

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.795 OF 2025

Sujata Ravindra Kamtam & Anr. ... Petitioners
V/s.
The Divisional Joint Registrar of
Cooperative Societies & Ors. ... Respondents

WITH
WRIT PETITION NO.2488 OF 2024

Charkop Ashrya Cooperative
Housing Society Limited through
it's Chairman/Secretary ... Petitioner
V/s.
The Divisional Joint Registrar of
Cooperative Societies & Ors. ... Respondents

Mr. Amit Karle with Mr. Sameer Tiwari for the
petitioner in WP/795/2025 & for respondent Nos.5 & 6
in WP/2488/2024.

Ms. Dhruti Kapadia, AGP for respondent Nos.1, 2, & 4
– State.

Mr. Shreepad Murthy with Mr. Sahil Wagh i/by Mr.
Abhishek Patil for respondent No.3 in WP/2488/2024.

CORAM : AMIT BORKAR, J.

DATED : MARCH 18, 2025

P.C.:

1. The petitioners in Writ Petition No.795 of 2025 claim to be the lawful owners of the flat in question, whereas the petitioner in Writ Petition No.2488 of 2024 is a cooperative housing society in

respect of which a membership dispute has arisen. The controversy in the present proceedings stems from the competing claims over the membership of the housing society concerning Shop No.1, which was originally owned by the husband of Petitioner No.1 in Writ Petition No.795 of 2025. The crux of the dispute revolves around the transfer of ownership and the consequential right to membership in the society.

2. The bare facts relevant for adjudication of the issues involved in the present writ petitions are as follows:

The petitioner in Writ Petition No.2488 of 2024 is a registered cooperative housing society. It is undisputed that the husband of Petitioner No.1 in Writ Petition No.795 of 2025 was a member of the society and was the owner of Shop No.1. The petitioners contend that by virtue of a registered gift deed dated 4th July 2014, the said shop was transferred in the name of Petitioner No.1 (wife) by her husband, thereby conferring upon her the exclusive ownership of the premises in question. On the other hand, Respondent No.4 claims that he has acquired possessory rights over the said shop pursuant to a registered agreement for sale executed in his favour. It is the case of Respondent No.4 that possession of the shop was delivered to him under the agreement for sale and that he has complied with all obligations arising therefrom, including payment of full consideration. On this basis, he asserts his entitlement to membership of the housing society under the Maharashtra Cooperative Societies Act, 1960.

3. The dispute arose when the society rejected the application of Respondent No.4 for transfer of membership, relying upon the registered gift deed executed in favour of Petitioner No.1 (wife) by the erstwhile owner. Aggrieved by the society's refusal to effectuate the transfer of membership in his favour, Respondent No.4 preferred an appeal under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960, which was dismissed. However, in the revision proceedings initiated by Respondent No.4, being Revision Application No.161 of 2023, the Revisional Authority allowed the application and directed the society to grant membership of Shop No.1 to Respondent No.4 and to transfer the share certificate in his name. This order of the Revisional Authority has been assailed in the present writ petitions—one filed by the wife and daughter of the original owner (Writ Petition No.795 of 2025) and the other by the housing society (Writ Petition No.2488 of 2024).

4. Learned counsel appearing for the petitioners in Writ Petition No.795 of 2025 submitted that the gift deed executed in favour of Petitioner No.1 (wife) is a duly registered document, conferring absolute ownership over Shop No.1. It was urged that once the property was validly transferred by way of a registered gift deed, the ownership rights stood crystallized in favour of Petitioner No.1, and consequently, Respondent No.4, who claims title merely on the basis of an agreement for sale, cannot claim superior rights or membership in the housing society. It was further argued that under the provisions of the Transfer of Property Act, 1882, a gift is a complete and absolute mode of transfer, whereas an agreement

for sale does not confer ownership unless followed by execution of a sale deed. Therefore, Respondent No.4, having failed to obtain a registered sale deed in his favour, has no legal right to claim membership.

5. Per contra, learned counsel for Respondent No.4 submitted that Petitioner No.1 in Writ Petition No.795 of 2025 (wife) was not a party to the proceedings initiated under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960. Hence, she has no locus standi to challenge the order of the Revisional Authority. It was further contended that since Respondent No.4 has entered into a registered agreement for sale and has taken possession in furtherance thereof, he is entitled to membership in the housing society. It was submitted that the entire sale consideration under the agreement for sale has been duly paid, and therefore, nothing remains to be performed on his part. Consequently, it was urged that the Revisional Authority was justified in directing the society to grant membership to Respondent No.4.

6. The rival contentions raised by the respective parties now fall for due consideration and adjudication by this Court in light of the material on record, the legal provisions applicable to the dispute at hand, and the judicial precedents governing the subject matter.

7. Upon perusal of the record, it is evident that respondent No.4 asserts his right, title, and interest over Shop No.1 on the basis of a registered agreement for sale dated 14th June 2019. In contrast, petitioner No.1 (wife) claims ownership of the said

property based on a registered gift deed dated 4th July 2014. The crux of the matter hinges upon the validity and legal sanctity of these rival documents and the consequent rights that flow therefrom. Once the petitioner No.1 (wife) had duly informed the society that she had become the absolute owner of the property in question by virtue of a registered gift deed, the society, acting in accordance with the governing legal framework, rightly proceeded to reject the application of respondent No.4 for membership. Such rejection finds firm support under the provisions of Section 23(2) of the Maharashtra Co-operative Societies Act, 1960 ("MCS Act"), which mandates that the membership of a co-operative housing society is primarily to be conferred upon a person who has a legal and enforceable title over the immovable property.

8. It is well settled that a right to occupy a flat in a co-operative housing society is a species of property, carrying with it proprietary and possessory rights. The law recognizes that any claim over such property must necessarily be backed by a legally tenable instrument transferring right, title, and interest. Furthermore, the said instrument must be duly registered and appropriately stamped as per the applicable stamp duty laws. In the absence of compliance with these legal requirements, no person can assert a valid claim to ownership or membership in the society. Any claim that is not supported by a registered document, executed and stamped in accordance with the law, remains merely inchoate and cannot be the foundation for recognition of ownership rights.

9. In this context, it is pertinent to take note of the authoritative pronouncement of the Hon'ble Supreme Court in the

case of *Suraj Lamp & Industries (P) Ltd. through Director v. State of Haryana*, (2009 (7) SCC 363 and AIR 2012 SC 206). In the said decision, the Apex Court categorically held that the practice of asserting ownership based solely on an agreement for sale or a general power of attorney, even if registered or partially stamped, does not confer a legally enforceable title upon the claimant. The Court further clarified that for a valid transfer of ownership, the title must be conveyed through a duly registered document, coupled with the payment of requisite stamp duty as per the provisions of the Indian Stamp Act and the Registration Act. The judgment unequivocally laid down that instruments such as an agreement for sale, general power of attorney, or conducting agreement, though conferring certain contractual rights, cannot per se operate as instruments of transfer of ownership under the law.

10. The principle enunciated by the Hon'ble Supreme Court is of paramount significance in the present case, wherein respondent No.4's claim rests upon a registered agreement for sale dated 14th June 2019. In contrast, petitioner No.1 has placed reliance upon a registered gift deed dated 4th July 2014. A gift deed, being an instrument of transfer recognized under the Transfer of Property Act, 1882, when duly executed, registered, and stamped, operates to convey absolute ownership in favor of the donee. On the other hand, an agreement for sale, in itself, does not create any interest or title in the immovable property. It merely signifies an intention to transfer ownership upon fulfillment of stipulated conditions, such as execution of a sale deed and payment of full consideration.

Absent compliance with these conditions, the agreement for sale does not bestow any enforceable ownership rights upon the purchaser.

11. In view of the settled legal position, it is evident that respondent No.4 cannot claim ownership merely on the basis of an agreement for sale. The society was, therefore, justified in rejecting his application for membership, as he does not hold any legally recognized title over the property. The rejection of respondent No.4's claim is in consonance with the statutory scheme under the MCS Act, which envisages membership of a co-operative housing society to be granted only to a person who has a legally valid title over the property in question.

12. Consequently, the claim of petitioner No.1, being supported by a duly executed and registered gift deed, must prevail. The rights flowing from such a registered instrument cannot be negated by a subsequent agreement for sale executed in favor of respondent No.4. The rejection of respondent No.4's membership application, therefore, does not suffer from any illegality or irregularity, as it is consistent with the statutory provisions and the law laid down by the Hon'ble Supreme Court. The plea of respondent No.4, thus, fails to withstand judicial scrutiny and cannot be sustained in law.

13. In the factual matrix of the present case, it is evident that once a registered instrument, namely, a duly executed and registered gift deed, was placed before the cooperative housing society, the society was bound by the legal mandate imposed upon

it under the Maharashtra Cooperative Societies Act, 1960, not to refuse membership arbitrarily. The statutory scheme under the said Act postulates that membership cannot be denied except for sufficient cause, and such a refusal must be supported by cogent and legally tenable reasons. It is a settled principle of law that in the absence of any substantive reason justifying the rejection of membership, the act of refusal itself becomes unsustainable in law.

14. In the present case, the registered gift deed unequivocally vests the ownership rights in favour of the petitioners, thereby forming a valid and legally recognized basis for seeking membership in the society. The refusal by the society, if any, ought to have been supported by substantial and legally justifiable grounds, failing which the decision becomes arbitrary and susceptible to judicial review. Consequently, the Revisional Authority, while exercising its jurisdiction, could not have interfered with the society's decision in an unwarranted manner, particularly in the absence of any procedural or substantive illegality in the decision-making process of the society. The interference by the Revisional Authority, therefore, does not stand the test of judicial scrutiny and warrants the intervention of this Court under Article 226 of the Constitution of India.

15. In the facts and circumstances of the present case, once the registered instrument, namely the Gift Deed, was duly produced before the Co-operative Housing Society, the statutory obligation cast upon the society under the Maharashtra Co-operative Societies Act, 1960 ("MCS Act") mandated that it could not refuse membership to a person unless there existed a legally sustainable

and justifiable cause to do so. The burden, therefore, squarely lay upon the Society to establish the existence of such sufficient cause in declining the membership.

16. It is a settled principle of law that a registered document carries with it a presumption of correctness unless rebutted by cogent evidence. In the present case, the registered Gift Deed in favour of the petitioners constitutes a legally valid and binding document, thereby conferring upon the petitioner No.1 (wife) a lawful right over the subject premises. Consequently, the Society's refusal to recognize her membership, in the absence of any demonstrable legal impediment, was arbitrary and untenable in law. The Revisional Authority, in interfering with the decision-making process of the Society in favour of respondent No.4, failed to appreciate the statutory mandate and the settled legal position governing such matters. Therefore, such interference by the Revisional Authority was unwarranted and liable to be set aside.

17. The respondent No.4 has raised a preliminary objection regarding the maintainability of the present writ petition by contending that the petitioner, not being a party to the proceedings under the MCS Act, lacks the locus standi to challenge the decision in the present writ petition. This contention is legally untenable in light of the well-settled principles enunciated by the Hon'ble Supreme Court in *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed*, (1976) 1 SCC 671. In the said decision, the Constitution Bench of the Hon'ble Supreme Court laid down the test of locus standi in writ proceedings under Article 226 of the Constitution of India and classified applicants into three

categories: (i) "persons aggrieved"; (ii) "strangers"; and (iii) "busybody or meddlesome interloper".

18. The Hon'ble Supreme Court has categorically observed that persons falling within the third category, i.e., busybodies or meddlesome interlopers, are those who seek to interfere in matters which do not concern them and masquerade as crusaders for justice without any genuine interest to protect. Such persons, who merely indulge in judicial adventurism for ulterior motives, ought to be discouraged, and their applications should be summarily rejected by the High Court at the threshold.

19. However, the distinction between the first and second categories, namely "persons aggrieved" and "strangers," is nuanced and context-dependent. The Supreme Court has explained that the first category of "persons aggrieved" includes individuals whose legal rights have been directly infringed. This category, in itself, comprises a core segment of certainty and an overlapping periphery where the distinction between "persons aggrieved" and "strangers" may sometimes become nebulous.

20. Applying the aforesaid principles to the present case, petitioner No.1 (wife) asserts her ownership over the premises based on a duly registered Gift Deed. An order passed by an Authority under the MCS Act, conferring membership upon respondent No.4, directly affects the petitioner's proprietary rights in the said premises. Therefore, petitioner No.1, being a co-owner with a vested interest, falls squarely within the definition of a "person aggrieved" and, consequently, possesses the requisite locus

standi to challenge the impugned order passed by the Authorities. In light of the foregoing discussion and the settled position of law, I am of the considered opinion that the writ petition, at the instance of petitioner No.1, based on the registered Gift Deed, is maintainable and deserves to be adjudicated on merits.

21. In so far as the judgment relied upon on behalf of respondent No.4 in the case of *Usha Jhaveri v. State of Maharashtra & Ors.* (Writ Petition No.659 of 2011, decided on 4th July 2011) is concerned, this Court was seized of a matter wherein a co-operative society was faced with conflicting claims from rival parties, making it impracticable for the society to unilaterally recognize the claim of any individual party without an authoritative adjudication by a competent court of law. In that context, it was held that the appropriate forum for resolving such competing claims would be a suit before the Civil Court, and the society was required to abide by the final decision rendered in such proceedings. The ratio laid down in the said judgment makes it manifestly clear that where the claims of membership involve contentious issues of title and ownership, the society cannot be compelled to accept the claim of any party in the absence of a judicial determination by a competent forum. The said principle squarely applies to the present case, where the claims of the contesting parties arise from distinct and rival title documents.

22. In *Harish Commercial Premises Coop. Society Ltd. v. Varsha Dinesh Joshi & Ors.* (2005 SCC OnLine Bom 1370), a Coordinate Bench of this Court expounded on the scope of the jurisdiction of

the Registrar under Section 23 of the Maharashtra Co-operative Societies Act, 1960. It was held that while considering an application for membership, the society is required to undertake a prima facie assessment as to whether the person seeking membership is a lawful occupier and whether he has a demonstrable right, title, or interest in the premises forming the subject matter of membership. However, it was further clarified that the jurisdiction of the Registrar under Section 23 does not extend to determining the validity, legality, or otherwise of the documents relied upon to establish title, as such an adjudication falls exclusively within the domain of the Civil Court. Any person aggrieved by or seeking to challenge an agreement or instrument relied upon by another for membership must necessarily institute a suit before the competent Civil Court to seek an authoritative determination.

23. In the factual matrix of the present case, petitioner No.1, being the wife of the original owner, has founded her claim on the basis of a registered Gift Deed, whereas respondent No.4 predicates her claim on a registered Agreement for Sale coupled with delivery of possession. It is well settled in law that an Agreement for Sale does not per se create any title or interest in immovable property unless it culminates into a sale deed duly executed in accordance with law. The distinction between an Agreement for Sale and a Sale Deed is well recognized in legal jurisprudence, and in the absence of a registered conveyance deed, respondent No.4 cannot be said to have acquired absolute ownership rights over the subject premises. In such circumstances,

the society was justified in declining the request of respondent No.4 for membership, as the document relied upon by her did not confer title in law. The Revisional Authority, while adjudicating the revision application filed by respondent No.4, erred in overlooking this fundamental aspect and proceeded to allow the revision without properly appreciating the nature of the document relied upon by respondent No.4. Consequently, in my considered view, the impugned judgment and order passed in the revision application cannot be sustained in law and warrants interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

24. In light of the foregoing discussion, the following order is passed:

- i) The impugned Judgment and Order dated 4th September 2023 passed in Revision Application No.161 of 2023 is hereby quashed and set aside.
- ii) However, it is clarified that none of the observations made in the present judgment shall be construed as a conclusive adjudication of the respective rights claimed by the parties in the subject premises. It shall be open for both parties to seek an appropriate declaration regarding their rights, title, and interest from a competent Civil Court if they so desire. The present judgment shall not be interpreted so as to either extinguish or create any right in favor of or against either of the parties in relation to the title of suit property.
- iii) It is further clarified that in the event any party is

aggrieved and chooses to institute civil proceedings, the competent Civil Court shall determine the issue of title and validity of documents concerning Shop No.1 on its own merits, uninfluenced by any findings recorded in the impugned order of the Revisional Authority or in the present judgment.

25. Both writ petitions stand disposed of in the aforesaid terms. There shall be no order as to costs.

(AMIT BORKAR, J.)