

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1553 OF 2016

1. Mr. Prakash Lachmandas
Chhabria and Ors

..Petitioners.

Vs

1. Mrs.Renuka Kishan Chandani
and Ors

.. Respondents

Mr. Rajesh A.More, Advocate for Petitioners.

Mr. Prathamesh Kamat a/w Ms Debahree Mandpe i/b Ganesh &
Co, Advocates for Respondent no.1.

**CORAM : R.G.KETKAR,J.
DATE : 29/03/2017**

PC:

1. Heard Mr.Rajesh More, learned counsel for the petitioners and Mr. Prathamesh Kamat, learned counsel for respondent no.1 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 8.10.2015 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai in Revision Application No. 24 of 2014. By that order, the Divisional Joint Registrar allowed the Revision Application filed by the first respondent herein and quashed and set aside the Judgment and order dated 3.12.2013 passed by the Deputy Registrar, Co-operative Societies, H/W Ward, Mumbai. The Divisional Joint Registrar ordered that respondent no.1 shall be admitted as

member of respondent no.2-society in respect of Shop no.3/B, situate in the society under section 23(2) of the Maharashtra Co-operative Societies Act, 1960 (for short, 'Act'). Respondent no.2 is directed to take necessary entries in the Share Certificate and records of the society.

3. In support of this Petition, Mr. More submitted that the petitioners are sons and respondent no.1 is the daughter of Lachmandas P. Chhabria. Lachmandas Chhabria executed Will dated 18.3.2004 bequeathing the suit property in their favour. Respondent no.1 claims that Lachmandas Chhabria had executed Will on 24.9.2011 bequeathing the suit property in her favour. He submitted that Lachmandas Chhabria died on 21.11.2012. The petitioners have instituted probate petitions in this Court and the same are pending. Respondent no.1 has also set up title on the basis of the registered Gift Deed dated 13.7.2012. He submitted that the petitioners have instituted S.C.Suit No. 2581 of 2013 in the City Civil Court, Dindoshi, Borivali for cancellation of the registered Gift Deed and the same is pending. The Deputy Registrar rejected the application made by respondent no.1 on the ground that the suit instituted by the petitioners is pending in the City Civil Court and the matter is sub judice. Respondent no.1, therefore, cannot claim benefit of Section 23(2) of the Act. He submitted that as validity of the Gift deed is sub judice, the Divisional Joint Registrar was not justified

in allowing the Revision Application. He also invited my attention to the decision of this Court dated 4.7.2011 in Writ Petition No. 659 of 2011 (Usha Jhaveri Vs State of Maharashtra).

4. On the other hand, Mr. Kankal supported the impugned order. He submitted that while allowing the Revision Application, the Divisional Joint Registrar has observed that the decision of the City Civil Court will be binding on the parties. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. It is not in dispute that respondent no.1 has made application for admitting her as a member on the basis of the registered Gift Deed dated 13.7.2012. The Deputy Registrar rejected the application solely on the ground that the petitioners have challenged that Gift Deed by filing suit and the suit is pending in the Civil Court. As against this, after considering the judgment of this Court, the Divisional Joint Registrar has allowed the application. It was further observed that the decision of the Civil Court shall be binding on the parties. For the reasons recorded in the impugned order, I do not find that the Divisional Joint Registrar has committed any error in passing the impugned order. It is however made clear that the parties will be bound by the final decree of S.C.Suit No. 2581 of 2013

presently pending in the City Civil Court, Dindoshi, Borivali, Mumbai. It is further made clear that the City Civil Court will decide the suit on the basis of evidence on record and on its own merits uninfluenced by the observations made in this order. Subject to these clarifications, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)