

MPBalekar

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

WRIT PETITION NO. 1498 OF 2026

Ashok Govind Gadgil and Anr. ... Petitioners
V/s.
Vikas Govind Gadgil and Ors. ... Respondents

Siddharth C. Wakankar, for the petitioners.

N. Agarwal a/w Vashnavi K. i/by S. Sawant for
respondent No.1.

P.V. Nelson Rajan, AGP, for the State – Respondent
Nos.6 & 7.

CORAM : AMIT BORKAR, J.

DATED : MAY 5, 2026

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** The challenge raised in the present writ petition emanates from the proceedings initiated under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960, whereby the claim preferred by respondent No.1 seeking recognition as a joint member in respect of Flat No.6 has been accepted and allowed in his favour by the competent authority.
- 3.** The factual matrix giving rise to the present writ petition, according to petitioner, is as follows. One Govind D. Gadgil had purchased the subject flat jointly with his wife in or about the year 1971, and both of them were admitted as joint members of the respondent-society. It is further stated that upon the demise of

Govind D. Gadgil, his wife, namely Vijaya Gadgil, continued as the sole member of the society in respect of the said flat. The petitioners contend that Vijaya Gadgil had executed a gift deed transferring the said flat in favour of the petitioner. On the other hand, respondent No.1 asserts that, being the son of Vijaya Gadgil and a co-sharer in the property, he is entitled to claim recognition as a joint member of the society.

4. The claim of the petitioners is founded upon a registered gift deed purportedly executed by Vijaya Gadgil. Vijaya Gadgil continued to be a member of the society till the date of her demise, which occurred on 25 July 2012. However, inasmuch as the application seeking joint membership has been instituted in the year 2024, the rights and obligations of the parties would necessarily fall for consideration in light of the provisions contained in Section 154B(13) of the Maharashtra Co-operative Societies Act, 1960. For proper adjudication of the controversy involved, it becomes necessary to reproduce the said provision, which reads thus:

Section 154B(13): “On the death of a Member of a society, the society shall transfer share, right, title and interest in the property of the deceased Member in the society to a person or persons on the basis of testamentary documents or succession certificate or legal heirship certificate or document of family arrangement executed by the persons, who are entitled to inherit the property of the deceased Member or to a person duly nominated in accordance with the rules:

Provided that, society shall admit nominee as a provisional Member after the death of a Member till legal heir or heirs or

a person who is entitled to the flat and shares in accordance with succession law or under will or testamentary document are admitted as Member in place of such deceased Member:

Provided further that, if no person has been so nominated, society shall admit such person as provisional Member as may appear to the Committee to be the heir or legal representative of the deceased Member in the manner as may be prescribed.”

5. Upon careful reading of Section 154B(13) of the Maharashtra Co-operative Societies Act, 1960, it becomes clear that when a member of a society dies, the society is under an obligation to transfer the share, right, title and interest in the concerned property in favour of such person who establishes entitlement on the basis of documents mentioned in the said provision. These documents are those which show legal succession or transfer, such as testamentary papers, succession certificate, or any lawful arrangement among heirs.

6. In the present facts, the petitioners are placing reliance upon a registered gift deed, which is a document recognized in law for transfer of property. On the other hand, respondent No.1 is not relying upon any such document of title, but is asserting right on the basis of nomination said to have been made by his father Govind. According to respondent No.1, such nomination gives him entitlement to claim joint membership. However, when the provision is read in its entirety, it appears that nomination does not create ownership, but only enables temporary arrangement. The first proviso to Section 154B(13) indicates that a nominee can be admitted only as a provisional member after the death of the

original member, and such provisional status continues only till the actual legal heir or person entitled under law is brought on record as a member. Further, where there is no nomination, the society has limited discretion to admit a person as provisional member who appears to be legal representative. Thus, the scheme of the provision suggests that nomination is not a source of title, but only a stop-gap arrangement till proper legal entitlement is established.

7. Once it is shown that there exists a registered instrument of transfer executed by the original member in favour of a particular legal heir, such document assumes importance, as it reflects intention of the member to transfer property in a specific manner. In the present case, registered gift deed is executed by Vijaya Gadgil. A plain reading of the said gift deed indicates that the entire Flat No.6 has been transferred exclusively in favour of the petitioners, leaving no portion undisposed. This aspect carries weight because the society, while dealing with membership, is not expected to go beyond such registered document unless the same is set aside by a competent forum. Therefore, in absence of any declaration invalidating the gift deed, the petitioners, being beneficiaries under a registered conveyance, would be entitled to step into the shoes of the member and seek admission as member of the society. The right flows from the document itself, and not from mere claim or assertion.

8. It is true that respondent No.1 has raised a contention that Vijaya Gadgil did not possess exclusive authority to execute the gift deed in favour of the petitioners. Such contention, though may appear arguable, cannot be decided in summary proceedings

before the Registrar. The proper course available to respondent No.1 is to approach the competent Civil Court and seek a declaration that the gift deed is not binding or that Vijaya had no exclusive right to transfer the property. Only upon such adjudication, rights can be conclusively determined. The scope of inquiry under Section 23(2) of the Act is very limited in nature. The Registrar is not expected to conduct a detailed trial on disputed questions of title. The Registrar has only to see whether there exists a registered document which prima facie confers title upon a person seeking membership. The validity, legality, or genuineness of such document cannot be examined by the Registrar, as such power lies exclusively with the Civil Court. Issues relating to ownership, co-ownership, or invalidity of transfer require evidence and detailed adjudication, which is beyond the jurisdiction of the authorities under the Act.

9. The claim of respondent No.1 rests mainly on the nomination. It is well settled position in law that a nominee does not become owner of the property by virtue of nomination alone. The nominee holds the property in a representative capacity for the benefit of all legal heirs and is required to distribute it in accordance with succession law. In the present case, even if respondent No.1 is one of the legal heirs, such status by itself does not automatically confer exclusive or joint membership rights in the face of a registered gift deed. Unless respondent No.1 succeeds in obtaining a declaration from a competent Civil Court that Vijaya Gadgil lacked exclusive title or authority to execute the gift deed, his claim cannot override the document relied upon by the

petitioners. In absence of such adjudication, respondent No.1 cannot be treated as legal representative entitled to claim joint membership in derogation of the registered instrument. Therefore, the authorities under the Act committed error in directing conferment of joint membership in favour of respondent No.1 without proper legal basis. The impugned orders, therefore, cannot be sustained and are liable to be quashed and set aside.

10. Consequently, the rule deserves to be made absolute in terms of prayer clause (a).

11. It is, however, necessary to clarify that the observations made herein are confined to the limited scope of adjudication under the present writ petition. These observations shall not operate as a bar against respondent No.1 in pursuing appropriate remedy before the competent Civil Court for establishing his independent right, title or interest in the subject flat. All such issues shall be decided on their own merits, without being influenced by the findings recorded in the present judgment.

12. The writ petition stands disposed of in above terms.

(AMIT BORKAR, J.)