

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11214 OF 2013**

Ashok Namdeo Gokhale & Anr.

..Petitioners

Vs.

The Divisional Joint Registrar C.S. & Ors.

..Respondents

**WITH
WRIT PETITION NO.11215 OF 2013**

Gautam Ashok Gokhale

..Petitioner

Vs.

The Divisional Joint Registrar C.S. & Ors.

..Respondents

Mr. S. S. Kanetkar for the Petitioners in both the Petitions

Mr. S. D. Rayrikar AGP for the Respondent Nos.1 and 2 in both the Petitions

Mr. Amit Borkar for the Respondent No.3 in Writ Petition No.11214 of 2013

Mr. V. P. Vaze for the Respondent No.4 in Writ Petition No.11214 of 2013

CORAM : R. M. SAVANT, J.

DATE : 23rd July, 2015

P.C.

1 The above Petitions take exception to the orders both dated 11-9-2013, passed by the Divisional Joint Registrar, Co-operative Societies, Pune, by which orders the Appeals filed by the Respondent No.4 herein came to be

allowed and resultantly the order dated 20-10-2011 passed by the Deputy Registrar, Co-operative Societies on the application filed by the Petitioners herein under Section 79 of the Maharashtra Co-operative Societies Act, came to be set aside.

2 This is an unfortunate case where the Respondent No.4 in Writ Petition No.11214 of 2015, is arrayed against the Petitioner No.1 who is her brother-in-law being her husband's brother. The bone of contention amongst the parties is the membership of the Respondent No.3 society. The said society is a plot owner society where the plots are leased out to the member on long terms lease basis. In the instant case, the plot in question is plot No.32 in the society which was standing in the name of one Namdeo Atmaram Gokhale. The said Namdeo Atmaram Gokhale was the father of the Petitioner No.1 in the above Petitions and the father-in-law of the Respondent No.4 herein. The said Namdeo Gokhale in his life time in the year 1992 transferred the said plot in the name of his two sons i.e. Kishore Namdeo Gokhale and the Petitioner No.1 i.e. Ashok Namdeo Gokhale. The share certificate was accordingly amended so as to include the name of Kishore Gokhale as the main member and Ashok Gokhale as an associate member. It appears that on 28-8-2000 both Kishore Gokhale and Ashok Gokhale executed jointly a nomination. In the context of the present Petition what is relevant to note that the said nomination was forwarded by a letter of the same date i.e. 28-7-2000 jointly signed by them,

wherein they have mentioned that after them, the names of their respective heirs should be entered in the record of the society as members. The nomination executed by them jointly was in the name of Gautam Ashok Gokhale whose name was at Sr. No.1 and Mihir Kishore Gokhale whose name was appearing at Sr. No.2. The name of Ashok Gokhale and Kishore Gokhale were also shown in cloumn (4) of the said nomination and it was also mentioned that Gautam Gokhale is the son of Ashok Gokhale and Mihir Gokhale is the son of Kishore Gokhale.

In so far as Kishore Gokhale is concerned, he expired on 31-1-2004. After his death, the Respondent No.4 made an application for inclusion of her name as a member as being the heir of the said Kishore Gokhale. In view of the nomination which was executed jointly by Kishore Gokhale and Ashok Gokhale, the Respondent No.3 society informed the Respondent No.4 that she would have to get the no objection of the other heirs of the said Kishore Gokhale. The Respondent No.4 accordingly obtained the no objection of her son Mihir Gokhale and daughter Mukta Gokhale which she submitted to the Respondent No.3 society. The Respondent No.3 society thereafter acted upon the application and in the meeting dated 19-6-2008 decided to confer the membership on the Respondent No.4 along with Ashok Gokhale i.e. the Petitioner No.1 which endorsement is found on the reverse of the share certificate.

3 The Petitioners aggrieved by the conferment of the membership on the Respondent No.4 herein invoked the jurisdiction of the Assistant Registrar under Section 79 of the said Act. The Assistant Registrar principally on the ground that in the nomination, the name of Gautam Gokhale appears at Sr. No.1, hence after the death of Kishore Gokhale the name of Gautam Gokhale would have to be included and the Respondent No.4 only because she is the heir of the said Kishore Gokhale, would not be entitled to be a member. The Deputy Registrar, Co-operative Societies, by his order dated 20-10-2011 accordingly directed the Respondent No.3 society to correct the record by including the name of Gautam Gokhale and deleting the name of the Respondent No.4.

4 The said order passed by the Deputy Registrar, was carried in Appeal by the Respondent No.3 society as also by the Respondent No.4. Both the Appeals i.e. Appeal No.28 of 2012 and Appeal No.69 of 2011 were allowed by the Divisional Joint Registrar by the impugned order dated 11-9-2013. The gist of the reasoning of the Divisional Joint Registrar is based upon the fact that after the death of either of the parties, their heirs were to be brought on record and it is to the said effect that the nomination was executed by both Kishore Gokhale and Ashok Gokhale. The Divisional Joint Registrar held that apart from the nomination, the relevant aspect would be whether the Applicant

is the heir of the deceased member. The Divisional Joint Registrar held that the Deputy Registrar has totally misdirected himself by holding that after the death of Kishore Gokhale, it would be Gautam Gokhale who would be required to be brought on record in terms of the nomination. The Divisional Joint Registrar has adverted to the fact that Mihir Gokhale i.e. S/o Kishore Gokhale has no objection to the Respondent No.4 i.e. his mother being conferred with the membership. The Divisional Joint Registrar has also observed that other heirs i.e. Mukta Gokhale i.e. the daughter of Kishore Gokhale has also given her no objection. The Divisional Joint Registrar in the said circumstances deemed it appropriate to set aside the order passed by the Deputy Registrar and has accordingly allowed the Appeals.

5 The Learned Counsel appearing for the Petitioners Mr. Kanetkar sought to contend that in terms of the nomination executed jointly by Kishore Gokhale and Ashok Gokhale both Gautam Gokhale and Mihir Gokhale were required to be brought on record and the aspect of heirship has no relevance once there is a valid nomination. In support of the said contention, the Learned Counsel sought to place reliance on a Division Bench Judgment of this court in the matter of Om **Siddharaj Co-operative Housing Society Limited Vs. The State of Maharashtra & Ors.**¹

6 Per contra, the Learned Counsel Mr. Vaze appearing for the

1 1998(4)Bom.C.R.506

Respondent No.4 as also the Learned Counsel Mr. Borkar appearing for the Respondent No.3 society would support the impugned orders. The Learned Counsel would contend that the nomination and the sequence in which the names are appearing has been wrongly construed by the Deputy Registrar when the intention of the parties was very clear that on their death their respective heirs are to be brought on record. The Learned Counsel Mr. Vaze drew this Court's attention to the forwarding letter as well as the nomination which was executed jointly by both Kishore Gokhale and Ashok Gokhale.

7 Having heard the Learned Counsel for the parties, in my view, there is no merit in the above Petition. As indicated hereinabove, the membership was in the joint names of Kishore Gokhale and Ashok Gokhale, Kishore Gokhale was to be the main member and Ashok Gokhale was to be the associate member. Both of them though having jointly executed the nomination wherein the names of Gautam Gokhale and Mihir Gokhale are appearing, their forwarding letter discloses their intention namely that their heirs whose names are appearing in the nomination were to be brought on record on the death of either of them. The said nomination cannot be construed in the manner as is sought to be construed by the Learned Counsel for the Petitioner Mr. Kanetkar, as on the death of Kishore Gokhale, it is his son Mihir Gokhale who would be entitled to become a member in terms of the nomination. Merely because the names are appearing in a sequence where the name of Gautam Gokhale

appears at Sr. No.1, the same would not mean that the name of Gautam Gokhale and Mihir Gokhale both have to be included on the death of one of the joint members. What is significant to note in the present case is that the nominee Mihir Gokhale has no objection to the name of his mother i.e. the Respondent No.4 being included as a member which no objection has also been given by his sister Mukta. Hence once the nominee has withdrawn in favour of his mother, the Respondent No.3 society was bound to honour the intention of the nominee who wants his mother to be conferred with the membership. The First Authority i.e. the Deputy Registrar can be said to have taken a highly technical view of the matter by observing that the name of the Respondent No.4 could not have been included as a member as it is only Gautam Gokhale i.e. the son of Ashok Gokhale who would be entitled to be included as a nominee of the joint members. A reasonable construction would have to be given to the nomination, as well as the intendment of the executants would have to be seen from the joint letters that they have addressed to the Respondent No.3 society. The intention obviously is to include the names of their respective heirs after them and not that the names have to be included in the sequence in which they appear in the nomination. It would also never have been the intention of Kishore Gokhale to nominate his nephew Gautam Gokhale as his heir, when his son Mihir Gokhale was very much there. In so far as the reliance placed by the Learned Counsel for the Petitioners on the judgment in the case of Siddharaj CHS Ltd. (Supra) is concerned, the same

has no application in view of the fact that in the instant case the nominee Mihir Gokhale has given a no objection for his mother's name to be included as a member.

8 In that view of the matter, the order passed by the Divisional Joint Registrar upsetting the order passed by the Deputy Registrar, cannot be found fault with. No case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petitions are accordingly dismissed.

9 At this stage, the Learned Counsel for the Petitioners applies for continuation of the ad-interim order which is operating in the above Petition. In the facts and circumstances of the case, the said prayer is refused.

[R.M.SAVANT, J]