



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 4319 OF 2018

Kamalkishor Madanlalji CharkhaPetitioner

VERSUS

Kusum Trimbakrao Shinde & anotherRespondents

Mr. A. A. Nimbalkar, Advocate holding for Mr. A. A. Pimpalwadkar,
Advocate for the Petitioner.

Mr. R. N. Dhorde, Senior Counsel instructed by Mr. V. P. Sawant,
Advocate for Respondent No. 1.

Mr. A. M. Gaikwad, Advocate for Respondent No. 2.

CORAM : R. M. JOSHI, J.

DATE : 31st JULY, 2025.

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to the judgment and order passed by the Co-operative Appellate Court dated 13.12.2017 in Appeal No. 49/2015 whereby the judgment and award dated 10.03.2015 passed by the Co-operative Court in Dispute No. CCN/37/2012 came to be reversed.

3. The facts which led to filing of this Petition can be narrated in brief as under :-

Petitioner claims himself to be the member of Opponent No. 2 Co-operative Society and claims allotment of plot bearing No. 150 in his favour. In or around 1968, the Petitioner got knowledge of formation of society and therefore he approached to the society for becoming member. Accordingly, he became member of the society. He further claims that allotment certificate No. 108 was also issued in his favour in the year 1968 on payment of Rs. 1,200/- towards the cost of plot and Rs. 450/- towards administrative charges. It is claimed by the Petitioner that in the year 2007, he filed Application before the TILR for mutating his name in the record of rights and accordingly mutation entry was sanctioned on 30.04.2008 in his favour. Petitioner submits that he visited the society for collection of information and it was noticed that on 29.02.2011, the Respondent No. 1 had collected the building material and was intending to carry out construction. Legal notice came to be tendered before filing of dispute under Section 91 of the Maharashtra Co-operative Societies Act. Respondent appeared before the Co-operative Court and resisted the claim of Petitioner. Specific objection was raised with regard to

non-joinder of the party. It was claimed that the dispute is not maintainable in absence of joining of the original allottee Govind Burapalle. In spite of said objection the disputant did not find it necessary to join him as party to the proceedings and the dispute was thereafter heard on merit and came to be decided by the judgment and award dated 10.03.2015. The Co-operative Court declared that the disputant is a legal allottee of Plot No. 150 and that allotment in favour of Opponent No. 1 is held to be null and void. Being aggrieved by the said judgment and award, Opponent No. 1 approached the Appellate Court by filing Appeal No. 137/2015. The said Appeal came to be allowed by the impugned order. Amongst other reasons, Appeal came to be allowed essentially on the ground that the original allottee was not joined as party defendant to the said proceeding before the Co-operative Court.

4. Learned counsel for Petitioner has taken this Court through the evidence on record led before the Co-operative Court so also the findings recorded by the Co-operative Court holding that the allotment of said plot to Govind Burapalle is not valid. It is also pointed out that the findings recorded by the Co-operative Court indicate that there was fabrication of record for the purpose of

showing allotment of the said plot in favour of Govind Burapalle. It is his submission that the issue of non-joinder of parties has been duly dealt with by the Co-operative Court in paragraph Nos. 85 to 90 of the judgment. It is his submission that since Opponent No. 1 had purchased the said plot from Govind Burapalle, he has stepped into the shoes of Govind Burapalle and that Govind Burapalle was not necessary party to the proceedings.

5. Learned counsel appearing on behalf of the Respondents supported the impugned order. Learned Senior Counsel on behalf of Respondent No. 1 submitted that the findings are recorded by the Co-operative Court against Govind Burapalle that allotment in his favour is on the basis of fabricated documents. This, according to him, is wholly impossible in view of the fact that said Govind Burapalle was not made party to the said dispute inspite of objection being raised with regard to non-joinder of parties.

6. There cannot be any dispute with regard to the basic principle of law that no one can be condemned unheard and hence an opportunity of hearing must be given to a person before taking adverse decision against him. Even if it is accepted for the sake of

argument that Govind Burapalle died before filing of the dispute, however, it was absolutely necessary for the disputant to join his legal heirs as party Defendants. This becomes more necessary and relevant when there are findings recorded by the Co-operative Court that the allotment obtained by Govind Burapalle is on the basis of false and fabricated documents. No such observation could have been made even against a dead person, when it is not a case wherein he has left no legal representative who could defend said allegation against the deceased. The disputant was fully aware of the objection raised by the Respondents with regard to maintainability of the dispute for non-joinder of parties. The Co-operative Court has given reasons as to why the said objection of non-joinder of parties is not tenable, however the said reasoning is not sustainable in law. Once the Co-operative Court records findings against Govind Burapalle, unless and since he is dead his legal representatives were made party no such observations ought to have been made. Govind Burapalle or his legal heirs were therefore necessary party to the dispute.

7. The Appellate Court has rightly taken into consideration the said aspect. Pertinent to note that though finally no declaration has been given by the Co-operative Court in respect of the previous

transaction, however, the declaration given in favour of the disputant is based solely upon the findings recorded in respect of the previous transaction of Burapalle only. Unless such findings were recorded, it was not possible for the Co-operative Court to grant any relief. In such circumstances, joining Govind Burapalle or his legal heirs was must. Since the same has not been done, no fault can be found with the Appellate Court causing interference in the order passed by Co-operative Court.

8. As a result of above discussion, Petition stands dismissed.

9. At this stage, learned counsel for Petitioner seeks extension of the statement made by learned counsel appearing on behalf of Respondent No. 1 on 27.04.2018 for the period of six weeks.

10. Learned Senior counsel for Respondent No. 1 opposes for continuation of said statement.

11. Since the statement made in the year 2018 is continued for last more than 6 years, the same is extended till the period of six weeks from today.

(R. M. JOSHI)
Judge

dyb