

Received on : 10.08.2015.
 Registered on : 10.08.2015.
 Decided on : 11.12.2018.
 Period : Y - M - D
 03 - 04 - 01

IN THE COURT OF JUDGE CO-OPERATIVE COURT, AURANGABAD.

(Before Smt. A .A. Pathan)
 J.O. Code.MH2677
 CNR No.MHCO200000812015
CASE NO.CCA. 64/2015.

Exh.118.

Balasaheb Kondiba Wagh,
 Age: 58 years, Occu: Service,
 R/o. C/o. S. N. Mohin Patil,
 Plot no.5, Lane No.11,
 Beside Sai Health Club,
 Jaybhavani Nagar, CIDCO, Aurangabad.

DISPUTANT

VERSUS

1) Shivdatta Co-operative Housing Society,
 N-8, Sector-1 CIDCO, Aurangabad.
 Through its Authorized Officer.

2) The Chief Administrator,
 CIDCO, New Aurangabad,
 Administrative Building, Town Center,
 CIDCO, Aurangabad.

OPPONENTS

APPEARANCES :

Advocate for disputant : Shri. G. V. Sukale.
 Advocate for opponent No.1 : Shri. S. B. Chabukswar.
 Advocate for opponent No.2 : Shri. D. E. Padwale.

J U D G M E N T

(Delivered on 11th December, 2018)

Brief Facts of the case is as under:

The present dispute is filed for declaration of ownership and perpetual injunction in respect of property bearing plot No.71 situated at Shivdatta Co-operative Housing Society N-8, Sector-1, CIDCO, Aurangabad. (Hereinafter suit plot in short).

2) The opponent Society is registered under the provisions of Maharashtra Co-operative Societies Act, 1960 by registration No. AGD/HSG/219/71 dated 19.02.1971. The disputant is a member of opponent society since 15.04.1990 and he was allotted suit plot by issuing certificate from the opponent society. Disputant deposited an amount of Rs.750/- as consideration towards said plot in view of resolution No.3(b) passed in a meeting dated 17.04.1988 as well as deposited Rs.50/- on 08/08/1990 towards the share in the opponent society. Since, then the disputant is the owner and possessor of the suit plot. At the relevant time, Administrator of the said society has issued Allotment Certificate on 08/08/1990. On 01.12.1995 secretary of the opponent society has issued No objection certificate allowing disputant as a permanent member of the opponent society to construct the house on the suit plot.

3) On 27.12.1991, the opponent society had issued a letter bearing No. 90/219/Shivdatta/SGNS/71 dated 25/12/1991 to the Chief Administrator, CIDCO, Aurangabad in which it is specifically stated that suit plot is allotted to the disputant but inadvertently the name of Mr. Janardhan Gatla was shown in it

but another plot was allotted to Janardhan Gatla. Therefore, to obtain the NOC, the disputant applied to the opponent society on 01.12.1995 by letter AGD/HSG/219/71/3. The disputant has also filed an application dated 04.12.2012 to CIDCO requesting to correct his name. Thereafter, the disputant again issued a reminder dated 24.06.2013 to CIDCO in response to the said letter, CIDCO replied that as per record available to them suit plot is allotted to Smt. Kusum Dattatry Jewaliker and directed to produce the list of members of the opponent society through Taluka Deputy Registrar. Therefore, in view of letter dated 24.07.2013, the disputant approached to the Taluka Deputy Registrar Co-operative Society, Aurangabad letter dated 25.07.2013 requesting that the suit plot is allotted to the disputant and since 1990, but due to hostile attitude of the opponent society, the CIDCO is unable to correct the said list. Therefore, to obtain the necessary documents Taluka Deputy Registrar Co-operative Society, Aurangabad had issued a letter dated 06.09.2013 No.TDR/ADM-2/HSG/Share/H/2459 to the Chairman and Secretary of the opponent Society directing them to provide the name of original members of the opponent Society.

4) In the year 1988, the opponent society allotted the suit plot to the disputant through resolution which was earlier allotted to Smt. Shamabai and Dr. Hiralal, but while allotting suit plot in the year 1990 i.e. on 15.04.1990, it was standing in the name of Smt. Kusum Jewlikar. Thereafter, opponent society decided to allot suit plot No.37 to Smt. the Kusum Jewlikar in place of Janardhan Gatala and the plot No.37 which was earlier allotted to Mr. Narsayya Gatala subsequently allotted plot No. 68. Therefore, plot No.37 which was initially allotted to Mr. Janardhan Gatla was cancelled and plot No. 37 allotted to the Smt. Kusum Jewaliker in exchange with suit plot. And accordingly suit plot was

alloted to the disputant. But, this total change was not corrected by showing the name of the disputant in the list dated 10.12.1990. The list submitted to the CIDCO shows the plot No.37 is in the name of Mr. Sanjay Jewlikar whereas the plot No. 68 is in the name of Mr. Narsayya Gatatla and suit plot was shown as reserved for the society. The opponent society has illegally shown the suit plot as reserved because there is no resolution passed to that effect. Therefore, on 24.02.2014, disputant issued a legal notice to the Taluka Deputy Registrar Co-operative Societies, Aurangabad as well as to the Chairman and Secretary of the opponent Society. The Notices were unclaimed by the opponent society and the Taluka Deputy Co-operative Societies, Auranganad, has also not taken any action. Hence, this dispute.

5) The opponent No. 1 has filed his written Statement and objected the contents in the dispute with the submission that, present dispute is filed by preparing forge and fabricated documents. The disputant is nowhere in possession of the suit plot. The opponent society never alloted the suit plot to the disputant. The suit plot is reserved for the society purpose only. The opponent society has constructed a hall for the opponent society by passing resolution No.4 dated 28.08.2014. The disputant is the relative of the then Secretary deceased Mr. R.M. Mane of the opponent Society and by preparing forged documents filed this dispute. The earlier Chairman has not maintained the record of the society and Secretary of the opponent society died therefore, the disputant by taking advantage filed the present false dispute. The earlier then Secretary Mr. R.M. Mane had tried to take the possession of the suit plot on 23.03.2012 but the opponent society and it's member opposed the same and also filed the police report to the CIDCO Police Station Aurangabad.

6) It is submitted that Smt. Shamabai was not the wife of Dr. Hiralal. The said Smt. Shamabai was applied for her name to the plot allotted to Dr. Hiralal at that time the opponent society directed to obtain the legal heirship certificate from the court. But she has not filed any such documents. Therefore, the suit plot was never allotted to the Smt. Shamabai. The documents filed by the disputant i.e. proceeding book of opponent society dated 17.04.1988 shows the resolution No.3(b) but there is a straight line to the word '3b' in the resolution which shows that the fabricated documents is made by the disputant. In the year 1990, the opponent society has submitted the true list of members wherein the suit plot 71 and 72 was shown as a reserved for the society. There is a Temple upon the plot No.72 and there is hall upon the suit plot. In the year 2008, earlier secretary of the opponent society Mr. S.D. Deshmukh was directed by the court to hand over the charge of the opponent society to the newly elected Secretary Mr. R.G. Kulkarni. S.D. Deshmukh died in the year 2009. The reason for mentioning the name of deceased Deshmukh because he was carried the original record of opponent society. After his death the opponent society issued letter to his wife for calling the record of opponent society but she did not supply. Even, on 14.09.2015, the opponent society has also issued a letter to Deputy Registrar for calling the original documents from the wife of deceased Deshmukh. But no such documents filed and disputant filed false dispute hence, submitted to dismiss with costs.

7) The opponent No. 2 is a CIDCO, has also filed his W.S. at Exh.19 and also objected the contents in the dispute. It is submitted that dispute suffers from non joinder of necessary party Smt. Kusum Jewliker has initially allotted suit plot but she is not made the party to the dispute. Even, there is no claim

against this opponent No.2 hence, the suit also suffers for mis-joinder of party. This opponent is not aware about any allotment of the opponent society No.1. False contention is made in the dispute and hence, submitted to dismiss the dispute with compensatory costs of Rs.25,000/-.

8) Following issues are framed by my Ld. predecessor at Exh.28 to which I have given my findings thereon with reasons as under:

Sr. No.	ISSUES	FINDINGS
1	Do disputant proved that he is the member of opponent No. 1 Society?	Yes
2	Do disputant proved that as per resolution No.3(b) passed dated 17.04.1988, the opponent No.1 society has allotted him the suit plot as contended?	Yes
3	Do disputant proved that he has allotted said suit plot after making cancellation of allotment of said plot as made in favour of Smt. Kusum Dattatray Jewliker as contended ?	Does not arise
4	Do disputant proved his possession over suit plot?	No
5	Do opponent Society proved that suit plot was reserved by it for itself and in the year 2014, the society has constructed open stage on the suit plot as contended?	No
6	Whether dispute is bad for non-joinder of necessary party?	No

7	Whether dispute is bad for mis joinder of opponent No.2 as a party to the dispute?	No
8	Whether disputant is entitled to the relief of declaration as prayed?	Yes
9	Whether the disputant is entitled to the relief of perpetual injunction as prayed?	Partly Yes
10	Whether the court has jurisdiction to try to decide the present dispute?	Yes
11	What order and decree?	As per final order

AS TO ISSUE No. 1, 2 and 5 :

9) All the aforesaid issues are interrelated to each other hence, discussed together. The disputant to prove his claim that the suit plot is allotted to him by the opponent No.1 Society has examined himself at Exh.32 and reiterated the facts narrated in the dispute. The disputant deposed that he is a member of opponent society since 15.04.1990 and he was allotted suit plot by issuing Allotment Certificate. The disputant has also deposited an amount of Rs.750/- as a consideration towards said suit plot. The opponent society has also passed resolution No.3 (b) specifically for the allotment of the suit plot to the disputant. The disputant has also deposited Rs.50/- towards the share in the opponent society. The disputant to prove the oral contention produced the list of documents at Exh.34. Copy of resolution passed by opponent society at Exh. 99 dated 17.04.1988. Allotment Certificate for house construction at Exh.38 dated 15.04.1990.

10) The disputant further deposed that he is the owner of the suit plot. At the time of issuing allotment certificate to the disputant i.e. on 17.04.1988, one Mr. Prabhakar Mande was the Chairman of the opponent Society. On 01.12.1995, Secretary of the opponent society had issued no objection certificate allowing disputant as a permanent member of the opponent society to construct house on the suit plot. The disputant has filed the construction permission letter dated 15.04.1990 at Exh.38.

11) The disputant further deposed that on 27.12.1991, the opponent society had issued a letter bearing No.90/219/Shivdatta/SGNS/71 dated 25/12/1991 to the Chief Administrator, CIDCO, Aurangabad in which it is specifically stated that suit plot is allotted to the disputant but inadvertently name of Mr. Janardhan Gatla was shown in the list but he was allotted another plot. The disputant has filed the said letter dated 25.12.1991 at Exh.40. The disputant to obtain the NOC, applied to the opponent society on 01.12.1995 by letter AGD/HSR/219/71/3. The said letter is also filed at Exh.42. The disputant has also filed an application dated 04.12.2012 requesting to correct his name to CIDCO at Exh.45. Thereafter, the disputant again issued a reminder letter at Exh.44 dated 24.06.2013 in response to the said letter, CIDCO replied at Exh.46 that as per record available to them suit plot is allotted to Smt. Kusum Dattatry Jewaliker and directed to produce the list of members of the opponent society. The disputant has filed an application dated 04.12.2012 at Exh.45 and the reply letter given by the CIDCO is at Exh.46. Therefore, in view of letter dated 24.06.2013, the disputant approached to the Taluka Deputy Registrar, Co-operative Societies, Aurangabad. The letter dated 24.07.2013 at Exh.46

requesting that the suit plot is allotted to the disputant since 1990, but due to hostile attitude of the opponent society, the CIDCO is unable to correct the name list. Therefore, to obtain the necessary documents Taluka Deputy Registrar Co-operative Society, Aurangabad had issued a letter dated 06.09.2013 No. TDR/ADM-2/HSG/Share/H/2459 at Exh.48 to the Chairman and Secretary of opponent Society directing them to provide the name list of original members of the opponent Society.

12) The disputant further deposed that in the year 1988, the opponent society allotted suit plot to the disputant through resolution which was earlier allotted to Smt. Shamabai and Dr. Hiralal but while allotting suit plot in the year 1990 i.e. on 05.04.1990, it was standing in the name of Smt. Kusum Jewliker in the CIDCO record. Thereafter, opponent decided to allot plot No.37 to the Smt. Kusum Jewliker in place of Mr. Janardhan Gatala and the plot No.37 which was earlier allotted to Mr. Gatala subsequently allotted him the plot No.68. Accordingly, suit plot was allotted to the disputant. But, this total changes were not corrected by showing the name of the disputant in the list dated 10.12.1990. The list submitted to the CIDCO shows the plot No.37 is in the name of Sanjay Jewliker whereas the plot No. 68 is in the name of Mr. Gatatla and suit plot was shown as reserved for the opponent society. The opponent society has illegally shown the suit plot as reserved because there is no resolution passed to that effect. Therefore, on 24.02.2014, disputant issued a legal notice to the Taluka Deputy Registrar Co-operative Societies, Aurangabad as well as to the Chairman and Secretary of the opponent Society. The notices were unclaimed by the opponent society whereas the Taluka Deputy Registrar Co-operative Societies, Auranganad, has also not taken any action. The disputant has filed copy of notice

dated 24.02.2014 at Exh.50 and 51.

13) The disputant in support of his contention has also examined Mr. Harshal Raghunath Mane as disputant no.2 (DW2) at Exh.70. He deposed that, he is the member of the opponent society and he is residing on plot No. 63. His father Mr. R.M. Mane was the founder member of the opponent Society. His father died on 08.10.2012. His father was the Secretary of the opponent Society since beginning till 1995-96. He has filed his membership Certificate at Exh.71. He obtained the information through Right to Information Act, from the CIDCO police station, about any police report filed by the opponent society against his father but he found that no such complaint has been filed against his father. DW2 has filed letter dated 29.10.2015 given by the Assistant Police Commissioner CIDCO, Aurangabad through R.T.I. application at Exh 76.

14) DW2 further deposed that, the opponent society since year 2014, made a Tin shed upon the suit plot without the permission of the disputant. Smt. Jewliker is residing with her family upon plot No.37 in the opponent Society. The suit plot was allotted to the disputant. There was some misunderstanding and typographical error occurred regarding name of members of opponent society, but after realization of error, opponent society has sent the correction letter to the CIDCO office on 25.12.1991 at Exh.40 but till today CIDCO office has not corrected the list of members of opponent society. On 30.07.2016 the Taluka Deputy Registrar, Aurangabad appointed the Administrator to the opponent society.

15) From the aforesaid evidence it reveals that, the disputant is claiming

his ownership over the suit plot whereas the opponent denied the claim of the disputant on the ground that the earlier Secretary Mr. R.M. Mane was the relative of the disputant and the disputant has forged the documents of the opponent society. However, it is a matter of the record that the disputant has produced the resolution No.3(b) of the opponent Society at Exh.99 dated 17/4/1988 which clearly shows that the meeting of the opponent was held on 17.04.1988 and the issue to transfer the suit plot in the name of disputant was discussed and the majority of the members of the opponent society has passed the resolution No.3(b) allowing the suit plot to transfer to the disputant. On the contrary, the opponent society though alleged that earlier secretary Mr. R.M. Mane is the relative of the disputant as well as alleged that the disputant has forged the documents of the opponent Society. However, the opponent society to substantiate the said submission has not filed a single document on the record to believe the contention of the opponent Society. If the opponent come with the submission that the disputant has forged the documents of the opponent society and earlier secretary Mr. R.M. Mane was helped to the disputant for obtaining the alleged documents, but there is no evidence on record to show that any complaint has been filed against the disputant or against Mr. R.M. Mane. The letter issued by the police commissioner, Aurangabad, under R.T.I. Act, at Exh.76 has certified the fact that no such complaint was filed against the Mr. R.M. Mane. It is pertinent to note that the earlier office bearer of the opponent society has supported the theory of the disputant. The evidence of Mane DW2 who is also member of the society clearly shows that there was a resolution No.3(b) passed by the opponent society in their meeting and said suit plot was allotted to the disputant.

16) The opponent society has taken further a defense that the record of the society was lost and not traceable. The opponent Society is not in existence and now the Administrator has been appointed upon opponent society. The Administrator in his evidence from opponent society at Exh.80 deposed that at the time of taking charge of the opponent Society on dated 09.08.2016 the office bearer of the opponent society was not furnished the old record specifically record before the year 2004.

17) The submission of the opponent No.1 in their written statement is that the suit plot was kept reserved for the opponent society and to that effect the opponent Society had passed the resolution No.4 on 28/8/2014 on list of document at Exh.21 A Sr. No.3. However, it is pertinent to note that the opponent society has not shown that when this suit plot has been kept reserved for opponent society office purpose. The administrator in his evidence clearly mentioned that resolution regarding reserving the suit plot is not in the record of the opponent society. Opponent society No.1 mentioned in its written statement that all record of the opponent society was in the custody of then secretary late Mr. S.D. Deshmukh. Therefore, a letter sent to the wife of Mr. Deshmukh but she was not responded to the opponent society, at list of document Exh.21 A Sr. No.6 dated 16/10/2008. But nothing came in the evidence of Authorized officer regarding this letter communication with Smt. Deshmukh. Not even examined to this witness in order to prove their version that said record was in the custody of then Mr. Deshmukh, therefore, they communicated the said things to the Smt. Deshmukh. Hence, mere submission is not sufficient to consider that the said record was with deceased Deshmukh. It appears that opponent society is just

waiving their liability and submitting that earlier record of the opponent society had lost. Further opponent society has taken stand that disputant has forged documents which filed at Exh. 99 with the help of secretary deceased R.M. Mane in the year 1990 but it is surprised that opponent has not filed any complaint against the disputant and then secretary Mr. R.M. Mane regarding forgery of resolution documents. Whether the submission of the opponents can be taken into consideration only on the basis of that earlier record of the society has been lost. At one side the disputant holding that the resolution No.3(b) of the opponent Society on the other side opponents merely denying by taking the stand of forgery of said documents but not taken any action. The disputant not merely holding the resolution of the opponent society but also holding the allotment certificate at Exh.37 as well as the Share Certificate Exh.38 which reveals the substance in the submission of the disputant and duly supported by the Disputant witness No.2. Nothing contrary came on record in the cross examination of the disputant witness No.1 and 2 which would be helpful to the opponent society. On the contrary opponent witness the Administrator has admitted in his evidence in para.4 wherein he mentioned that on 10/12/1990 the list of the members of the opponent society, the suit plot was mistakenly typed in the name of Smt. Jewalikar and plot no.72 is reserved for society purpose.

18) Upon going through these facts and circumstances, whether the subsequent resolution passed to reserve the suit plot for the opponent society can be taken into consideration, when the earlier resolution No.3 (b) of the society has still in existence and there is no record that at the resolution No.3 (b) has been cancelled. Whether the signatures and the seal of the opponent society on the allotment letter and other documents with the disputant can be overlooked,

only on the oral submission of the opponent society. According to me, the evidence led by the disputant is well supported with the documentary evidence on the contrary, the opponents society merely denying the facts alleged by the disputant without proving the fact that the suit plot was kept reserved for the opponent Society. It is also material to note that if the opponent society contended that suit plot was kept reserved for the society purpose. The resolution list of document at Exh.21 A Sr. no.4 is passed on 28/8/2014 for keeping the suit plot reserved for the society. But failed to file any record/ Resolutions to show the earlier status of the suit plot. The submission of the opponent that original record of the opponent society has lost, there is no substance in the submission.

19) The record shows that Deputy Registrar has initiated the action against the then president Mr. Maruti Mogalaji Ungratwar and then Secretary Mr. Ramesh Ganesh Kulkarni and declared that they are not qualified to contest the election, to get elected from election, to get authority, to become member of committee from the year 2017 to year 2022 by the opponent society at Exh. 92 dated 15/3/2017. The resolution no.4 at Exh. 21A list of document Sr. No.3 dated 28/8/2014. It appears that submission of correspondence letter to the wife of the Mr. Deshmukh discussed supra it clears that all record created after thought. Therefore, the same cannot be taken into consideration. It is not the case of the disputant has created documents in the year 2014-2015 but the documentary evidence at Exh.32 to Exh.42 reveals that these are very old documents of the year of 1983 to 1990 and which are original in nature. It is the case of the disputant that the suit plot was initially allotted to Smt. Shamabai and Dr. Hiralal by virtue of resolution No.2(b) passed in the meeting at Exh.100 dated 18/12/1983. The disputant has filed the said document at Exh.100 which

bears the seal of the opponent society and signatures of the Chairman and Secretary and other members of said society which supports the oral submission of the disputant wherein it is observed that the suit plot was previously allotted to the Smt. Shamabai and Dr. Hiralal. But opponent society has not produced on record which creates the doubt about the said resolution, even Administrator admitted in his cross that he identified the signatures of the then Chairman Prabhakar Mande and then Secretary Mr. R.M. Mane of opponent society because he has seen their signatures on many records and according to him they both were holding their respective post for many years together. Therefore, the document at Exh.100 has duly proved. The opponent Society in their W.S specifically denied the allotment of suit plot to anyone, except it is reserved for the society only. But it is important to note that the evidence led by the Administrator, Opponent Witness, clearly deposed in his evidence that the suit plot was allotted to Smt. Shamabai and Dr. Hiralal and the submission of the opponent Society that the suit plot was kept reserved and not allotted to any member this creates doubt in their stand in absence of evidence.

20) It is also deposed by the disputant that the suit plot was initially allotted to Smt. Shamabai and subsequently the disputant was allotted the suit plot by passing resolution No. 3(b) at Exh.32 by depositing the necessary fees. The version of the disputant and his witness brought the believable facts on record and nothing came contrary in their cross examination to impeach their credit of witness. Moreover, there is no contrary evidence brought by the opponents to rebut the evidence led by the disputant. The disputant has examined one independent witness Mr. Harshal Mane (DW2) who is a member of the opponent Society. He has fully supported the version of the disputant theory.

21) It has also come on record that since year 1984 till year 1995, the disputant has taken pains to bring his name in the opponent society as an owner of suit plot. On 01.02.1984 an application at Exh.36, resolution dated 17.04.1988 at Exh.99 in respect of transfer of suit plot in the name of disputant. Share certificate dated 08.08.1990 at Exh.101 issued in favour of disputant, Certificate of Construction and Membership Certificate dated 15.04.1990 at Exh.38, NOC at Exh.42 dated 01.12.1995 issued by opponent society, the disputant depositing plot construction fees at Exh.37. These documents are thirty years old documents, therefore, in view of Section 90 of Indian Evidence Act, these documents have presumption value. It is general rule that “an instrument thirty years old proves itself, provided if it is produced from a custody, if an instrument be produced from a custody were deeds of the description ought to be, then, if the instrument be thirty years old there is no necessary for further proof. In citation Andorson vs., Veston (1814) LJCP 194:138 ER 117.” In light of above provision in the present dispute these documents mentioned above produced by the disputant more than thirty years old and it is produced from proper custody as these documents belonging to him in connection with his membership and right upon the suit plot of the dispute. Unless it is rebutted by opponent society, but in compare to these documents the documents relied by the opponent is of the year 2014 onwards. As far as the submission of the old documents are concern, the opponent is merely denying these documents. Therefore, all such a documents cannot be threshold rejected only on the mere submission of the opponent society that forged and fabricated documents are created by disputant in absence of the evidence.

22) Opponents contended that suit plot is kept reserved but they failed to tendered any evidence in respect of reservation of the suit plot. The only witness i.e. Administrative O.W.1 has been examined by the opponents at Exh.80 wherein he has admitted in his cross examination that suit plot shown to be reserved for society as per updated list prepared in the year 2016. The opponent society does not have any ancient record. These facts clearly shows that the opponent society has no record to prove that the suit plot is kept reserved for the society only. Therefore, from the aforesaid reasons I held that the disputant is proved the fact that the suit plot was allotted to him by the opponent society by way of passing resolution and depositing the allotment charges, share certificate fees, the disputant became the owner of the suit plot. The opponent society merely denying the right of the disputant and alleging that the suit plot is kept reserved on the basis of subsequent document which are not taken into consideration as aforesaid reasons. Therefore, the opponent society is failed to prove that the suit plot was kept reserved for the society purpose only. Therefore, I answer Issue No.1 and 2 in affirmative and Issue No.5 in negative.

AS TO ISSUE No. 3:

23) As far as this issue is concern, the burden is casted upon the disputant to prove that the suit plot transferred to the disputant after cancellation of said suit plot in favour of Smt. Jewliker allotted. However, it is important to note that, the disputant in his pleading and evidence deposed that the suit plot was in the name of Smt. Shamabai and not in the name of Smt. Jewliker. The disputant deposed as aforesaid that the suit plot was allotted to the disputant vide cancellation of allotment made in favour by the opponent No.2 CIDCO in his

W.S. that as per the members list submitted by the opponent No.1 society to the opponent No. 2 CIDCO through letter dated 24.07.2013 at Exh. 46 that the name of Smt. Jewliker is showing to the suit plot. However, neither the society nor the CIDCO led any evidence to prove that such transfer of suit plot was made in favour of Smt. Jewliker. On the contrary, it is the evidence of the disputant that the name of Smt. Jewliker was wrongly shown in the member list dated 10.12.1990 of opponent No.1 society. Moreover, the opponent No.1 society has admitted the fact in evidence at Exh. 80 that due to typographical mistake the name of Smt. Jewliker was recorded. In fact Smt. Jewliker has been allotted the plot No.37 since beginning. Therefore, considering the aforesaid circumstances, The issue No.3 is does not arise. Therefore, I answer it as accordingly.

AS TO ISSUE No. 6 and 7:

24) The opponent No. 2 CIDCO has raised the issue of non-joinder of necessary party as well as mis joinder of party i.e. opponent No.2 to the present dispute. It is alleged that the name of Smt. Jewliker is showing to the record of CIDCO of the suit plot, therefore, she is the necessary party. It is also alleged that there is no relief against the opponent No.2 CIDCO, hence, unnecessary he has added to this dispute. However, from the aforesaid reasons, it is proved that the Smt. Jewliker has already allotted plot No.37 and she is not having any right in the suit plot. The name of Smt. Jewliker recorded to the opponent No.2 CIDCO office by typing mistake. Moreover, the opponent No.2 as claimed neither led any evidence not filed the list of members of the opponent No.1 society. The Administrator O.W.1 admitted in his cross examination that no person has claimed their right upon the suit plot except disputant. The correction

letter of opponent No.1 society dated 25.12.1991 at Exh.40 to the opponent No.2 CIDCO clearly reveals the fact that there is typographical mistake in the member list as aforesaid and also requested to rectify the same. If Smt. Jewliker has any right in the suit plot she would have objected the present claim of disputant or her heirs could raised the objections. Therefore, in view of supra discussion the Smt. Jewliker was neither necessary party nor proper party to the present dispute.

25) As far as the allegation in respect of mis joinder of opponent No. 2 is concern, the opponent No. 2 is the official body who kept all the record of the opponent No.1 society. The opponent No. 2 itself admitted in their W.S that the CIDCO has kept the record of Opponent No.1society. Moreover, member list dated 10.12.1990 shows the name of Smt. Jewliker the fact shown by the CIDCO. Thus, in view of the aforesaid reasons, I hold that the suit is nowhere bad for non joinder necessary party nor for mis-joinder of opponent No.2 CIDCO. Therefore, I answer Issue No. 6 and 7 in negative.

AS TO ISSUE No. 8 :

26) The disputant is claiming his right upon the suit plot. The disputant accordingly proved the fact that suit plot was allotted by the opponent No.1 in favour of the disputant by passing resolution discussed above. But the opponent society is denied the right of the disputant and also passed subsequent resolution to keep the suit plot reserved for society. But Section 34 of the Specific Relief Act 1963, states that any person entitle to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny his title to such character or right and court may in its discretion make

therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

27) Thus in light of above provision, the disputant has established his right upon the suit plot by leading oral as well as documentary evidence. Therefore, the ownership of the disputant is proved from the said document. Hence, the disputant is entitled for the relief of declaration. Therefore, I answer Issue No .8 in affirmative.

AS TO ISSUE No.4 And 9 :

28) The disputant has also claimed the perpetual injunction on the ground that the disputant is in possession of the suit plot. The suit plot is still open plot since allotment, the disputant is in possession of the suit plot. However, the disputant has clearly admitted in his cross examination that the opponent society has made construction upon the suit plot at about 150 – 200 Sq. ft. and constructed a Tin shed on the suit plot. This fact is also confirmed by the disputant witness Mane (DW2) in his evidence too. This fact is sufficient to hold that there is a possession of the opponent society upon the suit plot, therefore, question of protection of possession of the disputant does not arise. However, as far as the relief of perpetual injunction is concern, the same can be considered in the form that not to change the nature of the suit plot and not to create any third party right as the disputant has proved his legal right in the suit plot. Therefore, I hold that the disputant is entitled to the relief of perpetual injunction in the form of that not to change the nature of the suit plot as well as not to create third party right upon the suit plot. Therefore, I answer Issue No.4 in the negative and Issue

No.9 in partly affirmative.

AS TO ISSUE No. 10 :

29) This issue deals with the jurisdiction of the present dispute. It is well settled law that every disputant filed under Section 91 of M.C.S. 1960 and Rules can be tried and entertained by this court. Accordingly, present dispute is filed under Section 91 of the Co-operative Societies Act 1960. Though the opponents have challenged the jurisdiction of this court but the disputant has duly proved his membership with the opponent No.1 society which is registered under Maharashtra Co-operative Societies Act. There is a dispute of a member against the society. These facts proved in this dispute clearly which shows that the court is having jurisdiction to try and to entertain this dispute. Therefore, I answer Issue No. 10 in affirmative.

AS TO ISSUE No. 11 :

30) In view of the aforesaid reasons, the disputant has established his claim that opponent No. 1 society has allotted the suit plot in favour of the disputant and in spite of allotment, the opponent No.1 denying the right of the disputant. Under such circumstances, the opponent society may create any third party right upon the suit plot. Therefore, the relief of declaration of ownership as well as relief of perpetual injunction in the form of that not to create third party right can be granted to the disputant. The opponent No.2 merely claimed the compensatory Costs of Rs.25,000/- without leading any evidence that the present dispute is false and bogus. Therefore, the opponent No.2 is not entitled for the relief of compensatory Costs. On the contrary, the opponent No.1 society in spite

of allotment of suit plot denied the right of the disputant and forced the disputant to file this dispute, therefore, it would be just to impose the costs of the dispute upon the opponent No.1 Society. Therefore, I answer issue No. 11 in affirmative and to answer it, I pass following order,

ORDER

- 1) Dispute is partly decreed with costs
- 2) The disputant is declared the owner of the suit plot which is more particularly described in the dispute.
- 3) Opponent No.1, their agents, servants or anybody acting on behalf of the opponent No.1 society are perpetually restrained from changing the nature of the suit plot and from creating any third party right over the suit plot of opponent No.1 Society.
- 4) Award be drawn accordingly.
- 5) Dictated and pronounced in court.

Sd/-

Place :- Aurangabad.

(**Smt. A. A. Pathan**)

Judge,

Date :- 11th December, 2018.

Co-operative Court, Aurangabad.