. Avas Evam Vikas Parishad

.....Respondent

BEFORE:

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT
HON'BLE MR. RAMPAL SINGH, MEMBER

For the Appellant : Sri Raj Krishna Mishra in person.

For the Respondent : Sri N N Pandey, Advocate.

Dated : 28.12.11

JUDGMENT

PER MR. JUSTICE BHANWAR SINGH, PRESIDENT

This appeal is directed against the judgment dated 03-12-2009 of the District Consumer Forum-I, Lucknow whereby the complaint of the appellant was dismissed for being devoid of merit. The complainant preferred this appeal reiterating his version that the Avas Evam Vikas Parishad committed deficiency in service by not taking recourse to cancellation of the sale deed in favour of Smt. Anita Wadhwa. The complainant pleaded in his complaint that he had booked an H.I.G. house by depositing the prescribed amount and acting upon his request the Parishad allotted House No. A-841, Indira Nagar Residential Scheme, Lucknow under hire purchase scheme. The complainant, however, requested the authorities concerned to transfer the said house to his mother Smt. K K Mishra and his request was acceded to. An agreement of hire purchase tenancy had been executed in the name of Smt. K K Mishra. Subsequently Smt. K K Mishra transferred the said house in the name of Smt. Anita Wadhwa. The complainant specifically mentioned in his complaint that the transfer in the name of Smt. Anita Wadhwa was

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permitted on the ground of her being the daughter of Smt. K K Mishra.

The Avas Evam Vikas Parishad contested the averment of the complainant and pleaded that the complainant was not a party to the issue of transfer between Smt. K K Mishra and her daughter Smt. Anita Wadhwa. Also it was alleged by the Parishad that Smt. K K Mishra claimed Smt. Anita Wadhwa to be her real daughter and necessary documents and affidavits were relied upon, on the basis of which sale deed of the house in question in favour of Smt. Anita Wadhwa was executed. Subsequently Smt. Anita Wadhwa had sold the said house to one Sri Khwaja Yunus and since neither of the two parties were impleaded, no finding could be recorded against their right.

The complainant had taken recourse to two other proceedings – one in the High Court and the other in a Civil Court. He filed Writ Petition No. 2349(MB) of 2004 before the Lucknow High Court and prayed for issuance of a mandamus to the Parishad with a direction to cancel the sale deed in the name of Smt. Anita Wadhwa. Subsequently he filed a civil suit No. 181/2005 in the Civil Court of competent jurisdiction and the said suit is still pending disposal.

It is significant to note that the complainant neither in his complaint, nor in this appeal impleaded either his mother Smt. K K Mishra or Smt. Anita Wadhwa or Sri Khwaja Yunus so as to ask them to file their version. According to the Avas Evam Vikas Parishad Smt. Anita Wadhwa was not the real daughter of Smt. K K Mishra and, therefore, there was no question of her being a blood relation of his mother. Also it was alleged by the appellant that forged and fictitious documents to prove the blood relationship between the two were relied upon and the Avas Evam Vikas Parishad officials were in know of this fact but even then they did not concede to the complainant's request for cancellation of the sale deed in the name of Smt. Anita Wadhwa. The complainant specifically prayed before the Forum below as also before this Commission that the sale deed in favour of Smt. Anita Wadhwa was/is liable to be cancelled as it had been fraudulently obtained on the basis of a wrong and false blood-relation plea between Smt. K K Mishra

and Smt. Anita Wadhwa. As a matter of fact, the necessary parties to question the veracity of the allegation of the complainant were Smt. K K Mishra and Smt. Anita Wadhwa but for the best reason known to the complainant, he had not preferred to implead either of the two. In the absence of these two important persons no finding can be recorded against their interest. If there was no relationship between the mother and daughter, the complainant should not have felt shy of impleading them in the array of the complaint or the memorandum of appeal. It would be against the principle of natural justice to record any finding against their interest unless they were called upon to contest the complainant's challenge regarding their interse relationship. Not only this but the third party Mohd. Khwaja Yunus who was a purchaser of the flat from Smt. Anita Wadhwa too has not been impleaded either in the complaint or in the memorandum of appeal and his interest would also be jeopardized if any finding in his absence would be recorded against his predecessors – in interest. In these circumstances, the complainant's plea of invalidity in the matter of execution of the sale deeds is not acceptable.

It is also an issue to be looked into as to whether the complainant is a consumer of the Avas Evam Vikas Parishad? As a matter of fact, he is not for the simple reason that after he had transferred his interest in the house to his mother he ceased to be a consumer for all purposes and as such he would not be entitled to claim any relief against the Avas Evam Vikas Parishad. The Parishad itself would have been competent to look into the allegation and it would have taken a decision at its level at the relevant time but if it was not so done in time, implications and complications were likely to result in, with the passage of time. Smt. K K Mishra being full-fledged owner of the house transferred it to Smt. Anita Wadhwa and ^{the} ~~latter~~ ^{he} in her right transferred it to Sri Kwhaja Yunus. In this way, the property had changed three hands leaving the complainant far far behind. His contention that at some point of time the Housing Commissioner of the Parishad had taken a decision to lodge ^w an F.I.R. against his mother and Smt. Anita Wadhwa will not fetch any advantage to him as there is no proceeding before us which could indicate that

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criminal proceedings were initiated against the two at the instances of the Avas Vikas Parishad. Moreover, the District Consumer Forum and the State Commission can act upon the issues between the contesting parties. Even if some decision was taken by the Housing Commissioner to draw a proceeding, this alone cannot provide a handle or a basis to go deep into the controversy and make a declaration in the absence of the necessary parties. Keeping all these aspects of the matter in our consideration, we are of the view that the complainant being not a consumer is not competent to claim any relief.

Moreover, a civil suit No. 181/2005 initiated by the complainant is still pending before the court concerned and the Hon'ble High Court has in its judgment dated 25-05-2004 in writ petitions no. 2349/MB of 2004 and 5192/MB of 2002 already made it clear that the issue regarding cancellation of a sale deed can be decided by a civil court. The writ petition of the complainant was held to be devoid of merit and dismissed, however, with a liberty to Sri Raj Krishna Mishra who filed writ petition no. 5192/MB of 2002 to approach a Civil Court for redressal of his grievance. Sri Kwhaja Yunus also filed the other writ petition praying for quashing of the Housing Commissioner's order for initiating proceedings regarding cancellation of the sale deed in the name of Smt. Anita Wadhwa. Both the parties were directed to approach the civil court by means of the judgment referred to above. The civil suit of Sri Raj Krishna Mishra as said above is pending disposal. The civil court is the appropriate authority to record a categorical finding about validity of the sale deed in question. For the reasons disclosed above, we do not find any merit in this appeal and accordingly it is dismissed with costs.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(RAMPAL SINGH)
MEMBER