

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

APPEAL FROM ORDER NO.73 OF 2018

Kannamwar Nagar Navodayagiri CHS Ltd. ... Appellant

Versus

Kedar Suresh Joshi and Anr. ... Respondents

.....

Mr. U.P. Bobade a/w Priyanka Chandeliya I/b. Mr. J.H. Ramugade
for the Appellant.

None for the Respondents.

.....

CORAM : M. S. KARNIK, J.

DATE : 22nd JULY, 2019.

P. C.:

1. Learned counsel for the appellant submitted that the suit filed by the plaintiff is not maintainable as the plaintiff has not given notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960 ('the said Act' for short).

2. According to learned counsel for the appellant the reliefs as sought by the plaintiff touch the business affairs of the Society and in case if the suit is allowed then necessary changes will have to be made by the Society in the records by transferring the share certificate in the name of the plaintiff.

3. Learned counsel for the appellant would submit that though necessary mutation in respect of the suit flat is already carried out in the name of defendant No.1 and even the share certificate is transferred in the name of defendant No.1, nonetheless Section 164 of the said Act mandates issuance of the mandatory notice in as much as the records of the Society will undergo the change as a result of the declaration sought for.

4. I have gone through the order passed by the Trial Court. Plaintiff has essentially filed the suit against the defendant No.1 for declaration of his 50% share in the suit premises in respect of the flat situated in the defendant No.2-Society. In the said suit the relief of injunction claimed by the plaintiff is that the defendant No.2-Society should not transfer the share certificate and mutate the name of defendant No.1 in the records of the Society. As stated by learned counsel for the appellant and as observed by the Trial Judge, the name is already mutated in the Society's record and even the share certificate is transferred in the name of defendant No.1. The suit is essentially between the plaintiff and the defendant No.1 for declaration of the rights of

the plaintiff in the suit flat. Even the question of now seeking an injunction by the plaintiff against the Society does not arise as the share certificate is already transferred in the name of defendant No.1. The plaintiff had only sought injunction against the Society. In any case this is not a case where the notice as mandated under Section 164 of the said Act is necessary before filing a suit against the Society.

5. In this view of the matter, I do not find any reason to interfere with the order passed by the Trial Court. The Appeal is dismissed.

(M. S. KARNIK, J.)