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

WRIT PETITION NO. 3174 OF 2021

Prafulla Nikhilesh Jhaveri Petitioner
Vs.
The Divisional Joint Registrar
of Co-operative Societies, Mumbai and ors. Respondents

Mr.Shailendra S. Kanetkar i/b Mr.Rahul Soman & Mr.Shon Gadgil,
for the Petitioner.
Mr. Mayur Khandeparkar a/w Mr.Vikram Garewal & Mr.Nikhil Apte
i/b Wadia Ghandy & Co., for Respondents No.4 & 5.
Smt. V.S. Nimbalkar, AGP for the Respondent - State.

CORAM : M. S.KARNIK, J.

DATE : 05th AUGUST, 2021

P.C. :

. Heard learned Counsel for the Petitioner. The order
impugned in this Petition is passed by the Divisional Joint
Registrar, Co-operative Societies dismissing the revision filed by
the Petitioner against the order passed by Deputy Registrar.
Respondents No.4 & 5 approached the Deputy Registrar by filing
an application under Section 23 of the Maharashtra Co-operative
Societies Act, 1960 (for short 'the Act') for membership in

respect of Respondent No.3 – Society. Briefly stated it is the case of the Respondents No. 4 & 5 that they along with one Ishwarlal Patel, father of the Petitioner are the co-owners of the suit property in question. Ishwarlal Patel died. It is the case of the Petitioner that she is also a co-owner of the suit property and to support this contention, reliance is placed on agreement dated 29/01/1992 at Exhibit A. Learned Counsel for the Petitioner further invited my attention to the declaration at page 137 reiterating this fact.

2. An application was made by Respondents No. 4 & 5 to the Deputy Registrar for membership of the Respondent No.3 – Society. It is the grievance of the Petitioner that without impleading the Petitioner as party respondent, the application was made. The Petitioner contends that even the Petitioner is entitled to become a joint member along with Respondents No.4 & 5. The Deputy Registrar on the basis of the materials produced, granted membership to Respondents No.4 & 5 under section 23 of the Act. In revision filed before the Divisional Joint Registrar by the Petitioner, application for leave to be impleaded was made which came to be allowed. It is the contention of Shri Kanetkar that in these circumstances, the Divisional Joint Registrar should have remitted the matter to the Deputy

Registrar as order passed by the Deputy Registrar was behind the back of the Petitioner who was a necessary party.

3. I have gone through the order passed by the Deputy Registrar. Shri Khandeparkar on behalf of Respondents No.4 & 5 submits that he does not dispute that Ishwarlal Patel is a co-owner along with Respondents No.4 & 5 and therefore so far as the membership rights of Ishwarlal Patel is concerned, the Respondents No.4 & 5 have no objection, however, Ishwarlal Patel now is no more. It is submitted by Shri Khandeparkar that on the basis of the Will, the Petitioner must obtain probate or at least some family settlement should be produced on record so that the Respondents No.4 & 5 will not have any objection acknowledging the Petitioners ownership and right to become a member. Nonetheless, Respondents No.4 & 5 admit co-ownership of Ishwarlal Patel.

4. Considering these facts, I do not propose to interfere with the impugned order for what has been done by the Authorities is that the claim of the Respondents No.4 & 5 who are admittedly co-owners of the property has been accepted and they are admitted as members. Even Petitioner does not dispute

the right of the Respondents No.4 & 5 to be admitted as member but wants her name also to be included as a member. So far as the Petitioner is concerned, if it is the contention of the Petitioner that she is a co- owner along with Respondent No.5 or in her capacity as legal heir of the Ishwarlal Patel, it is always open for the Petitioner to apply to the Society for membership. If such an application is made, undoubtedly, Society shall consider the application on its own merits after considering the documents which are produced by the Petitioner in support of her claim. Learned Counsel for Respondents No.4 & 5 reiterated that Respondents No.4 & 5 admit the co-ownership of Ishwarlal Patel and that they would not in any manner deal with the share of Ishwarlal Patel in the suit property.

5. Keeping all contentions of the Petitioner open, the Society shall consider the application for membership made on behalf of the Petitioner without being influenced by what is observed in the impugned orders. Subject to what is observed hereinabove, the impugned orders are not interfered with. Writ Petition is disposed of.

(M.S.KARNIK, J.)