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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 6th July, 2018

+ **TEST.CAS. 61/2014**

PROMILA SHARMA Petitioner

Through: Mr. Mohit Jolly, Advocate.

versus

STATE & ORS Respondents

Through: Mr. Rajender Kumar, Advocate for R-5 to 6 & R-8 to 11 along with Respondent No.11 in person.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present testamentary petition has been filed by Smt. Promila Sharma. Letters of administration are sought in respect of the estate of late Smt. Usha Rani Sharma. The Estate consists of immovable property bearing No.A-09, Delhi School Teacher Cooperative House Building Society, Surajmal Vihar, Delhi-110092 measuring 154.963 square yards. Initially vide order dated 24th September, 2014, this Court had directed the parties to maintain status quo with regard to title and possession of the property.

2. In the petition, the various LR's of late Smt. Usha Rani Sharma have been impleaded as Respondent Nos. 2 to 6. Respondent No.7, Mr. R.K. Bhardwaj is a person who claims to be a nominee of the deceased in the Group Housing Society. The affidavits given by the deceased in his favour have been relied upon by him and the said Respondent No.7 had preferred Testamentary Case No. PC No. 25/13. He claimed that since he was the

nominee of the deceased in the Society, he was entitled to letters of administration in respect of the said property. The said petition was transferred and tagged along with the present TEST.CAS. 61/2014 vide order dated 11th December, 2015.

3. The present petition is preferred by Smt. Promila Sharma who is the sister of the deceased. During the pendency of the present petition, Smt. Promila Sharma expired and her LRs were brought on record vide order dated 28th January, 2015. Respondent Nos. 8 to 11 were impleaded in this petition as they were the Respondents in the petition filed by Mr. R.K. Bhardwaj, Respondent No.7. As per the Petitioner, the legal heirs who are entitled to a share in the Estate of the deceased are as under: -

Sl No.	Name	Relationship with the Deceased	Address	Share
1	Mrs. Promila Sharma	Sister	C-4/214, Sector-6, Rohini, Delhi-110085	1/5 th
2	Mr. Krishna Sharma	Brother	2173, Constance Drive, Oakville, Ontario-L-6J5L2, Canada	1/5 th
3	Mrs. Manju Tripathi	Sister	E-15, Sector-52, Noida - 201301, Uttar Pradesh	1/5 th
4	Dr. P.S. Sharma	Brother	Plot No.12, Sector-9, B-2/409 Varun Apartments, Rohini, Delhi-110085	1/5 th
5	Ms. Shipra Sharma	Daughter of a predeceased son of a daughter	Quarter No.7, I.D. Hospital, Nursing Hospital, Kingsway Camp, Delhi - 110009	1/10 th

6	Ms. Ritu Acharya	Daughter of a predeceased son of a daughter	#672, 1st Floor, Niti Khand-I, Indirapuram, Ghaziabad 201012, Uttar Pradesh	1/10 th
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4. The Respondent Nos. 3 and 4 have already given their no objection and relinquished their rights in favour of the Petitioner. The affidavits given by them are at pages 60 to 63 of the documents filed by the Petitioner. Insofar as Respondent Nos.5, 6 and 8 to 11 are concerned, learned counsel appearing for the said Respondents also submits that they have no objection to the grant of letters of administration in terms of para 6 of the petition.

5. Insofar as Mr. R.K. Bhardwaj who is the main contesting Respondent is concerned, as recorded in the order dated 11th December, 2015, his claim initially to the suit property was on the basis of the nomination in the Society wherein he was described as the uncle of the deceased. However, the said Respondent who is represented through Mr. Arpit Jain now submits that the stand of the said Respondent is that he was in a live-in relationship with the deceased. The said averment was to be brought by means of an amendment to the reply which is already filed. This stand was also recorded in the order dated 9th January, 2018. The said Respondent No.7 claims that he has filed an amended reply and has a filing number for the same which is 375422 dated 30th July, 2015. It has been three years since the said Respondent has sought to amend his reply but for some reason or the other, the Respondent No.7 has not brought it on record. Such delay in filing the amended reply cannot be condoned. Repeated opportunities have been given by this Court to the Defendant to bring the amended reply on record. However, the same has not been brought on record.

6. The Court has perused the so called amended reply, a copy of which has been handed over by the counsel. As per the amended reply, the Respondent No.7 relies on the same affidavit of nomination which was filed along with the PCA case initially where he was described as the uncle. However, none of the documents sought to be relied upon in the amended reply have been brought on record. The contrast in the nomination affidavit relied upon in the PCA case and the current reply is stark inasmuch as in the affidavit, the deceased described Respondent No.7 as the 'uncle' and now the Respondent No.7 seeks to describe himself as a 'partner who had a live-in relationship' with the deceased. These two statements are completely contradictory to each other and cannot co-exist. A person who was described by the deceased as her 'Uncle' cannot now turn around and argue that he was in a 'live-in' relationship with the deceased.

7. It is the settled position in law that a person in whose favour nomination may be made in a cooperative society does not automatically become a legal heir. In **Ashok Chand Aggarwala v. Delhi Administration & Ors. 1998 VII AD (Delhi) 639** a Ld. Division Bench of this Court held as under:

“4. It has been vehemently contended, relying upon the aforesaid provisions, that it was not a case of simple nomination but was a case of providing inheritance. The contention was that this nomination was in the nature of a 'will'. It was pointed out that the nomination was required to be attested by a witness. The contention of learned counsel is that the language of the aforesaid provisions makes it clear that the nominee is to inherit the interest of the deceased, on the basis of the nomination. We are unable to accept the contention. To our mind Section 26 and Rule 35

only provides a protection to the society from undue litigation in case it substitutes in its record the name of nominee in place of deceased on the basis of the nomination. Such an intention is clear from a bare reading of the Section in particular sub-section (3) of Section 26. These two provisions cannot be read to mean that the nomination provides for inheritance in favour of nominee to the exclusion of other heirs. The dispute between the parties in the present case is whether the appellant alone is entitled to inherit the plot to the exclusion of all other heirs or all heirs are entitled to inherit it in accordance with law. The basis of the claim of appellant is the nomination and on that account alone, the appellant says that other heirs are not entitled to inherit the plot in question. We do not agree.

5. The point in issue, in fact, is no longer res integra as far as this Court is concerned. Apart from the view taken by learned Single Judge in judgment under appeal, atleast in two other decisions similar views have been expressed. In Sushila Devi Bhaskar Vs. Ishwar Nagar Cooperative House Building Society Ltd. & Ors. 45(1991) DLT5 18, relying upon the decision of Supreme Court in the case of Smt. Sarbati Devi & another Vs. Smt. Usha Devi, [1984] 1SCR992 , it was held by a learned Single Judge of this Court that:

"Thus, it now well settled that a mere nomination, made in favour of a particular person, does not have the effect of conferring on the nominee any beneficial interest in property, after the death of the person concerned. The nomination only indicates the hand which is authorised to receive the amount or manage the property. The property or the amount, as the case may be, can be claimed by the heirs of the deceased,

*in accordance with law of succession,
governing them."*

*6. Similar view was expressed by another learned
Single Judge in the case of Priya Nath Mehta Vs.
Manju Aggarwal 54(1994) DLT34."*

8. Further, in **Manmohan Kishan Malik Vs Avtar Kishan Malik** [CS(OS) 426/2008 decision dated 13th October, 2009], a Ld. Single Judge of this Court considered the question as to whether the view held by the Supreme Court in **Sarbati Devi v. Usha Devi AIR 1984 SC 346** continued to be good law in the light of the dicta in **Zorastrian Cooperative Housing Society Ltd. v. District Registrar Co-operative Societies (Urban) AIR 2005 SC 2306** The Ld. Single Judge then went on to hold as under:

"6. The senior counsel for the defendant No.1 has contended that since it is borne out / admitted that defendant No.1 had been nominated by Shri Malik Arjun Dass as his nominee, the defendant no.1 alone is entitled to and the owner of the aforesaid plot and the plaintiff or any of the other defendants, who are the other natural heirs of Malik Arjun Dass will have no share in the said plot.

7. The counsel for the plaintiff has contended that the aforesaid plea is no longer res integra. Reliance is placed on –

i. Smt Sarbati Devi Vs Smt Usha Devi AIR 1984 SC 346 where in relation to a nomination qua the benefits of the LIC policy, the Supreme Court held that Insurance Act whereunder the nomination was made was not intended to alter the law of succession and nomination does not make the nominee the sole heir qua the insurance proceeds. It was held that a nominee is not equivalent to a heir or a legatee.

ii. Ashok Chand Aggarwala Vs Delhi Administration 1998 VII AD (Delhi) 639 DB

iii. Gopal Vishnu Ghatnekar Vs Madhukar Vishnu

Ghatnekar AIR 1982 Bombay 482

*iv. Priya Nath Mehta Vs Manju Aggarwal 54(1994)
DLT 34*

*v. Sushila Devi Bhaskar Vs Ishwar Nagar
Cooperative House Building Society Ltd 45(1991)
DLT 528.*

In all of which, qua nomination in a Cooperative society also, it has been held that the nominee does not take as a sole heir and the principles as laid down in Smt Sarbati Devi (supra) apply. The counsel for the plaintiff has thus contended that merely because there is a nomination by the common predecessor of the parties, Malik Arjun Dass in favour of the defendant No.1, does not make the defendant No.1 the sole owner of the property.

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11. Though during the hearing I had entertained certain doubts whether the judgments aforesaid of this court continue to be good law in the light of the dicta in Zorastrian Co-operative Housing Society Limited Vs District Registrar Co-operative Societies (Urban) AIR 2005 SC 2306 and Greater Bombay Cooperative Bank Ltd Vs United Yarn Tex Pvt. Ltd. AIR 2007 SC 1584, though not cited by either of the counsels, but nevertheless giving a special status to the cooperative laws. However, on carefully perusing the said two subsequent dicta of the Supreme Court, I am unable to, on the basis thereof hold that the consistent dicta of this court distinguishing a nominee from a successor requires any reconsideration. I also find that Division Bench of the Bombay High Court in Om Siddharaj Cooperative Housing Society Ltd Vs State of Maharashtra and a recent Division Bench judgment of this court in Abhay Sapru Vs Chitrlekha Bukshi have also taken the same view and with which I am respectively bound and concur.

12. There is yet another reason for not disturbing the aforesaid consistent dicta. The Supreme court in Smt

Sarbati Devi (supra) has also held that when all along the High Courts have taken the view that mere nomination does not deprive the heirs of their rights and when inspite thereof the Parliament has not chosen to make any amendment to the act, in such situation unless there are strong and compelling reasons to hold all these decisions to be erroneous, the court should be slow to take a different view.

13. Another contention of the senior counsel for the defendant No.1 on the basis of para 11 of Smt Sarbati Devi (supra) must also be noticed. He has contended that while the Supreme Court, qua the proceeds of the policy, has held the nomination to not interfere with the general law of succession, qua the commission of insurance agent under Section 44(1) of the Insurance Act, the nomination prevails. The reason there for given is that there is no right in common law to such commission and since right has been created under Section 44 itself, the same was also held entitled to provide for the beneficiary of such right. Senior counsel for the defendant No.1 has contended that the right of transfer of membership is also not a right under the common law but a right created in the Cooperative Societies Act and thus the said Act is entitled to provide for the beneficiary thereof also.

14. I am however unable to accept the said position. Though the right of membership of a society may be a right governed by the Cooperative Societies Act but once such right has resulted in acquisition of an immovable property by a member, the devolution of such immovable property will be governed not by the Societies Act but by the general law of succession as aforesaid.

15. I thus hold the defendant No.1 to have not acquired any exclusive rights in the property subject matter of the suit by virtue of nomination in his favour and the rights of the other heirs of the deceased Malik Arjun Dass would not be defeated by such nomination.”

Thus, it is the settled position that nomination does not decide the right to claim inheritance based on the law of succession.

9. Going by the affidavit of nomination which is the best case the Respondent No.7 has, no legal rights vest in the property of the deceased. Moreover, under the law as it exists, a live-in partner cannot be considered as a legal heir. There is no provision in the law which recognises live -in partners as legal heirs of an individual.

10. Under these circumstances, the letters of administration prayed for are liable to be granted. In terms of paragraph 6 of the petition, the shares of the parties are determined as under: -

Sl. No.	Name	Share
1	Mrs. Promila Sharma	1/5 th
2	Mr. Krishna Sharma	1/5 th
3	Mrs. Manju Tripathi	1/5 th
4	Dr. P.S. Sharma	1/5 th
5	Ms. Shipra Sharma	1/10 th
6	Ms. Ritu Acharya	1/10 th

11. Respondent No.10, as per the counsel, is Mrs. Bina Sharma and not Mrs. Vina Sharma. Registry is directed to make the appropriate correction in the Memo of Parties. Letters of administration are accordingly granted as prayed for in the petition.

12. Petition is disposed of.

13. Insofar as PCA case is concerned, for the reasons stated in the order passed in TEST.CAS. 61/2014, the present petition is dismissed.

PRATHIBA M. SINGH
JUDGE

JULY 06, 2018/Rekha