

IN THE CO-OPERATIVE COURT, NANDED

(Before Shri. B.S.lakhote,Judge)

Madhu D/o Laxman Kale

Age:52yearsOccu:Advocates

R/o Sujata Colony, Old Pedgaon road

Parbhani, Tq. Dist. Parbhani

DISPUTANT

VERSUS

1. Rajesh S/o Laxman Kale

Age : Occu : Service

R/o C/o Ganesh Giri, Above Jyotirling

Jwellers, Shikash Colony, Main Road,

Ranjangaon (She,Pu) Tq. Gangapur, Dist

Sambhajinagar, (Aurangabad)

2. Sujata @ Magaswargiya Sahkari

Gruhnirman Sanstha Maryadit,

Parbhani, Tq. Dist. Parbhani

Through Its Chairman,

Dillip S/o Kishanrao Dhutmal

Age : 55 uears. Pcci Business

R/o Mahatma phule colony, parbhani

Tq. Dist parbhani

OPPONENT

ORDER BELOW EX.5

1. The applicant filed this application for temporary injunction against the opponents in respect of the property plot No.11 gut No.619 village Parbhani and there by pray to restrain to the opponents from interfering in to possession of disputant. The contention of disputant that she is the daughter

of late pushpa w/o Laksman Kale who is the member of society and she is holder plot No.11 in society and she is possessor and owner of the of plot No. 11.

2. The opponent No.1 is the real brother of disputant and opponent No.2 is society who illegal handover the plot No.11 to the opponent No.1 On dated 30/05/2024 the mother of disputant died at Parbhani and father of disputant also Lakshmanrao Kale died On dated 31/07/2020. The parents of disputant resided at same plot No.11 and the disputant residing in the said plot.

3. The mother of disputant on 19/06/2020 Executed consent deed in favour of Ramesh Lakshman Kale who is the elder son of deceased Pushpa Kale and elder brother of disputant and given the consent to take ownership of said plot No.11 as well as relinquished her right over the plot No. 11 as well as on 19/06/2020 the opponent No. 1 also executed consent deed in favour of his elder brother Ramesh Lakshan Kale. The Ramesh Kale approached to the opponent No.1 to become member of said society as per consent deed but the society refuse to take action to become member of society.

4. After death of mother of disputant, the disputant and her elder brother approached to opponent No.2 in the month of July to take mutation and become the owner of said plot and also member but intentionally avoided to do more. They also delivered written application for without disputant consent they should not take any entry about plot No.11.

5. The disputant came to know that on 28/02/2025 the opponent No.2 enter the name of opponent No.1 as member of society and owner of plot No.11.

The disputant demanded the document to the opponent No.2 which is produced before society by opponent No.1 for taking entry of his name as member. But they refuse to delivered any document hence the opponent approach to assistance register Co-operative society Parbhani and demanding to produced document. On 10/03/2025 the unknown person visited the house of disputant plot No.11 and demanding to see plot an at that time disputant said to unknown person who are you and why do you want to see plot and at that time person replied to disputant that he is willing to purchase the said plot at that time disputant was shocked and she came to know that opponent No.2 is ready to sold plot No.11 to third person.

6 The disputant is possessor of said plot she was not having any alternate residential place, she is helpless lady in the life time of her parents she take care of her old parents in the said plot. The opponent prepare forged document with the collusion of opponent No.2 and become member of society. In the life time of parents of disputant and opponent No.1, the opponent No.1 become owner of plot No.24 situated at Basmat Panchashil Nagar Magasvargiy Sahakari Gruhnirman Sanstha Vasmal Nagar which is owned by father of disputant. The disputant now residing in the said plot No.11, the opponent No.1 want to dispossess from the plot No. 11 accordingly disputant pray for interim relief.

7. The opponent No.1 in response to the application of disputant filed written statement at Ex.23 and filed pursis at Ex.25 to treat the w.s. as reply to the application and submitted that disputant is not member of society and she has no right to filed dispute. The dispute filed by disputant is barred by limitation. The opponent No.1 admitted that she is daughter of late Pushpa

lakshman Kale and opponent No.1 is a her brother. The opponent No.1 contended that he is owner and possessor of plot No.11 as per record of society.

8. The opponent No.2 society had legally transferred the plot No. 11 in the name of opponent No.1 on written request dated 29/04/2024 of late pushpa lakshman kale along with documents by passing resolution No.4 in AGM dated 27/06/2024 and society has issued they allotment certificate in the name of opponent No.1. The disputant had made false story regarding mother of disputant have executed consent deed in her favor. The disputant has not made party to the Ramesh lakshman kale elder brother of disputant. The disputant have fully knowledge about transfer of the plot No. 11 by her mother in the name of opponent No.1.

9. The disputant is not in possession of plot No.11 therefore she has no right to filed dispute and obtained prohibitory relief against the opponents. The application filed by disputant liable to rejected and if the application is not rejected the opponent No.1 will suffer irreparable lose which cannot be compensated by any means.

10. The opponent no.2 society failed to filed reply to the application.

In view of rival pleading of parties following points arise for my determination and my finding with reasons as follows.

POINTS

FINDING

1. Whether disputant has prima facie case to grant interim relief ?

Positive

- | | |
|--|--------------------|
| 2. Whether balance of convenience in favor of disputant ? | Positive |
| 3. Whether disputant will cause loss if the application rejected ? | Positive |
| 4. What order ? | As per final order |

REASON

11. The disputant in order to claim the interim relief against the opponent has to establish the three principle of law, that is prima facie case, balance of convenience and irreparable loss. These are the basic principle required to consider while granting of such application. In the matter the disputant is the on the legal heir of late Pushpa lakshman kale and lakshmanrao sambhaji kale. It is the fact that late Pushpa lakshman kale the mother of disputant was holder of plot No.11 and she was member and was in possession of plot no.11 the disputant claim that on 19/06/2020 the mother of disputant executed consent deed in favour of her brother Ramesh Kale and given the ownership of said plot. The opponent No.1 also on same date 19/06/2020 Executed consent deed in favor of her brother Ramesh Kale. The opponent No.1 denied this fact and submitted that the plot No.11 has been transfer on the written request of late Pushpa lakshman kale dated 29/04/2024 and the society accordingly passed resolution in AGM dated 27/06/2024 and society issued allotment certificate to the opponent No.1.

12. In order to consider the contention of parties , let us see the documents produce by the disputant and opponents in their supports. The counsel of disputant Shri. R.B. Sable submitted that the disputant is residing on address given in the dispute and she is the member of society and owner of plot No.11 as per consent deed dated 19/06/2020 given by deceased by

Pushpa kale. The allotment certificate given by society as per resolution dated 16/06/2024 in favour of opponent No.1 illegally . The counsel further submitted that the mother of disputant was hospitalizes in the hospital for treatment and the mother of disputant died on 23/05/2024 and the contention of opponent No.1 that she has given bond on 25/04/2024, when the mother of disputant was admitted how she has given consent letter in favor on opponent No.1 about the plot No.11

Per contra, the opponent No.1 counsel Shri. Veer submitted that if the pleading of disputant consider she is not a member or ex member of society she has no right to filed dispute and claim the relief. The society transfer plot No.11 in favor of opponent No.1 legally and pray for rejection of application.

13. In order to examined correctness in the submission of respective counsels I have gone through the pleading of parties and the documents produced on record. Firstly it is required to mention that disputant is legal heir of the deceased Pushpa Kale . The dispute is filed in capacity of the legal heir which is tenable. There is no dispute that plot No.11 was in possession of deceased Pushpa kale the document dated 20/01/2013 indicate that possession of plot no.11 given to deceased Pushpa kale by society as she was member of society the document filed by disputant also indicate that deceased Pushpa kale on dated 19/06/2020 given the consent transfer plot No.11 in favor of Ramesh kale brother of disputant and the opponent No.1 also on 19/06/2020 given a consent letter in favour of Ramesh kale to transfer said plot in favor of Ramesh kale and the opponent No.1 relinquished her right in the said plot. When the opponent no.1 relinquished his right in plot no.11 by executing the consent deed in favour of Ramesh Kale his brother, then how society without obtaining any objection from

other legal heir transferred plot no.11 in favour of opponent no.1. The disputant after execution of above consent deed given letter to the society to transfer the said plot in her name along with documents and also given application to the assistance registrar and requested to direct to society not to transfer said plot to any third person. It appears from the documents filed by opponent No.1 that his society as per resolution No.4 dated 16/06/2024 transfer plot No.11 to the opponent No.1 and issue a allotment letter and therefore the disputant claim the relief against the opponent.

14. The plot No.11 was originally owned by deceased pushpa kale mother of disputant and opponent No.1 after her death disputant and opponent No.1 and her brother Ramesh Kale are the heir of deceased of pushpa kale. According to section 30 read with rule 25 of MCS Act after the death of member plot holder of society, as per rule 25(3) of MCS Act the society is required to publish notice and invite any objection to transfer of share or interest in absence of nomination of deceased Pushpa Kale. The section 30 of MCS Act provide that in case of death of members and in absence of any nomination made by the member, the society is bound to adopted the procedure prescribed in rule 25 of MCS Act. It clear from the said section that after death of member the society is required to transfer share or interest in the property of deceased to the legal heir.

15. In the matter at hand the society did not appear and stated that the opponent No.1 on so and so date given application to society for transfer of share or interest of the deceased plot. The opponent No.1 stated that the society in AGM dated 27/06/2024 transfer said plot to the opponent No.1 and issued allotment certificate after the written request dated 29/04/2024 given

by deceased Pusha kale mother of opponent no.1 to society. The opponent No.1 has not filed the document dated 29/4/2024 on record but at this stage it appears from the document of the opponent No.1 that allotment certificate issued to the opponent No.1 by society which is disputed by the disputant. Now whether the transfer of plot No.11 in favor of opponent No.1 by society is legal or illegal is a part merit of case. It is required to mention here that the opponent No.1 is only transferee of plot No.11 hold for other legal heir of deceased Pushpa kale. The opponent No.1 cannot be owner of plot No.11 because interest of said plot transfer by society in his name as legal heir of Pushpa kale as per section 30 of MCS Act. He cannot transfer the said plot to any third person. The specific condition mention in the allotment letter that without consent of the society opponent no.1 can not sale or transfer said plot. It appears from the documents on record that disputant is in possession of plot No.11. Whatever the document filed by parties and disputed those document is a part of evidence of case but at the stage the disputant being the one of the legal heirs of the deceased pushpa kale and she is being in possession of said plot No.11, the possession is to be required to be protected, otherwise the disputant would cause loss. The plot No. 11 as transfer to the opponent No.1 is only to deal with the society, he cannot claim the ownership on the said plot. The legal heir only claim share in the said plot as per succession Act.

Considering the documents on record the disputant established prima facies case and balance of convenience. Further if interim injunction is rejected the opponent No.1 in whose name plot No. 11 transfer may alienate the said plot and in that circumstances the right of disputant as legal heir amount to be taken away.

Accordingly I proceed to pass following order.

ORDER

1. The application is hereby allowed.
2. The opponents is hereby temporary prohibited from alienated or transferring the plot No.11, survey No.619 at village Parbhani tq dist parbhani ward No.21 to any third person till disposal of dispute.
3. The opponent also restrain from abstracting and interfering in to peaceful possessor of disputant in respect of plot No.11 till disposal of dispute.

Place: Nanded
Date : 01/08/2025

Judge
(B.S.Lakhote)
Co-operative court Nanded