



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.16194 OF 2024

Smt. Mallika Arvind Phansalkar

...Petitioner

V/s.

State of Maharashtra and Ors.

...Respondents

Ms. Manjiri Parasnis *with Ms. Shrushti Kale for the Petitioner.*

Ms. P.J. Gavhane, *AGP for Respondent Nos.1 to 3-State.*

Mr. Valmiky H. Narvekar *for Respondent No.5.*

CORAM: SANDEEP V. MARNE, J.

DATED: 8 JUNE 2026.

P.C.:

1) Challenge in the Petition is to the order passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai (**Divisional Joint Registrar**) dated 13 June 2024. By the impugned order, the Divisional Joint Registrar has set aside Order dated 20 August 2021 passed by the Deputy Registrar, Co-operative Societies, G/N-Ward, Mumbai (**Deputy Registrar**) under Section 22(2) of the Maharashtra Co-operative Societies Act, 1960 (the **MCS Act**). By order dated 20 August 2021, the Deputy Registrar had directed inclusion of name of the Petitioner as a joint member in respect of the flat in question.

2) The flat in question was originally owned by Smt. Mrinalini Shripad Phansalkar, who made a nomination on 6 May 1976 in the name of Respondent No.5-Ashutosh Arvind Phansalkar (**Ashutosh**). At the time of death of Mrinalini Phansalkar on 28 February 1981, Respondent No.5-Ashutosh was minor. Upon acquisition of majority, the Society has transferred the share certificate solely in the name of Respondent No.5-Ashutosh. Aggrieved by Society's action in transferring share certificate solely in the name of Respondent No.5-Ashutosh, the Petitioner filed application under Section 22(2) of the MCS Act before the Deputy Registrar. By Order dated 20 August 2021 the Deputy Registrar directed entry of name of the Petitioner alongwith Respondent No.5-Ashutosh in the membership register. Upon revision filed by Respondent No.5, the Divisional Joint Registrar has set aside the order passed by the Deputy Registrar. The net result is that name of Respondent No.5-Ashutosh continues to be reflected as a sole member in respect of the flat in question. Petitioner is aggrieved by the Order passed by the Divisional Joint Registrar and has filed the present Petition.

3) It appears that in pursuance of an order passed by this Court, mediation was attempted by the parties. However, the learned counsel appearing for parties have apprised the Court that mediation has failed. Accordingly, the Petition is taken up for hearing.

4) I have heard Ms. Parasnis, the learned counsel appearing for the Petitioner, Mr. Narvekar, the learned counsel appearing for Respondent No.5 and Ms. Gavhane, the learned AGP for Respondent Nos.1 to 3-State and have considered the submissions canvassed by them.

5) It is well settled position in law that mere nomination does not decide the issue of title. In that sense, mere entry of Respondent No.5 in the membership register by the society does not make Respondent No.5 a sole owner in respect of the flat in question. The issue of title will have to be decided by the Civil Court in appropriate proceedings.

6) It appears that the Petitioner did file a civil suit in respect of the flat. My attention is drawn by Mr. Narvekar to the Plaint filed in Short Cause Suit No.2218 of 2017. Inviting my attention to paragraph 3 of the Plaint, Mr. Narvekar submits that the Suit was for declaration of title to the effect that the Petitioner is the absolute owner of Flat No.4. Relevant pleadings in paragraph 3 of the Plaint reads thus:

3. The Plaintiff is filing the present Suit for a declaration that the Plaintiff is the absolute owner of Flat No.4, ground floor, Lalat CHS Ltd., Keni Apartments, Lt. Dilip Gupte Marg, Mahim Mumbai-400 016 and for administration of the estate of the said deceased.

7) However, upon perusal of the prayers in the Plaint, it appears that no prayer for declaration of title was sought. Prayers in the Plaint are as under:

a) That this Hon'ble Court be pleased to pass a permanent order and injunction restraining the Defendants, their servants, agents and/or any persons claiming through the Defendants and/or under them from disturbing the Plaintiff's use and occupation and/or creating third party rights in the flat, more particularly Flat being Flat No.4, ground Floor, Lalat CHS Ltd., Keni Apartments, Lt Dilip Gupte Marg, Mahim, Mumbai- 400 016;

b) That pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to pass a permanent order and injunction restraining the Defendants, their servants, agents and/or any persons claiming through the Defendants and/or under them from disturbing the Plaintiff's use and occupation and/or creating third party rights in the

flat, more particularly Flat being Flat No.4, ground Floor, Lalat CHS Ltd., Keni Apartments, Lt Dilip Gupte Marg, Mahim, Mumbai-400 016;

c) That pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to pass an order and injunction restraining the Defendants, their servants, agents and/or any persons claiming through the Defendants and /or under them from disturbing the Plaintiff use and occupation and/or creating third party rights in the flat, more particularly Flat being Flat No.4, ground Floor, Lalat CHS Ltd. Keni Apartments, Lt. Dilip Gupte Marg, Mahim, Mumbai-400 016;

d) That pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to pass an order and injunction restraining the Defendants, their servants, agents and/or any persons claiming through the Defendants and/or under them from creating third party rights, title or interest in respect of the said flat, Flat No.4, ground floor, Lalat CHS Ltd. Keni Apartments, Lt Dilip Gupte Marg, Mahim, Mumbai- 400 016;

e) For ad-interim and interim reliefs in terms of prayer clause(c) and (d) be granted.

(f) For costs

(g) For such other and further reliefs as the nature and circumstances of the case may require.

8) It appears that the Suit was filed on account of peculiar cause of action which existed at that point of time when some portion of the flat was sub-divided and let out by Respondent No.5 to outsiders. This is clear from following averments in paragraph 12 of the Plaint:

12. The Plaintiffs state that in or about November 2016, the Plaintiff had lodged NC complaint with the Mahim Police Station on 5/11/2016. The Plaintiff states that the Defendants have illegally and unlawfully divided the entire flat and illegally and unlawfully let out the suit/flat to third party. The copy of NC is annexed herewith as Exhibit "K".

9) It appears that application for temporary injunction was rejected by the City Civil Court by order dated 26 July 2019 and the trial of the Suit was directed to be expedited. In the meantime, Petitioner took out application at Exhibit-7 for withdrawal of the Suit with liberty to file a

fresh Suit. The said application was filed *inter alia* on account of the fact that the Petitioner has claimed absolute ownership in respect of the suit flat when in fact she could have claimed only 1/ 3rd share therein. Be that as it may. Application at Exhibit 7 came to be rejected by the Trial Court by order dated 8 February 2021. Thereafter Petitioner's Suit has been dismissed for non-prosecution by order dated 22 September 2022. No steps are taken by the Petitioner for restoration of the said Suit.

10) Ms. Parasnis submits that the Suit was purely for injunction and no prayer was made for declaration of title. On the other hand, it is the contention of Respondent No. 5 that the issue of title was also involved in the Suit. If Petitioner believes that she is entitled to file a fresh suit seeking declaration of title of 1/ 3rd share in the Flat, the Petitioner would be at liberty to do so. However, Respondent No.5 would be at liberty to raise all objections to such suit including the objection of *res judicata*. As of now, it can clearly be seen that the Petitioner cannot seek declaration of ownership from the Deputy Registrar or Divisional Joint Registrar. That jurisdiction vests only with the Civil Court. As of now, Respondent No.5 is merely a nominee in respect of the flat in question. As and when Civil Court decides the issue of title, necessary changes in the membership register can always be effected.

11) Petitioner cannot expect to secure from Registrars of Cooperative Societies something which only a Civil Court can grant. Petitioner needs to adopt remedies for securing declaration of title in respect of the flat.

12) Considering the above position, no fault can be traced in the order passed by the Divisional Joint Registrar. Petition is bereft of merits. It is accordingly **dismissed**. It is however clarified that this Court has not

decided issue of title in respect of the flat in question and all contentions of the parties in that regard are expressly kept open.

[SANDEEP V. MARNE, J.]