

AGK

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

**WRIT PETITION NO.7681 OF 2024
WITH
INTERIM APPLICATION NO.923 OF 2025**

- 1. Usha Biharilallal Hassija,**
aged 71 years Widow of the deceased
Biharilallal G. Hssija,
- 2. Mr. Sanjay Biharilallal Hassija,**
aged 57 years, elder son of the deceased
Biharilallal G. Hassija, both having their
address at C/o. Suraj Mandir Building,
2nd Floor, Flat No. 204, Santacruz (West),
Mumbai – 400 056 and presently at
Flat 108, Serenity Heights, 'B' Wing,
1st Floor, Malad (West), Mumbai 400 064.

... Petitioners

V/s.

- 1. The Divisional Joint Registrar,
Cooperative Societies, at Mumbai,
Malhotra House, 6th floor, G. P. O. Fort,
Mumbai 400 001**
- 2. The Dy. Registrar,
Cooperative Societies, 'C' Ward,
Malhotra House, G. P. O. Fort,
Mumbai 400 001**
- 3. Western Court Coop Hsg Soc. Ltd.,
83, Marine Drive, 'F' Road,
Mumbai 400 002.**
- 4. Kishore G. Hassija,
83, Western Court, Flat 14, 3rd Floor, 'F' Road,
Marine Drive, Mumbai 400 002.**

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5. **Jaiprakash G. Hassija,**
Maurya Society, E Building, 2,
Navlove Road, Pune 411 001.
6. **Jayikalyan Sahakari Bank Ltd,**
140, Vivek Darshan Sindhi Society,
Oppo. Bhakti Bhavan, Chembur,
Mumbai 400 071.
7. **Vinod Kishore Hassija,**
8. **Vinita Kishore Hassija,**
Both 7 & 8 presently residing at
Flat 502, 5th floor, 'D' Wing,
Simla House, 51-B, Nepeansea Road
Mumbai 400 006.
9. **Vinod Jain,**
10. **Priti Vinod Jain,**
Both residing at Flat No.14,
83 Westen Court, 3rd floor, 'F' Road,
Marine Drive,
Mumbai 400 002.
11. **State of Maharashtra** ... Respondents

**WITH
WRIT PETITION NO.8531 OF 2024**

1. **Usha Biharilal Hassija,**
aged 71 years Widow of the deceased
Biharilallal G. Hssija,
2. **Mr. Sanjay Biharilal Hassija,**
aged 57 years, elder son of the deceased
Biharilallal G. Hassija, both having their
address at C/o. Suraj Mandir Building,
2nd Floor, Flat No. 204, Santacruz (West),
Mumbai – 400 056 and presently at
Flat 108, Serenity Heights, 'B' Wing,
1st Floor, Malad (West), Mumbai 400 064. ... Petitioners

V/s.

1. **The Dy. Registrar,**
Cooperative Societies, 'C' Ward,
Malhotra House, G. P. O. Fort,
Mumbai 400 001
2. **Western Court Coop Hsg Soc. Ltd.,**
83, Marine Drive, 'F' Road,
Mumbai 400 002.
3. **Kishore G. Hassija,**
83, Western Court, Flat 14, 3rd Floor, 'F' Road,
Marine Drive, Mumbai 400 002.
4. **Vinod Kishore Hassija,**
5. **Vinita Kishore Hassija,**
Both 7 & 8 presently residing at
Flat 502, 5th floor, 'D' Wing,
Simla House, 51-B, Nepeansea Road
Mumbai 400 006.
6. **Vinod Jain,**
7. **Priti Vinod Jain,**
Both residing at Flat No.14,
83 Western Court, 3rd floor, 'F' Road,
Marine Drive,
Mumbai 400 002.
8. **State of Maharashtra** **... Respondents**

Ms. Priyanka Pardeshi i/b Rita D. Bhatia, for the
Petitioners.

Ms. P. J. Gavhane, AGP, for the State – respondent in
WP/8531/2024.

Ms. Savina R. Crasto, AGP, for the State – respondent in
WP/7681/2024.

Mr. Chaitanya Jadhav a/w Shashank Dubey i/b SC
Legal, for respondent No.6.

Mr. Yashpal Thakur, for respondent Nos.4, 5 & 7.

Mr. Mukund Pandya, for the respondent Nos.9 & 10.

CORAM : AMIT BORKAR, J.

RESERVED ON NOVEMBER 06, 2025

PRONOUNCED ON : NOVEMBER 18, 2025

JUDGMENT:

1. Both writ petitions place the same legal issue and the same factual background before the Court. It is proper to hear them together. I am, therefore, deciding both the petitions by this common judgment.

2. The material facts are as follows. On 25 January 2017, Kishor Hassija applied to the respondent society for transmission of membership in respect of Flat No. 14. He claimed that the rights of late Biharilal Gobindram Hassija had devolved upon him. He paid the required charges and submitted all supporting documents. His application sought transfer of Share Certificate No. 20 dated 1 August 1968 and Share Certificate No. 40 dated 1 September 1948 relating to the said flat. In the indemnity bond filed along with the application, clause 6 records that the petitioners are legal heirs of late Biharilal. It also shows Kishor as a legal heir in his capacity as brother. The indemnity further records that Biharilal had not made any nomination under Rule 21 and that he held a one-third share in the two share certificates.

3. The society did not grant membership to Kishor. He then filed Appeal No. 1254 of 2017 under Section 23(2). The Appellate Authority accepted the fact that Biharilal held a one-third share. It noted that the petitioners had not applied for transfer of membership and that they did not appear before the Authority despite notice and publication. Relying on the indemnity furnished by Kishor, the Authority exercised its power under Section 23(2) and accepted transmission of 33.33 percent share in his favour. It directed the society to enter his name in the membership register and transfer the relevant share certificates.

4. The petitioners challenged this decision by filing Revision Application No. 234 of 2018. The Revisional Authority dismissed the revision. It recorded that Kishor had filed a testamentary petition seeking probate of the Will of late Gobindram Hassija. That petition has been contested by Biharilal and the dispute is pending before this Court.

5. On 7 July 2009, petitioner No. 1 applied to the society for membership. The society did not respond. The Revisional Authority referred to the judgment of this Court in Writ Petition No. 9881 of 2010, John D. D'Souza versus Joint Registrar. It held that authorities under the Maharashtra Cooperative Societies Act, 1960 cannot decide questions of title or determine validity of documents. Membership decisions do not conclude rights, title, or interest of parties. It held that the Assistant Registrar acted correctly while allowing the transfer.

6. During this period, Kishor executed a registered gift deed on 10 March 2017 in favour of his son Vinod and daughter Vinita. He gifted his two-thirds share in the flat to them. On 21 June 2018, Vinod and Vinita executed a registered sale deed transferring Flat No. 14 to Vinod Vimalchand Jain and Priti Vinod Jain. On the basis of the sale deed, Vinod and Priti applied for membership on 7 December 2023. The society did not take any decision within three months. They then filed an appeal under Section 22(2). The Appellate Authority relied on the registered sale deed and held that they had become deemed members in respect of Flat No. 14. It directed the society to record their names in the I and J registers.

7. The orders passed in Revision Application No. 234 of 2018 and in Appeal No. 1 of 2024 are under challenge in Writ Petition No. 7681 of 2024 and Writ Petition No. 8531 of 2024, respectively.

8. The learned advocate for the petitioners submitted that the membership of the original member, Gobindram Hassija, is admitted. It is also admitted that he had four sons, namely Kishor, Jayprakash, Biharilal and Shamsundar. It is further accepted that Shamsundar resigned on 21 May 1975 and his name was deleted from the share certificate. She submitted that, according to the respondents, Jayprakash executed a gift deed of his share in favour of Kishor on 20 September 2017. Based on this, his name was deleted from the membership register. She submitted that Biharilal is survived by the petitioners, and this position is not disputed. Despite this, Kishor projected himself as the legal representative of Biharilal and applied for transmission of membership.

9. Referring to the indemnity bond filed by Kishor, she submitted that even that document acknowledges the petitioners as the legal representatives of Biharilal. She submitted that Section 30 of the Maharashtra Cooperative Societies Act requires the society to transmit the share of a deceased member to his legal representatives when no testamentary document exists in favour of any other person. She argued that, in this background, the Registrar acted incorrectly while directing the society under Section 23(2) to enter the name of Kishor as legal representative of Biharilal. She further submitted that, regarding Appeal No. 1 of 2024, the decision does not take away the petitioners' right as legal representatives of Biharilal. They will remain entitled to apply for joint membership in respect of Flat No. 14 to the extent of the share of Biharilal.

10. In reply, the learned advocate for the contesting respondents submitted that Biharilal had submitted an application on 29 June 1992 seeking transfer of his share in the name of Gobindram Hassija by filing Form No. 20AB and Form No. 22. The society did not act on that application. He submitted that since the legal representatives of Biharilal did not apply, Kishor was justified in seeking transmission of membership of the share held by Biharilal. Despite being given an opportunity, the petitioners did not appear before the Appellate Authority. He submitted that even after notice was published in the newspaper, the petitioners did not raise any objection to membership being conferred on Kishor. Kishor, therefore, submitted an indemnity and accepted full responsibility for consequences arising from the transfer. He submitted that the

Registrar acted correctly. He further submitted that the respondents in Writ Petition No. 8531 of 2024 claim their rights based on a registered sale deed executed by Vinod and Vinita. That sale deed is rooted in the gift deed executed by Kishor conveying his two-thirds share. He therefore supported the order passed in Appeal No. 1 of 2024 and prayed for dismissal of the writ petitions.

11. For the purpose of considering the issue involved, it is necessary to set out Sections 23(2) and Section 30 of the MCS Act, which reads thus:

“22. Person who may become member.— (1) Subject to the provisions of section 24, no person shall be admitted as a member of a society except the following, that is to say—

(a) an individual, who is competent to contract under the Indian Contract Act, 1872;

(b) a firm, company or any other body corporate constituted under any law for the time being in force, or a society registered under the Societies Registration Act, 1860;

(c) a society registered, or deemed to be registered, under this Act;

(d) the State Government or the Central Government;

(e) a local authority ;

(f) a public trust registered under any law for the time being in force for the registration of such trusts ;

(g) the depositor or the financial service user:

Provided that, the provisions of clause (a) shall not apply to an individual seeking admission to a society

exclusively formed for the benefit of students of a school or college:

Provided further that, subject to such terms and conditions as may be laid down by the State Government by general or special order, a firm or company may be admitted as a member only of a society which is a federal or urban society or which conducts or intends to conduct an industrial undertaking :

Provided also that, any firm or company, which is immediately before the commencement of this Act a member of a society deemed to be registered under this Act, shall have, subject to the other provisions of this Act, the right to continue to be such member on and after such commencement.

Explanation.— For the purposes of this section an “urban society” means a society the business of which mainly falls within the limits of a municipal corporation, municipality, cantonment or notified area committee.

(1A) Notwithstanding anything contained in sub-section (1), the State Government may, having regard to the fact that the interest of any person or class of persons conflicts or is likely to conflict with the objects of any society or class of societies, by general or special order, published in the Official Gazette, declare that any person or class of persons engaged in or carrying on any profession, business or employment shall be disqualified from being admitted, or for continuing, as members or shall be eligible for membership only to a limited extent of any specified society or class of societies, so long as such person or persons are engaged in or carry on that profession, business or employment, 2 [as the case may be ; and the question whether a person, is or is not so engaged in or carrying on any profession, business or employment or whether a person belongs or does not belong to such class of persons as declared under this sub-section

and has or has not incurred a disqualification under this sub-section shall be decided by the Registrar under section 11.

(1B) Notwithstanding anything contained in sub-section (1), where the Registrar has decided under section 11 that a person has incurred a disqualification under sub-section (1A), the Registrar or the person not below the rank of District Deputy Registrar of Co-operative Societies, authorised by him in this behalf, may, by order, remove such person from the membership of the society; and such person shall cease to be a member of the society on expiration of a period of one month from the date of receipt of such order by him.

(2) Where a person is refused admission as a member of a society, the decision (with the reasons therefor) shall be communicated to that person within fifteen days of the date of the decision, or within three months from the date of receipt of the application for admission,— whichever is earlier. If the society does not communicate any decision to the applicant within three months from the date of receipt of such application, the applicant shall be deemed to have been admitted as a member of the society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.

23. Open membership.— (1) No society shall without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act and its by-laws.

(1A) Where a society refuses to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to

the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days from the date of receipt of such application and the amount ; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society. 8 If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.

(2) Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar [, within a period of sixty days from the date of the decision of the society]. 2 [Every such appeal, as far as possible, be disposed of by the Registrar within a period of three months from the date of its receipt:

Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay.

(3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof.

(4) Without prejudice to the foregoing provisions of this section, in the case of agro-processing societies or any other society for which a definite zone or an area of operation is allotted by the State Government or the Registrar, it shall be obligatory on the part of such society to admit, on an application made to it, every eligible person from that zone or the area of operation, as the case may be, as a member of such society, unless such person is already registered as a member of any other such society, in the same zone or the area of operation.

30. **Transfer of interest on death of member.**—

(1) On the death of a member of a society, the society shall transfer the share or interest of the deceased member to a person or persons nominated in accordance with the rules or, if no person has been so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member:

Provided that, such nominee, heir or legal representative, as the case may be, is duly admitted as a member of the society:

Provided further that, nothing in this sub-section or in section 22 shall prevent a minor or a person of unsound mind from acquiring by inheritance or otherwise, any share or interest of a deceased member in a society.

(2) Notwithstanding anything contained in sub-section (1), any such nominee, heir or legal representative, as the case may be, may require the society to pay to him the value of the share or interest of the deceased member, ascertained in accordance with the rules.

(3) A society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

(4) All transfers and payments duly made by a society in accordance with the provisions of this section, shall be valid and effectual against any demand made upon the society by any other person.”

12. I have considered the record, the statutory provisions, and the submissions of both sides. The facts are clear. Flat No. 14 stood in the names of members of the Hassija family. Biharilal held a definite share in the flat. He died without leaving behind any nomination.

13. Kishore filed application for membership prior to introduction of Chapter XIII-B, hence Section 30 was applicable. Section 30 of the Maharashtra Cooperative Societies Act lays down a simple rule. When a member dies without a nomination, the society must transfer his share to the person who appears to be his heir or legal representative. This transfer can take place only after such heir or legal representative is admitted as a member.

14. The material on record shows that late Biharilal was a member of the society and held a defined share in Flat No. 14. It is established that he did not make any nomination. In such a situation, the first part of Section 30 does not apply because that part concerns transfer to a nominee.

15. The second part of Section 30 then comes into operation. It requires the society to transfer the share of the deceased to the person who appears to be the heir or legal representative. This is not a matter of choice for the society. It is a statutory duty. The society must look at the reliable evidence placed before it and identify the lawful heir.

16. In this case, the indemnity bond filed by Kishor clearly acknowledges the petitioners as the legal heirs of late Biharilal. No document has been produced by Kishor to show that he alone was authorised to receive the share of Biharilal. There is no will. There is no nomination. The probate proceedings referred to by the respondents concern the will of Gobindram, not the share of Biharilal. Therefore, those proceedings cannot override Section 30 in relation to the share of Biharilal.

17. The proviso to Section 30 requires that the heir or legal representative must be admitted as a member before the transfer takes effect. This shows the two-step scheme of the Act. First, identify the heir. Second, admit him as a member. Only then can the share be transferred. The society and the Registrar did not follow this process. They treated Kishor as the sole legal representative even though the record indicated that the petitioners were also legal heirs. This is contrary to the mandatory language of Section 30.

18. The second proviso clarifies that even a minor or a person of unsound mind can inherit. This shows the intent of the legislature to protect the rights of lawful heirs irrespective of their personal circumstances. It reinforces the principle that the share must follow lawful succession unless a nomination or a valid testamentary instrument says otherwise.

19. Applying Section 30 to this case leads to one conclusion. The petitioners, as legal heirs of late Biharilal, have the statutory right to seek admission to membership to the extent of his share. This right cannot be displaced by unilateral actions of another family member without supporting legal evidence.

20. The indemnity bond submitted by Kishor himself acknowledges the petitioners as the legal heirs of late Biharilal. There is no document on record which gives Kishor an exclusive right over the share of Biharilal. There is also no testamentary document placing Kishor in that position. In such a situation, the society was required to consider the claim of the petitioners as

legal heirs. The Registrar, while acting under Section 23(2), did not examine this statutory requirement. The Registrar treated Kishor as the sole legal representative even though his own indemnity acknowledged the petitioners. This approach is contrary to Section 30.

21. The petitioners delayed their objections. They also failed to remain present before the Appellate Authority despite notice. Their absence does not defeat the law. Section 30 operates on a clear principle. The share of a deceased member devolves upon his legal heirs unless a nomination or a testamentary document gives a contrary direction. Therefore, the petitioners, as legal heirs of late Biharilal, retain the right to seek joint membership to the extent of his share.

22. As far as Vinod Jain and Priti Jain are concerned, their claim arises from the registered sale deed executed by Vinod Hassija and Vinita Hassija. Their title flows from the two thirds share which Kishor had gifted to his children. The Appellate Authority rightly recognised that, to the extent of the share derived from Vinod Hassija and Vinita Hassija, Vinod Jain and Priti Jain are deemed members. Their membership is confined to that portion of the flat which lawfully came to them through the registered deed. Their membership cannot extend to the one third share which belonged to late Biharilal. That share did not form part of the gift deed or the subsequent sale deed.

23. The society must honour both legal positions. It must acknowledge the deemed membership of Vinod Jain and Priti Jain

to the extent of their lawful share. It must also recognise the right of the petitioners, as legal heirs of Biharilal, to seek joint membership to the extent of his one third share.

24. In view of the above findings, the following directions are issued.

25. It is declared that the petitioners, being the legal heirs of late Biharilal Hassija, are entitled to apply for joint membership in respect of Flat No. 14 to the extent of the share held by late Biharilal.

26. The society shall consider such application in accordance with Section 30 of the Maharashtra Cooperative Societies Act and admit the petitioners as members to the extent of the said share.

27. It is further declared that Vinod Vimalchand Jain and Priti Vinod Jain are deemed members only to the extent of the share derived from Vinod Hassija and Vinita Hassija under the registered sale deed dated 21 June 2018.

28. The society shall make appropriate entries in the I and J registers reflecting the respective shares of the petitioners on one side and Vinod Jain and Priti Jain on the other, as directed above.

29. All pending applications and objections shall stand disposed of in accordance with these directions.

30. There shall be no order as to costs.

(AMIT BORKAR, J.)