

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

WRIT PETITION NO. 10040 OF 2024

Max Edward Cardoz Through Santosh Koli **... Petitioner**

Versus

State of Maharashtra Through

Divisional Joint Registrar And Ors

... Respondents

Mr. Ruben A. Fernandes (*Through V.C.*) *for the Petitioner.*

Mr. S.P. Srivastava *for Respondent Nos. 3 & 5.*

Ms. Snehal S. Jadhav, AGP *for Respondent-State.*

CORAM : SANDEEP V. MARNE, J.

DATE : 15 APRIL 2025.

P.C. :

1) The present Petition challenges orders dated 10 June 2024 passed by the Divisional Joint Registrar rejecting the Revision Application preferred by the Petitioner and confirming the order dated 7 July 2015 passed by the Deputy Registrar. The Deputy Registrar directed the society to grant membership in favour of Respondent No.3 in respect of Flat No. 27.

2) I have heard Mr. Fernandes, the learned counsel appearing for the Petitioner and Mr. Srivastava, the learned counsel appearing for the Respondent Nos. 3 and 5.

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3) It is Petitioner's contention that the flat was originally owned by the mother of the Petitioner and Respondent No. 5 and that the mother has passed away intestate without execution of Will. Petitioner therefore claims 50% share in the flat. The society however transferred membership in respect of the flat in favour of the fifth Respondent on the strength of nomination. It is the contention of the Petitioner that mere nomination executed in favour of fifth Respondent does not make her owner of the entire flat.

4) On the other hand, it is the contention of Mr. Srivastava that the Petitioner gave no objection for transfer of membership of the flat in favour of fifth Respondent through affidavit dated 23 March 1998. Petitioner denies having executed the said affidavit.

5) It appears that after the membership of the flat was transferred in favour of the fifth Respondent, she sold the flat in favour of the Respondent No.3 vide registered agreements dated 26 March 2014. The Deputy Registrar has directed grant of membership to the Respondent No.3 on the basis of the said agreement dated 26 March 2014.

6) Petitioner had filed Suit No. 2019 of 2023 *inter alia* challenging the agreement dated 26 March 2014 and seeking a declaration of ownership in respect of the flat in question. The plaint in the suit is however rejected under provision of Order VII Rule 11 of the Code of Civil Procedure, 1908 and the order passed by the City Civil Court is under challenge in the Civil Revision Application filed by the Petitioner.

7) Grant of membership in favour of Respondent No.5 and Respondent No.3 would obviously be subject to the outcome of the final order that may be passed in Suit No. 2019 of 2023. Mere grant of membership in favour of either Respondent No. 5 or Respondent No.3 would not *ipso facto* make them owners in respect of the flat in question. The real remedy for the Petitioner is to pursue the suit, which has already been dismissed and the proceedings are pending before this Court in Civil Revision Application. It is therefore clarified that the orders passed by the Deputy Registrar and the Divisional Joint Registrar shall be subject to outcome of the decree that would be passed in Suit No. 2019 of 2023. With the above observations, the Petition is **disposed of**.

[SANDEEP V. MARNE, J.]