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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 4748 OF 2016

Ms. Kavita Krishna Pai ... Petitioner
Vs.
The Deputy Registrar of Co-op.
Societies, Pune Division, Pune & Ors. ... Respondents

Mr. K. K. Malpathak, for the Petitioner.
Mr. A. R. Metkari, AGP for Respondent Nos. 1 to 3.

CORAM : C. V. BHADANG, J.

DATE : FEBRUARY 3, 2020

PC :

1. The challenge in this petition is to the order dated 28th April, 2011 passed by the Deputy Registrar, Co-operative Societies, Pune Division, Pune in Appeal No. 1 of 2011. This order has been confirmed by the lower authorities throughout.

2. The dispute pertains to the transfer of the flat and issuance of a share certificate in the name of the Petitioner by the Utopia Co-operative Housing Society (Respondent No. 4). The Petitioner claims to have purchased the said flat from her brother Kiran Pai under an agreement dated 26th June, 2009. It appears that there is some matrimonial dispute between the brother of the Petitioner i.e. transferor, and his wife. His wife has filed proceedings under the

Domestic Violence Act against the transferor, being Misc. Application No. 322 of 2009 before the Judicial Magistrate, F. C. Cantonment court, Pune. By an order 22nd July, 2009, the learned Magistrate has directed G. K. Pai, the power of attorney holder of Mr. Kiran Pai not to create any third party interest in the shared household, which is subject Flat No. A-14 in Utopia Co-operative Housing Society, Wanowrie, Pune.

3. The Society has refused to transfer the said flat and issue the share certificate in the name of the Petitioner, on the ground that there is a dispute between the transferor and his wife. The learned Dy. Registrar of Co-operative Societies has refused to interfere with the said order, while dismissing the appeal filed by the Petitioner, which has been upheld by the appellate authority and the revisional authority.

4. The learned counsel for the Petitioner submitted that the agreement dated 26th June, 2009 is prior to the passing of the order by the learned Magistrate on 22nd July, 2009, and therefore, it was not open for the Society or the authorities below to refuse transfer of the flat or to issue share certificate in the name of the Petitioner.

5. Prima-facie, the contention raised on behalf of the Petitioner, to my mind, cannot be accepted. There appears to be an order passed by the competent court on 22nd July, 2009 restraining the

transferor Mr. Kiran Pai and the power of attorney holder Mr. G. K. Pai from creating any third party interest in the subject flat, which cannot be overlooked by the Society or the authorities below. On a specific query being made to the learned counsel for the Petitioner as to whether the proceedings initiated under the Domestic Violence Act are still pending, learned counsel in all fairness submitted that presently, he has no instructions as to whether said proceedings are pending or disposed of. He further points out that there are some civil proceedings pending between Kiran Pai and his wife in respect of the said flat before the competent civil court. If that is so, no exception can be taken to the impugned order, at this stage, refusing to transfer the said flat in the name of the Petitioner and / or to issue the share certificate. In such circumstances, the petition is disposed of with liberty to the Petitioner to renew the request for such transfer / issuance of the share certificate in her name, after *inter se* dispute between the transferor and his wife is resolved. In the circumstances, there shall be no order as to costs.

Sd/-
C. V. BHADANG, J.

Vinayak
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