

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9769 OF 2024

Pralhad Bhimrao Mangalvedhekar

...Petitioner

V/s.

Vithal Bhimrao Mangalvedhe and
Ors.

...Respondents

Mr. Rakesh K. Agrawal *for the Petitioner.*

Mr. Pankaj Thatte *with Mr. Amit Sharma for Respondent No.1*

Mr. Y.D. Patil, *AGP for Respondent -State.*

CORAM: SANDEEP V. MARNE, J.

Dated: 25 April 2025.

P.C.:

1) Petition challenges order dated 26 March 2024 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai, partly allowing Revision Application No.453 of 2019 filed by the first Respondent and setting aside the order dated 29 August 2019 passed by the Deputy Registrar. The proceedings are remanded to the Deputy Registrar for being decided afresh. By order dated 29 August 2019 the Deputy Registrar directed the Society to transfer the membership and share certificate in respect of the flat in question in the name of the Petitioner.

2) I have heard Mr. Agrawal, the learned counsel appearing for the Petitioner, Mr. Thatte, the learned counsel appearing for the Respondent No.1 and Mr. Patil, the learned AGP for Respondent -State and considered the submissions canvassed by them.

3) The Petitioner claims that the flat in question was owned by his mother and that the mother has executed a registered Gift Deed dated 9 July 2014 in his favour. Membership of the society is accordingly sought on the strength of the registered Gift Deed dated 9 July 2014. On the other hand, it is the contention of the first Respondent that the mother did not have right to execute Gift Deed of the flat in favour of the Petitioner. It appears that the first Respondent has filed Suit No.490 of 2014 *inter alia* for partition of the flat.

4) The Divisional Joint Registrar appears to have been swayed by pendency of Civil Suit No.490 of 2014 while setting aside order passed by the Deputy Registrar. Another reason why the Divisional Joint Registrar has set aside order passed by the Deputy Registrar is violation of principles of natural justice. However, it appears that though the first Respondent was initially not impleaded by the Petitioner in the proceedings before the Deputy Registrar, first Respondent did intervene in the proceedings and has been heard before passing order dated 29 August 2019. In my view, there is no breach of principles of natural justice on the part of the Deputy Registrar while passing order dated 29 August 2019.

5) So far as pendency of Suit No.490 of 2014 is concerned, in my view, the grant of membership in favour of the Petitioner would always be subject to the decree that would be passed in the said Suit. Till decision of the said Suit, Petitioner would hold membership of the flat in question only as a nominee and ultimate contest between parties relating to title of the flat would be decided by the Civil Court. The Deputy Registrar is otherwise incompetent to decide the issue of title. In my view therefore, the Divisional Joint Registrar has grossly erred in setting aside order passed by the Deputy Registrar on 29 August 2019.

6) Petition accordingly succeeds. Order dated 26 March 2024 passed by the Divisional Joint Registrar is set aside and order dated 29 August 2019 passed by the Deputy Registrar is confirmed. However, grant of membership in favour of the Petitioner in respect of the flat in question shall be subject to the outcome of Suit No.490 of 2014. The first Respondent would also be at liberty to apply for necessary injunctive relief in the pending Suit since the building is slated to go for redevelopment.

7) All the contentions relating to the title of the flat in question are expressly kept open. Petition is allowed in above terms. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]