

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 13084 OF 2017****ALONGWITH****CIVIL APPLICATION NO. 59 OF 2018****IN****WRIT PETITION NO. 13084 OF 2017**

**Mohan Menghraj Shroff,)
 An adult, Indian Inhabitant,)
 residing at Flat No.31, Guide Building)
 8th Floor, 16-L.D.Ruparel Marg,)
 Mumbai – 400 006)**

**..... Applicant/
 Petitioner**

VERSUS

**1. Deputy Registrar,)
 Co-operative Societies, “D” Ward,)
 Mumbai having its office at)
 6th Floor, Malhotra House,)
 Opposite G.P.O. Mumbai – 400 001)**

**2. Empire Guide Co-operative)
 Society Limited, having its address)
 at 16-L.D.Ruparel Marg,)
 Mumbai – 400 006)**

3. Mr.Ramkishan V.Shroff)

**4. Mrs.Nirmala Laxminaraian Shroff)
 both adults, Indian Inhabitants and)
 residing at Flat No.35, Guide Building)
 8th Floor, 16- L.D.Ruparel Marg,)
 Mumbai – 400 006)**

..... Respondents

Mr.Mayur Khandeparkar, a/w. Mr.Farid Karachiwala, Ms.Sneh Mehta,
 Mr.Mahek Chhada, i/b. Wadia Ghandy & Co. for the Petitioner.

Mr.S.H.Kankal, A.G.P. for the State – Respondent no.1.

Mr.Murtuza Slatewala for the Respondent no.2.

Mr.N.N.Bhadrashete, i/b. Mr.G.H.Keluskar for the Respondent nos. 3 and 4.

CORAM : R.D. DHANUKA, J.

DATE : 24th APRIL, 2018

JUDGMENT

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order passed by the respondent no.1 dated 10th August,2017 allowing the Intervention Application No.30 of 2017 filed by the respondent nos. 3 and 4 in the Application No.4973 of 2016.

2. It is the case of the petitioner that the deceased Mr.Amar Menghraj Shroff who was the brother of the petitioner had applied as tenant in common for five shares with one Mr.Laxminarain V.Shroff bearing nos. 166 to 170 in respect of the Flat No. 35 on the 9th floor, Guide Building, Nepean Sea Road, Malabar Hill, Mumbai 400 006. The said deceased Mr.Amar Menghraj Shroff alongwith Mr.Laxminarain V.Shroff filed a nomination form with the respondent no.2 society on 2nd August,1975 and thereby nominating the petitioner as nominee for 50% share of the said Mr.Amar Menghraj Shroff in the said premises. In the said nomination form insofar as nominees are concerned, the name of the respondent no.3 was mentioned whereas the name of the petitioner as nominee was at serial no.2. Both the original members expired.

3. The petitioner made an application under section 30(1) read with

section 23 of the Maharashtra Co-operative Societies Act, 1960 on 29th December, 2016 before the Society relating to the transfer of 50% shares of the deceased in the said premises in favour of the petitioner and also requested to make necessary changes in the share certificate. The society did not give any response to the said application filed by the petitioner. The petitioner accordingly filed an appeal under section 23(2) of the Maharashtra Societies Act, 1960 before the respondent no.1. In the said appeal, respondent nos. 3 and 4 filed intervention application on 23rd March, 2017 on various grounds. The said intervention application was opposed by the petitioner. The respondent no.1 passed a non-speaking order in the said intervention application and allowed the said application. The said order is impugned by the petitioner in this writ petition.

4. Mr.Khandeparkar, learned counsel for the petitioner invited my attention to the nomination form signed by the said two deceased who were the members each having 50% shares in the said flat and the shares and also showing the petitioner and the respondent no.3 as the nominees. He submits that since the society did not take any action in the said application filed by the petitioner, the petitioner filed an appeal under section 23(2) of the Maharashtra Co-operative Societies Act, 1960 and the same was maintainable.

5. Learned counsel also invited my attention to the intervention application filed by the respondent nos. 3 and 4 and would submit that the application for intervention was made by the respondent nos. 3 and 4 on the ground that they were claiming exclusive rights in the said flat

and the said shares based on an alleged oral family arrangement entered into in the year 1974. He submits that the respondent no.1 while deciding an appeal under section 23(2) of the Act cannot decide the rival claims of title in respect of the said flat and the shares. The respondent no.1 therefore could not have allowed the said intervention application. The respondent no.1 was therefore neither necessary nor a proper party to the said appeal filed under section 23(2) of the said Act.

6. Mr. Bhadrashete, learned counsel for the respondent nos. 3 and 4 invited my attention to the appeal filed by the petitioner under section 23(2) of the Act and would submit that the petitioner had not only claimed the transmission of the share as nominee of the deceased Mr.Amar Menghraj Shroff but has also claimed the ownership in respect of the said 50% shares. It is submitted by the learned counsel that even if the application filed under section 30 of the Act read with Rule 25 of the Maharashtra Co-operative Societies Rule, 1961 was not entertained by the respondent no.2 society within the time prescribed, an appeal under section 23(2) filed by the petitioner itself was not maintainable. The respondent nos. 3 and 4 were thus entitled to be impleaded as the parties in the said appeal filed by the petitioner and to raise an issue of maintainability and also to raise a plea of ownership of the entire flat and the shares exclusively.

7. It is a well settled principles of law laid down by the Supreme Court and this court in catena of decisions that nominee has no right, title or interest in the flat and the shares based on the nomination form.

The nominee is a trustee in respect of such flat and shares till the dispute about the title is settled upon by the civil suit in appropriate proceedings. Though in the appeal filed under section 23(2) of the Maharashtra Co-operative Societies Act, 1960, the petitioner has also prayed for title in respect of the 50% shares based on the nomination form, the petitioner would not be entitled to claim ownership in respect of the 50% shares based on the said nomination form.

8. Mr.Khandeparkar, learned counsel for the petitioner on instruction states that this court may clarify that the issue of title would be pressed by the petitioner in the suit in respect of the 50% share in the said flat and the shares and not in the appeal filed under section 23(2) of the Act. The statement made by the learned counsel is accepted.

9. Insofar as the objections of the respondent nos.3 and 4 that the appeal maintainable under section 23(2) on the ground that the society had not refused to admit the petitioner as a member of the respondent no.2 is concerned, on conjoint reading of section 30 of the Maharashtra Co-operative Societies Act, 1960, with Rule 25 indicates that if an application is made by a nominee in accordance with the provisions of of the Maharashtra Co-operative Societies Act, 1960 read with rules, the society has to transmit the shares in the name of the nominee under those provisions. Such transfer does not create any right, title or interest in the flat and the shares and makes such nominee a member only by virtue of such nomination form under section 30 read with Rule 25 of the Rules till such flat and the shares are devolved

by law of succession.

10. I am not inclined to accept the submissions of respondent nos. 3 and 4 that if the society refuses to transmit the shares and the flat and consequently the membership in respect of such flat and the shares, the petitioner will not have any remedy under the provisions of the Act and the Rules including the remedy of section 23(2). In my view, the effect of refusal or inaction on the part of the society to transmit the shares and the flat though application under section 30 read with Rule 25 is in order will lead to a refusal to accept the membership of such applicant who was nominated by the members of the society in respect of such shares. In my view section 23(2) of the Maharashtra Co-operative Societies Act, 1960 thus would be attracted and remedy of such applicant would be by way of an appeal under the said provision.

11. It is made clear that even if the said appeal is allowed in favour of the petitioner, the petitioner would not become the owner in respect of such flat and the shares. Such transfer would be only to the extent of share mentioned in the nomination form and if no such share is mentioned then equally in view there being two nominees.

12. Insofar as the respondent nos.3 and 4 are concerned, they have raised their claims on the basis of alleged oral family arrangement in respect of the entire flat and the shares. The Deputy Registrar who will decide the appeal under section 23(2) filed by the petitioner has no jurisdiction to decide an issue of title under the said provisions. The rival claims in respect of the title of flat and the shares can be only

decided in the suit by the civil court having jurisdiction. In my view the respondent nos. 3 and 4 thus are neither necessary nor proper parties in the appeal filed by the petitioner under section 23(2) of the Maharashtra Co-operative Societies Act, 1960.

13. I, therefore, pass the following order :-

(a) Impugned order dated 10th August, 2017 passed by the respondent no.1 allowing the Intervention Application No.30 of 2017 filed by the respondent nos. 3 and 4 is set aside.

(b) Intervention Application filed by the respondent nos. 3 and 4 in the Application No.4973 of 2016 filed by the petitioner is dismissed.

(c) Respondent nos. 3 and 4 would be at liberty to file civil suit for adjudication of the title claimed in the said flat and the shares. If any such civil suit is filed by the respondent nos. 3 and 4 for adjudication, the same shall be decided on its own merit and without being influenced by the order if any passed by the respondent no.1 in the appeal filed by the petitioner.

(d) Similarly the civil suit filed by the petitioner also to be decided on its own merit without being

influenced by the order if any passed by the respondent no.1 in the appeal filed by the petitioner under section 23(2) of the Maharashtra Co-operative Societies Act, 1960.

(e) Ad-interim relief granted by this court in this petition stands vacated.

(f) The respondent no.1 is directed to dispose of the appeal filed by the petitioner on its own merit.

14. Writ petition is disposed of in the aforesaid terms. No order as to costs.

15. In view of the disposal of the writ petition, Civil Application No.59 of 2018 does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]