

MPBalekar

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

WRIT PETITION NO. 16354 OF 2025

Amit Suresh Sharma,
legal heir of late Suresh Ishwardas
Sharma and Anr. ... Petitioners

V/s.

The District Deputy Registrar,
Co-op. Soc. M Ward Mumbai and Ors. ... Respondents

Ms. Deepali Bagla i/by Bagla & Associates for
petitioners.

Mr. Abhishek C. Bhadang, AGP for the State –
Respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 21, 2026

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** This writ petition is filed by the legal representatives of late Ishwardas Sharma. He was a member along with his wife Ratnadevi Ishwardas Sharma. Ishwardas died on 10 September 1999. He left behind his wife Ratnadevi, his son Rajkumar who was the husband of respondent No.5 and father of petitioner No.1 and petitioner No.2, and one daughter. Rajkumar Sharma died on 10 November 2019. After the death of Ishwardas and Rajkumar, Ratnadevi executed a registered gift deed on 3 November 2020. Under that deed she transferred her 50 percent share in the flat to

respondent No.5.

3. Respondent No.5 claims that due to the above transfer she has become the owner of 100 percent share in the flat. The petitioners dispute this. They state that Ishwardas and Ratnadevi were co-owners of 50 percent each. Ratnadevi has transferred her 50 percent share to respondent No.5. As a result respondent No.5 owns only 50 percent share. The petitioners state that exclusive membership could not be given to respondent No.5 since she does not own the full share.

4. The advocate for respondent No.5 submits that before this Court passed the ad-interim order on 8 December 2025, the Deputy Registrar had already implemented the order granting membership. She states that due to this the writ petition has become infructuous and only raises an academic issue.

5. She further submits that Ratnadevi became owner of 50 percent share due to nomination by Ishwardas. She already owned 50 percent share in her own right. She therefore transferred the entire 100 percent share to respondent No.5. Hence, respondent No.5 claims to be owner of the full share.

6. The law under the Maharashtra Cooperative Societies Act, 1960 does not grant ownership to a nominee. The Supreme Court in *Indrani Wahi vs Registrar of Cooperative Societies 2016 (6) SCC 440* holds that a nominee only receives the property for the limited purpose of distributing it among the legal heirs. A nominee does not become the absolute owner. In this case Ratnadevi was only a nominee for the 50 percent share of Ishwardas. She cannot claim

full ownership of that share. The 50 percent share of Ishwardas must devolve on his legal heirs. The legal heirs shown by record are the wife, two sons, and one daughter. This interpretation is supported by the evidence on record and by the law laid down by the Supreme Court.

7. The above discussion leads to a clear conclusion. Petitioner No.1 and petitioner No.2 are co-owners along with respondent No.5 in respect of the flat. The authorities could not treat respondent No.5 as 100 percent owner. They could not confer exclusive membership on respondent No.5. The legal heirs have a right to their respective shares. They have a right to seek associate membership to protect their interest.

8. The contention of respondent No.5 that the petition has become academic also fails. Execution of an order does not make the challenge academic. Execution is relevant only at the stage of interim relief. When the Court examines the legality of the order at the final stage, the fact of execution has no impact. The Superior Court must still adjudicate the legality of the order. This principle is well recognised. The challenged order therefore remains open to judicial scrutiny. This contention has no merit.

9. For these reasons, the impugned order granting 100 percent membership to respondent No.5 cannot stand.

10. Rule is made absolute in terms of prayer clause (a).

11. It is clarified that the legal heirs have a right to seek associate membership according to their share in the flat.

12. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)