

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3316 OF 2019

Shivaji Kundalik Dumbre

.. Petitioner

Versus

Anita Anup Dalal & Ors.

.. Respondents

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- Mr. Dileep Shriram Paranjpe for Petitioner
- Mr. Shriram S. Kulkarni a/w Ms. Pranjal Khatavkar and Mr. Sujay Palshikar for Respondent No. 1
- Mr. C.D. Mali, AGP for Respondent No. 3 - State

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 07, 2022

ORDER:

1. The present petition filed under Article 227 of the Constitution of India challenges the legality and validity of the order dated 11.01.2019 passed by Respondent No. 3 - Divisional Joint Registrar, Co-operative Societies, Kalyan in Revision Application No. 131 of 2017 under Section 154 of the Maharashtra Co-operative Societies Act, 1960 (for short "**the said Act**"). By the said order, Respondent No. 3 has set aside the order dated 10.08.2017 passed by the Dy. Registrar under Section 23(2) of the said Act allowing Petitioner's application for membership.

2. Facts which are relevant for adjudication of the present petition are as follows:-

2.1. One Bhagirathibai Guruppa Dalal was owner of flat No. 602

in Respondent No. 2 - Society. She expired intestate on 29.09.1997. Her son Baburao Guruppa Dalal was granted heirship certificate on 24.02.2016 in M.A. No. 415 of 2015 by 2nd Joint Civil Judge Senior Division, Kalyan on the pleadings that he was her only son and legal heir.

2.2. According to Petitioner, on 10.03.2016, Baburao Guruppa Dalal executed an agreement for sale of flat No. 602 in his favour. Said agreement was duly registered.

2.3. Respondent No. 1 daughter-in-law of Baburao Guruppa Dalal filed Special Civil Suit No. 135 of 2016 before CJSD, Kalyan seeking declaration from the Court that she was entitled to 50% right in ownership of Flat No. 602. Baburao Guruppa Dalal had two sons Avinash and Anup. Respondent No. 1 is the wife of Anup. Anup has expired. Hence, she claimed 50% share in flat No. 602.

2.4. On 22.02.2017 Petitioner filed an Application seeking membership of Respondent No. 2 Society under Section 23 of the said Act. Respondent No. 2 Society did not take any steps for admitting Petitioner as member. Being aggrieved, on 23.03.2017 Petitioner filed Application No. 1280 of 2017 under Section 23(2) of the said Act before the Dy. Registrar of Co-operative Societies, Kalyan seeking direction to the society to admit him as member. In those proceedings, Society filed its say, *inter alia*, stating that Special Civil Suit No. 135 of

2016 was filed before CJSD, Kalyan in respect of the said flat by Respondent No. 1. The Dy. Registrar, after hearing the Petitioner, allowed his application on 10.08.2017 and directed the society to admit him as member of the society.

2.5. By another application dated 06.09.2017, Petitioner sought direction from Dy. Registrar of Co-operative Societies, Kalyan to the Society to incorporate the Petitioner's name on the share certificate in respect of flat No. 602. By order dated 03.10.2017, Dy. Registrar directed the society to incorporate the name of the Petitioner on the share certificate.

2.6. Respondent No. 2 society took cognizance of the aforesaid two orders viz. 10.08.2017 and 03.10.2017 and passed a resolution in its meeting held on 14.10.2017. By the said resolution, Petitioner was admitted as member of the Society and his name was incorporated on share certificate No. 25 in respect of flat No. 602.

2.7. Being aggrieved, Respondent No. 1 filed Revision Application under Section 154 of the said Act before Respondent No. 3 to challenge the order dated 10.08.2017 of admitting Petitioner as a member of the society. Petitioner filed his say in the Revision Application opposing the same.

2.8. Respondent No. 3 by the impugned order set aside the order dated 10.08.2017 of admission of Petitioner as member of the society,

inter alia, on the ground that the Petitioner had not preferred an Application under Rule 19A of the Maharashtra Co-operative Societies Rules, 1961 (for short "**MCS Rules**"). Hence, the present Petition.

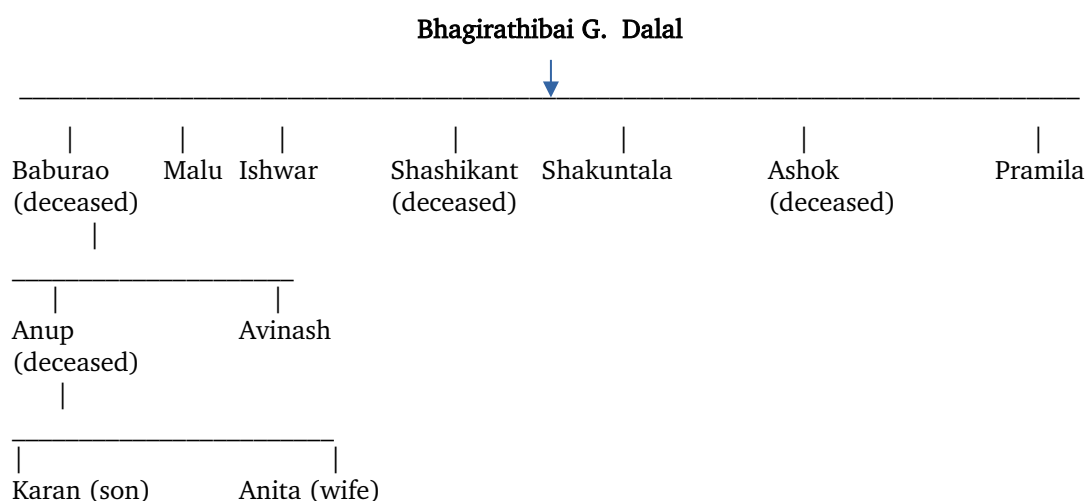
3. Mr. Paranjpe, learned Advocate for Petitioner submitted that Petitioner is the owner of the subject flat vide registered agreement for sale 10.03.2016 from Baburao Guruppa Dalal, the sole successor of deceased Bhagirathibai who died intestate. He submitted that on 24.02.2016, the heirship certificate granted in favour of Baburao Guruppa Dalal entitled him to claim title and legacy of the said flat. He submitted that Respondent No. 1 filed Special Civil Suit No. 135 of 2016 before CJSD, Kalyan belatedly on 11.04.2016 after registration of the sale deed. He submitted that there was no preventive order injuncting the Petitioner from claiming membership of the society in respect of the said flat. That the reliance on the provisions of Rule 19A in the impugned order was highly unwarranted and grossly incorrect and did not have any application to the facts of the Petitioner's case. That Rule 19A or its application was never raised or canvassed in the Revision Application by the Revision Applicant and hence, the impugned order deserves to be set aside.

4. *PER CONTRA*, Mr. Kulkarni, learned Advocate for Respondent No. 1 submitted that admittedly Flat No. 602 was standing in the name of late Bhagirathibai Dalal. Record indicates

that Bhagirathibai had inserted the name of her grandson i.e. Avinash, son of Baburao as nominee of the said flat in the year 1996. Record further indicates that though Baburao obtained heirship certificate of Bhagirathibai on the ground that she expired intestate and he was her only son and legal heir, however there is an alleged Will dated 10.04.1996 executed by Bhagirathibai. That apart contention of Baburao that he was the only legal heir of Bhagirathibai is false and he has played a fraud upon the civil Court to obtain the heirship certificate.

4.1. Mr. Kulkarni submitted that in the background of the above facts, it is to be noted that, it is Petitioner's case that Bhagirathibai died intestate. It is to be further noted that in paragraph No. 3A of the petition, Petitioner has stated that Bhagirathibai died leaving behind Baburao her only son as her legal heir.

4.2. However, the genealogy of Bhagirathibai placed on record by Respondent No. 1 is contrary to the above facts. It has come on record that Bhagirathibai had four sons and three daughters as under:-



4.3. That Anup and Avinash were the sons of Baburao. Further Respondent No.1 has stated that Flat No. 602 has been occupied by her since her marriage to Anup i.e. son of Baburao. That the adjoining Flat No. 601 was occupied by her in-laws i.e Baburao and his wife. That Respondent No. 1 has submitted a Will executed by late Bhagirathibai to the society wherein the said flat has been bequeathed to Anup and Avinash jointly. A copy of the Will is appended to the affidavit-in-reply of Respondent No. 1. That Avinash was the nominee of the said flat and the share certificate relied upon by the Petitioner was in fact false and bogus. That the transaction of sale of flat between Baburao and Petitioner was done in a clandestine manner by keeping all other legal heirs in the dark. That the sale deed of the flat purchased by Petitioner showed that the entire consideration was received by Baburao in cash and in fact, Baburao had got the heirship certificate solely in his name to the exclusion of his other six siblings

fraudulently. That the society had informed Respondent No. 1 through its Advocate's letter that in view of the disputed questions of fact, till the final decision is arrived at in the civil suit, her request for amendment of share certificate would not be granted. Hence, he submitted that until Special Civil Suit No. 135 of 2016 is decided, the order dated 11.01.2019 needs to be sustained.

5. Submissions made by the learned Advocates appearing for the parties have been duly considered of the Court. Perused the record of the case.

6. Learned Advocate for Petitioner has referred to and relied upon the decision of this Court in the case of **Poornanand Saraswati Co-operative Housing Society Ltd Vs. Divisional Joint Registrar (Appeal) Mumbai & Ors. in support of his case.** He has referred to paragraph No. 6 of the said judgment which are the submissions made on behalf of the Society in that case. *Prima facie*, perusal of the facts of that case show that they are not similar to the facts in the present case. As alluded to herein above, facts in the present case are two fold viz. in the first instance the dispute between the legal heirs of Bhagirathibai is required to be resolved on the one hand and subject to the resolution and decision of the said dispute, the right and entitlement of the Petitioner claiming through Baburao would thereafter arise. In that view of the matter, the decision relied upon

by the Advocate for Petitioner in the case of Poornanand Saraswati CHS (supra) cannot be *ipso facto* applied to the present case. The facts in the said case pertaining to rejection of admission to the membership of the society were different unlike in the present case.

7. In the present case, record clearly indicates that there are serious disputed questions of fact. Save and except the admitted position that the title to the said flat belonged to late Bhagirathibai Guruppa Dalal, all other issues in respect of devolution of her estate are either not settled or subjudiced. One of her son namely Baburao claimed that Bhagirathibai died intestate and he was her only sole surviving son and legal heir when the record is to the contrary. In that view of the matter, the impugned order dated 11.01.2019 records that considering the aforesaid unresolved disputes, the Society has not invoked the provisions of Rule 19A and followed the procedure thereunder in the present case. Rule 19A of the MCS Rules reads thus:-

“19A. Procedure for tendering application to the Registrar for membership under Section 23(1A)

(1) Where a society has refused to accept the application for membership from eligible person, such person shall tender an application to the Registrar in Form ‘H-1’ together with requisite share money and entrance fee.

(2) The Registrar, on receipt of such application, shall forward the same to the society concerned together with requisite share money and entrance fee within thirty days from the date of its receipt.

(3) The Society shall take the decision and communicate the same to the applicant within sixty days from the date of receipt of such application as provided in sub-rule (2) and if no decision is

communicated to the applicant within the said period of sixty days, the applicant shall be deemed to have been admitted as a member of such society.

(4) In case the society refuses to admit the applicant as its member, it shall communicate the decision within the period of sixty days mentioned in sub-rule (3) with reasons therefor and refund the share money and entrance fee with such communication. If the society fails to refund the said amount, it shall be liable to pay interest at 15% per annum on the said amount from the date of such communication and the said amount if not paid, shall be recovered as an arrears of land revenue.]

7.1. Admittedly the procedure contemplated under Rule 19A has not been followed in the present case. Hence the findings returned in the impugned order are in consonance with the statutory provisions stipulated and cannot be faulted with. The order is therefore sustained. Hence, the petition fails.

8. In view of the above, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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by RAVINDRA
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AMBERKAR
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