

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

WRIT PETITION NO.2516 OF 2024

Mrs. Ramabai Sudhakar Nayak

...Petitioner

V/s.

The Chairman/Secretary Shri
Mohan Co-operative Housing Society
Ltd. and Ors.

...Respondents

Mr. Satyajeet A. Rajeshirke *with Mr. Shubham Vasekar for the
Petitioner.*

Mr. S.B. Amin *with Ms. Pooja Tiwari for Respondent No.2.*

Mr. J.P. Patil, *AGP for Respondent No.3-State.*

CORAM: SANDEEP V. MARNE, J.

Dated: 11 March 2025.

P.C.:

1) Petition challenges order dated 9 October 2023 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai-Division, Mumbai, allowing Revision Application No.173 of 2019 and setting aside order dated 5 December 2018 passed by the Deputy Registrar, Co-operative Societies. The Divisional Joint Registrar has directed the Respondent-Society to admit Respondent No.2 as a member in respect of Flat No.83 under

Section 22 of the Maharashtra Co-operative Societies Act, 1960
(MCS Act).

2) I have heard Mr. Rajeshirke, the learned counsel appearing for the Petitioner, Mr. Amin, the learned counsel appearing for Respondent No.2 and Mr. Patil, the learned AGP for Respondent-State.

3) The flat was initially owned by late Purandardas Prabhudas Prabhu. Petitioner is the sister of original owner whereas Respondent No.2 is his brother. The original member has passed away in the year 2011. However, Respondent No.2 relies upon Agreement for Sale executed on 5 May 1987 in his favour for claiming ownership in respect of Flat No.83. He further contends that said Agreement for Sale has been adjudicated by paying the deficit amount of stamp duty on 29 March 2012. Thus, as of now Respondent No.2 is armed with at least some document to create *prima facie* presumption of title, which is necessary for deciding the issue of membership of co-operative society. Mere issuance of share certificate in favour of Respondent No.2 would not make him owner in respect of flat in question. It would be open for the Petitioner to seek a declaration from Civil Court about her title in respect of the flat. The membership to society would depend on the decree that would be passed by the Civil Court.

4) Though Mr. Rajeshirke has suggested that Respondent No.2 needs to be driven to the Civil Court, in my view Respondent No.2 is armed with at least a document in the form of Agreement for Sale dated 5 May 1987 whereas Petitioner claims presumption of ownership in respect of the flat through heirship. In my view therefore, the correct course of action for the Petitioner is to file a Civil Suit contending that Agreement for Sale dated 5 May 1987 does not confer title in respect of the flat in favour of Respondent No.2 and that she is the joint owner in respect of the flat in question. Complicated issues of title cannot be adjudicated in enquiry under Section 22 of the MCS Act. Till decision of the Suit, Respondent No.2 can enjoy the membership of the Society. It would be open for the Petitioner to seek appropriate temporary injunction in her Suit to restrain Respondent No.2 from creating third party rights in respect of the flat during pendency of the Suit.

5) I accordingly proceed to pass the following order:-

(i) Petition is dismissed.

(ii) However, it would be open for the Petitioner to institute a Civil Suit claiming title in respect of Flat No.83 and such Suit would be decided on its own merits without being influenced by any of the observations made by the Divisional Joint Registrar or by this Court in the present order.

(iii) It would be open for the Petitioner to apply for temporary injunction in such Suit to restrain Respondent No.2 from creating third party right in respect of Flat No.83.

6) With the above directions, Petition is disposed of.

[SANDEEP V. MARNE, J.]

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