

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9964 OF 2018

Surendra A. Bongale
V/S
Divisional Joint Registrar

...PETITIONER

Co-operative Societies & Ors.

...RESPONDENTS

...

Mr. Parag Tilak for the Petitioner.

Mr. P.P. Kakade, GP and Mr. P.P. Pujari, AGP for Respondent Nos.1 and 2/State.

Mr. Chetan Patil for Respondent Nos.3 and 4.

Mr. Ajit Savagave for Respondent No.5.

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CORAM : SANDEEP V. MARNE, J.

DATE : NOVEMBER 1, 2023.

P.C.:

1 **Rule.** Rule made returnable forthwith. With the consent of parties, the Petition is taken up for final hearing.

2 The challenge in the present Petition is to the orders dated 17 January 2018 passed by the Deputy Registrar, Co-operative Societies, G/S Ward, Mumbai as well as to the order dated 11 May 2018 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai.

3 The dispute between the Petitioner and Respondent No.3 is about title to Flat No.8 situated in Respondent No.5-Tulsivilla CHS Ltd. Petitioner claims title to the flat on the strength of a unregistered gift deed executed in his favour. He is in possession of the suit flat from the year 1961. The Society was formed subsequently in the year 1986.

4 On account of Complaints made by Respondent No.3, who claims interest in the flat and by Respondent No.4 who is merely a member in the Society (without any interest in the flat), the Society initially expelled the Petitioner from membership and adopted a resolution to that effect on 7 September 2015. When a proposal was sent to the Deputy Registrar for grant of approval to the resolution dated 7 September 2015, the Deputy Registrar rejected the proposal by order dated 31 January 2017 holding that the issue of determining validity of gift deed does not come within the jurisdiction of the Deputy Registrar. The Society did not challenge order dated 31 January 2017 and the same attained finality. Subsequently the Respondent Nos.3 and 4 filed proceedings before the Deputy Registrar under the provisions of 25-A of the Maharashtra Co-operative Societies Act, 1960 (**the Act of 1960**) seeking cancellation of membership of the Petitioner by order dated 17 January 2018. The Deputy Registrar, this time went into the correctness of the unregistered gift deed and allowed the application filed by Respondent Nos.3 and 4 and directed the Society to delete the name of the Petitioner from

Membership Register. The Divisional Joint Registrar has confirmed the decision of the Deputy Registrar by rejecting Revision Application No.41 of 2018 filed by the Petitioner vide order dated 11 May 2018.

5 I have heard Mr. Tilak, the learned Counsel appearing for the Petitioner, Mr. Patil, the learned Counsel appearing for the Respondent Nos.3 and 4 and the learned AGP appearing for the Respondent-State.

6 After considering the submissions canvassed by the learned counsel appearing for the parties, it is seen that the Deputy Registrar had recorded a specific finding in its order dated 31 January 2017, that the issue of determining the validity of gift deed was beyond her jurisdiction. However, within a year later, she changed her mind and proceeded to go into the issue of validity of gift deed and recorded a finding in the order dated 17 January 2018 that the unregistered gift deed did not confer any title on the Petitioner. Once the Deputy Registrar recorded a finding in order dated 31 January 2017 that she did not have jurisdiction to decide the issue of validity of the gift deed, it is incomprehensible as to how the very same officer could record an exactly contradictory finding on 17 January 2018 in proceedings initiated by Respondent Nos.3 and 4 under section 25-A of the Act 1960. This approach on the part of Deputy Registrar, Co-operative Societies, G/S Ward, Mumbai, is required to be deprecated. In my view, the earlier decision of the Deputy Registrar dated 31 January 2017 that it did not have jurisdiction to decide the validity of

the gift deed was correct and there was no reason for her to change the decision and go into issue of conferment of title through unregistered gift deed or otherwise. The Divisional Joint Registrar has unfortunately not noticed the glaring error committed by the Deputy Registrar in passing order dated 17 January 2018.

7 Also relevance is the fact the Respondent No.3 had instituted Suit bearing OS No.140 of 2014 before the Additional Senior Civil Judge, Hubballi for partition, separate possession, for declaration of Will dated 29 July 1983 as null and void. He further sought a declaration that the gift deed dated 25 March 1974 is null and void and not binding. By judgment and order dated 1 April 2022 the Civil Court has proceeded to dismiss the Civil Suit interalia holding that though the gift deed was unregistered, the Petitioner has been continuing in the possession of the suit for a substantially long period of time.

8 Mr. Patil is quick enough to contend that the judgment and decree passed by the Civil Court was not before the Deputy Registrar and the Divisional Joint Registrar and that an Appeal is filed by the Respondent No.3 challenging the judgment and decree dated 1 April 2022 be that as it may. The fact remains that Respondent No.3 has raised the issue of validity of the gift deed in the Suit. The Civil Court alone has jurisdiction to decide as to whether any right, title or interest is conferred on the Petitioner on the basis of unregistered gift deed. Neither the Deputy

Registrar nor the Divisional Joint Registrar had jurisdiction to decide that issue.

9 In my view, therefore the Deputy Registrar has committed a serious error in directing deletion of name of Petitioner from the membership of the Society by order dated 17 January 2018.

10 Thus, the orders passed by the Deputy Registrar on 17 January 2018 and by the Divisional Joint Registrar on 11 May 2018 are unsustainable. They are accordingly set aside.

11 The Writ Petition is allowed. Rule is made absolute.

(SANDEEP V. MARNE, J.)