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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2091 OF 2019

WITH

INTERIM APPLICATION NO. 14155 OF 2024

Smt. Raghbir Kuar Bedi)
Age 74 yrs, Occ: Household)
Earlier R/a Geeta Mishra Chawl No.2))
Room No. 12, J. M. Road,)
Bhandup (W), Mumbai-400078)
NOW RESIDING AT address below)
C/o Rajinder Kaur Room No. A/19,)
Gorai (I) Sneha CHS Ltd,)
Plot No. 81 R. S. C.-7 Gorai,)
Borivali (W), Mumbai-400092) ...Petitioner/Applicant

Versus

1. Gorai (I) Sneha CHS Ltd.,)
Plot No. 81, R. S. C.-7, Gorai,)
Borivali (W), Mumbai-400092)

2. Vinod G. Shukla)
R/o Room No. A/29,)
Gorai (I) Sneha CHS Ltd,)
Plot No. 81 R. S. C.-7 Gorai,)
Borivali (W), Mumbai-400092) ...Respondents

Mr. Niranjan A. Mogre a/w. Mr. Harshal Mule for the Petitioner.
Mr. Nitin S. Tare a/w. Mr. Sushant Tare for Respondent No.1.
Mr. Ani B. Lawand for Respondent No.2.

CORAM : M.M. SATHAYE, J.
RESERVED ON : 12th DECEMBER, 2025
PRONOUNCED ON : 30th APRIL, 2026

JUDGMENT :

1. This petition is filed challenging the judgment and order dated 21.09.2018 passed by the Member, Maharashtra State Co-operative Appellate Court, Mumbai in Appeal No. 16 of 2018. By the impugned order, the said appeal filed by Respondent No. 2 was allowed thereby setting aside judgment and order dated 23.10.2017 passed by Judge, Co-operative Court No. 4, Mumbai in Dispute No. 342 of 2004.

2. The said dispute was allowed by the Co-operative Court, declaring that the Petitioner is entitled to take possession of disputed room No. A/29 (hereinafter referred to as 'said room') in Respondent No. 1 Society. However, it is dismissed at the appellate stage.

3. The petition was admitted on 13.03.2019 and considering the age of the Petitioner, it was directed that matter be placed for final hearing as per priority to senior citizens. Hence, taken up.

4. Few facts necessary for disposal of this petition, are as under:

4.1. The Petitioner filed said dispute before the Co-operative Court contending *inter alia* that she is a member of Respondent No.1 Co-operative Housing Society and Respondent No.2 also claims to be the member of the said society for same premises. That one Mrs. Kondanbai Laxman Kamble was the original allottee of Room No. A/29 in Respondent Society. That said Kondanbai sold the said room to Petitioner on 17.03.1994. That the said room was under construction at the relevant time. That documents were executed by said Kondanbai in favour of Petitioner. That the Petitioner paid

various amounts towards cost of construction to Respondent No.1 Society. That the Petitioner has paid total amount of Rs.56,500/- to the society upto 05.12.1998 towards entire cost of said room. That despite the same, Respondent No.1 Society has failed, neglected and avoided to give possession of the said room and has permitted Respondent No. 2 to possess and occupy the same. That Petitioner has filed various complaints with Maharashtra Housing and Area Development Authority (MHADA) as well as with concerned Deputy Registrar of Co-operative Societies. However, nobody helped the Petitioner. That Deputy Registrar has communicated with the Petitioner to approach the Court. That Respondent No. 2 has already left the said room and is residing somewhere else and he has started construction in the said room raising an illegal structure. That Respondent No. 2 may change the nature of structure and create third party interest. That therefore declaration that the Petitioner alone is entitled to use, occupy, possess and enjoy the said room is necessary. That therefore it be declared that the Petitioner is entitled to take possession of said room.

4.2. By ad-interim order dated 11.10.2014, the Co-operative Court restrained the Respondents from creating third party interest till filing of reply.

4.3. Respondent No.1 Society filed written statement *inter alia* contending that the dispute suffers from non-joinder of necessary parties as said Kondanbai is not made party. That share certificate was issued in the name of Kondanbai. That the Petitioner is not entitled to claim possession of the said room. That the Petitioner has

nothing to do with membership of Respondent No.1 Society. That membership claimed by the Petitioner is through share certificate standing in the name of said Kondanbai and there is tampering of share certificate. That Respondent No. 2 is in use, occupation and possession of the said room on the basis of documents furnished to the Society. That the Petitioner had made application for transfer of associate membership from room No.A/29 to room No.A/12 in the year 1996 and the said change was allowed and it was communicated. That the Petitioner applied to the Administrator of Respondent Society on 20.11.1998 asking for possession of other Room No.A/12. That therefore the Petitioner is not concerned with the said room.

4.4. Respondent No. 2 filed written statement contending *inter alia* that dispute suffers from non-joinder of necessary parties as said Kondanbai is not joined as also for non-joinder of Mr. Marriappan G. Kavender who was lawful possessor of the said room after Kondanbai and also from non-joinder of MHADA, the concerned authority. That the transfers have taken place under observation of MHADA. That Kondanbai had transferred her rights in the said room to Mr. Marriappan on or about 24.12.1994 and Mr. Marriappan was in possession till 29.03.2000 and thereafter said Mr. Marriappan has relinquished and transferred his rights in the said room in favour of Respondent No. 2 who is in possession. That Respondent No. 2 has approached and applied to concerned authority for transfer of said room by paying transfer fees.

4.5. The Co-operative Court framed issues and held that the

Petitioner is a member of Respondent No.1 Society who has paid construction cost of the said room. That the transaction between Kondanbai and Petitioner is prior to transaction between Kondanbai and said Marriappan and then to Respondent No. 2. That No objection granted by Respondent No. 1 society for transfer in favor of Respondent No. 2 is illegal, invalid and not binding on the Petitioner and the Petitioner is entitled to possession of the said room. The Co-operative Court accordingly allowed the dispute, thereby declaring that Petitioner is entitled to take possession of Room No. A/29 situated in Respondent No.1 society.

4.6. Respondent No. 2 filed the said appeal before Co-operative Appellate Court. The Appellate Court held that the Petitioner has not proved that she has acquired valid right under agreement dated 17.03.1994. It held that the order passed by the Co-operative Court is illegal and interference is warranted. Accordingly, the appeal was allowed and Petitioner's dispute was dismissed.

SUBMISSIONS

5. Learned counsel for the Petitioner, Mr. Mogre, submitted as under. That though the document in favour of Petitioner is unregistered, it is already marked in exhibit without any objection and therefore Respondents cannot challenge the said document. That the document in favor of Petitioner is prior in point of time as compared to the document allegedly in favor of Mr. Marriappan and therefore the Petitioner's right would prevail. That the document in favor of said Marriappan is highly doubtful considering that his name

is neither mentioned in agreement nor in the receipt of alleged consideration paid. That the Petitioner has paid construction cost to Respondent Society for which bank passbook is produced. That MHADA has written letters to the Petitioner. That said Mr. Marriappan is not made party because on the date when dispute was filed, Respondent No. 2 was already in possession claiming rights from Mr. Marriappan. That Appellate Court holding about non-payment of construction cost is perverse. That initial burden of proving better right is not discharged by Respondent No.2. He relied upon following judgments in support his submissions.

- i. Javer Chand and Ors. Vs. Pukhraj Surana AIR 1961 SC 1655.
- ii. Shyamal Kumar Roy Vs. Sushil Kumar Agarwal (2006) 11 SCC 331.
- iii. Prakash Balraj Ghodke Vs. Suresh Balraj Ghodke and Ors. (Writ Petition No. 2526 of 2019 Bombay High Court Bench at Aurangabad).
- iv. Hemprabha Co-operative Housing Society Ltd. Vs. Kishore C. Waghela & Ors. 2025(1) ALL MR 814.
- v. Mohinder Kaur Kochar Vs. Mayfair Housing Pvt. Ltd. and Ors. 2013(1) Mh.L.J. 389.

6. Per contra, learned counsel Mr. Tare appearing for Respondent No. 1 Society submitted that the transfer in favour of Respondent No. 2 is approved by MHADA on 06.04.2008. That if the original allotted member has cheated the associate member, then it is a dispute to be filed in Civil Court or with the police authority and the same cannot be considered by the Co-operative Court.

7. Learned counsel Mr. Lawand for Respondent No. 2 submitted as under. That the impugned order is lawful and does not require

interference. That Kondanbai has executed many documents in favour of Mr. Marriappan which are considered by the Appeal Court. That the document in favour of Petitioner has no value as the same is not registered document and it is prior to formation of society. That communication by MHADA with the Petitioner is not direct and it is 'care of the original allottee Kondanbai'. That the Respondent No.2 has given details of the amounts paid with the Administrator of society towards construction cost. That signature of Kondanbai on the document in favor of Petitioner does not match with signature of Kondanbai on other documents. That passbook produced by the Petitioner is bogus. That declaration of membership is not sought by the Petitioner and only possession is claimed. It is lastly submitted that Co-operative Court has no jurisdiction for giving possession. He relied upon following judgments in support of his submission.

- i. Shyam Narayan Prasad Vs. Krishna Prasad and Ors. (Civil Appeal No.5415 of 2011 Supreme Court).
- ii. Bondar Singh and Ors. Vs. Nihal Singh 2003 AIR (SC) 1905.
- iii. L.C. Goyal Vs. Mrs. Suresh Joshi & Ors. 1999 (3) SCC 376.

8. I have considered the rival submissions and perused the record with the assistance of the learned counsel for parties. Following factual aspects, emerge from the record :

(a) Both the agreements in favour of the Petitioner as well as Respondent No.2 are unregistered documents. The agreement in favour of Petitioner is prior in point of time (17.03.1994). It is executed by Kondanbai in favour of the Petitioner.

(b) That on 30.08.1996, the Secretary of the Respondent No. 1 Society has written a letter to Assistant Registrar Co-operative Societies about admission of associate members with a list of 19 rooms having names of original members and associate members, in which name of said Kondanbai and Petitioner appear for said Room No.A/29.

(c) That on 31.08.1996, the Assistant Registrar of Co-operative Societies has informed the Respondent Society that associate members can be admitted as per provisions of Maharashtra Co-operative Societies Act (MCS Act) and Rules and bye laws of the society subject to compliance in respect of entrance fees, etc.

(d) That on the share certificate No.29, the name of Petitioner appears as joint associate member.

(e) That the passbook of Petitioner indicates various payments made to Respondent No. 1 Society from 07.11.1993 till 18.03.1997. The Petitioner has produced receipts of construction cost paid by her and the receipts stand in the name of the Petitioner.

(f) That on 15.10.1996 a letter was written by the Respondent society to the Petitioner (directly, not care of) asking for payment towards construction. That MHADA on 06.11.1996 has addressed a letter to said Kondanbai through the Petitioner about Room No. 29 demanding balance amount of payment. That Secretary of the Respondent Society on 21.01.1997 had called upon the Petitioner (directly, not care of) to take possession of the said Room No. A/29.

(g) That Petitioner has produced various communications with the police authority as well as MHADA and society authorities raising objection about Respondent No. 2 found in illegal possession of said room.

(h) That by a letter dated 01.07.2004, MHADA had informed the Petitioner that necessary action is being taken against the Society committee for giving membership in respect of same room to multiple persons. It asked the Petitioner to file appropriate case in the Court of competent jurisdiction considering mismanagement of Respondent No.1 Society.

9. In the teeth of above, it is necessary to consider the documents produced in favor of Respondent No. 2. Respondent No. 2 claims to have received rights from Mr. Marriappan Kavender. Therefore, it is necessary to see what are the rights of Mr. Marriappan himself. The document allegedly executed by the said Kondanbai in favour of Mr. Marriappan is dated 24.12.1994, which is admittedly after the document in favour of Petitioner. In the said document, name of Mr. Marriappan Kavender is not mentioned as one of the party and the name of purchaser is kept blank. The said document is apparently not signed by Mr. Marriappan and the receipt typed at the end of the document also does not mention the name of Mr. Marriappan and the amount is left blank. In view of these apparent and glaring irregularities, the document in favour of Mr. Marriappan is highly doubtful and cannot be relied upon for any purpose. If the agreement between said Kondanbai and Mr. Marriappan was genuine, there was no need to execute General Power of Attorney by said Kondanbai in

favour of Mr. Marriappan and also the indemnity bond. Respondent No. 2 has produced resignation letter of said Kondanbai, which is also an undated document thereby creating serious doubt about such resignation.

10. Considering that the basic document in favour of Mr. Marriappan itself is highly doubtful and cannot be relied upon, apparently said Mr. Marriappan could not have transferred any meaningful right further in favour of Respondent No.2. A man can not give what he does not have. Therefore, the subsequent documents in favour of Respondent No.2 by Mr. Marriappan as well as letter/s issued either Respondent Society or MHADA is of no consequence, when his vendor himself did not have any document in his favor.

11. Perusal of the impugned order shows that the learned Member of the Appellate Court has allowed the Appeal for following reasons.

(a) That the agreement in favour of the Petitioner is not registered document and therefore has no evidentiary value.

(b) That the copy of passbook produced by the Petitioner where debit entries are seen in favour of the society, the same is not sufficient to presume that the Petitioner has paid the amount for construction charges.

(c) That the Petitioner has not insisted with the Respondent-Society to issue share certificate in her exclusive name and has not opposed showing her name as associate member of the society with

original allottee Kondanbai.

(d) That despite letter dated 21.01.1997 issued by the Respondent-society addressed to the Petitioner, the resolution mentioned therein is not produced.

(e) That the predecessor of Respondent No. 2 viz Mr. Marriappan is not made party.

12. So far as the first reason of the Petitioner's documents being unregistered is concerned, the learned Member of the Appellate Court was conscious of the fact that the document in favour of Mr. Marriappan as well as in favour of the Respondent No. 2, both are also unregistered and therefore they also do not have evidentiary value more than the Petitioner's document. In fact the documents in favour of Mr. Marriappan purportedly executed by Kondanbai suffers from many other fatal defects such as name of Mr. Marriappan and amount not being mentioned. The learned member of the Appellate Court was conscious of these facts.

13. The Appellate Court was also conscious of the fact that if Kondanbai had executed document in favour of Mr. Marriappan, then there was no propriety or necessity for Kondanbai to execute Power of Attorney in favour of Mr. Marriappan. All these shortcomings in the document purportedly in favour of Mr. Marriappan has been considered by the Appellate Court in paragraph No. 29 of the impugned order. The Appellate Court has even held that considering the documents on the basis of which Respondent No. 2 is claiming right, it is difficult to digest whether Mr. Marriappan has become title

holder of the said room and transaction between Mr. Marriappan and the Respondent No. 2 has become legal and valid. Having so held, the Appellate Court was not not at all justified in brushing aside the earlier agreement in favour of the Petitioner coupled with the proof of payment to the society and correspondence by the society directly in the name of Petitioner.

14. There is no reason to disbelieve debit entries in favour of Respondent Society from Petitioner's bank pass book. To say that 'it is a passbook of joint account of Petitioner and her daughter and therefore not believable' can not be sustained in the absence of clear evidence about involvement of Petitioner's daughter's interest.

15. The Appellate Court has held that even though basic documents of right, title and interest of both sides are not considerable, it cannot be disputed that since 2000 the Respondent No. 2 is in occupation of the said room and has ultimately tilted against the Petitioner. This is the only thing that seems to have weighed with the Appellate Court.

16. In the present case, when both the parties are relying on unregistered documents, it was and is a question of better claim and better right vis-a-vis the said room. The Appellate Court has also found fault with the prayers made by the Petitioner. It is material to note that declaration was granted by Co-operative Court in favour of the Petitioner about entitlement to the possession of suit room. There was no need to enter the dispute about whether possession is sought or about disturbance of possession.

17. The judgment of Hon'ble Supreme Court in case of **Javer Chand & Ors. (Supra)** directly supports the case of the Petitioner, where it is observed that once the document has been admitted in evidence, such admission cannot be called in question on the ground that instrument has not been duly stamped.

18. The judgment of **Shyamal Kumar Roy (Supra)** also supports the Petitioner in which it is observed by the Hon'ble Supreme Court that if a party intends that a document should not be admitted in evidence because it is insufficiently stamped, the party must raise an objection thereto at appropriate stage.

19. In **Hemprabha Co-operative Housing Society Ltd (supra)**, learned Single Judge of this Court while considering dispute regarding recovery of possession of the society's property has held that such issue comes within the scope of management of the society under Section 91 of the Maharashtra Co-operative Societies Act and therefore Co-operative Court has jurisdiction to hear and decide it. This judgment also supports the case of Petitioner because the Appellate Court has raised doubt about whether the Appellate Court can consider the prayer for possession.

20. In the Judgment of **Shyam Narayan Prasad (supra)**, the Hon'ble Supreme Court was considering a suit for declaration that a document Exhibit-P2 was invalid, and in that specific context, it was held that since the said document of exchange (defined under Section 118 of the Transfer of Property Act) is about immovable property worth more than Rs.100/-, Section 54 of Transfer of

Property Act would apply and therefore, registration is necessary. In the present case, no declaration about document is sought. Since both parties are relying on unregistered documents and question is about society membership, the said judgment will not help Respondent No.2.

21. It is settled position of law that unregistered documents can be relied upon for collateral purposes. In the present case, admittedly the documents relied upon by both sides are unregistered and it is for collateral purpose of claiming membership.

22. Judgment of **Bondar Singh (supra)** in fact supports the Petitioner, as it supports the aforesaid proposition that unregistered and unstamped sale deed can be looked into for collateral purpose like the nature of possession.

23. Lastly, so far as the judgment of **L. C. Goyal (supra)** is concerned, the Hon'ble Supreme Court itself has considered the admitted and disputed signatures, having come to the conclusion in that case. However, in the present case, the argument about Smt. Kondanbai's signature being different on the document in favour of petitioner, need not be considered in writ jurisdiction being a disputed question of fact. Also, no such contention appears to have been raised before the Courts below. Therefore, the same cannot be considered for the first time in Writ Petition.

24. In the aforesaid facts and circumstances and for reasons indicated above, the impugned order is found perverse. Therefore, the petition succeeds. The impugned order

dated 21.09.2018 is quashed and set aside. The Appeal No. 16 of 2018 is dismissed. The order of the Co-operative Court No. 4, Mumbai dated 23.10.2017 is confirmed. No order as to the costs.

25. In view of disposal of the petition, above pending application is also disposed of.

26. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)