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**IN THE COURT OF JOINTT CIVIL JUDGE, SENIOR
DIVISION, PUNE.**

(Presided over by V. V. Kulkarni)

Spl.Civil Suit No. 376/2013

Exh. No.139

Mr.Uday Anant Dudhbhate,
Age-58 yrs. Occ. Business,
R/at 4/2 Konark Abhishek
Salisbury Park, Pune-411037

... **Plaintiff**

Versus

1. Mr. Jaideep Anant Dudhbhate,
Age-52 yrs. Occ. Service,
2. Mrs.Anagha Jaideep Dudhbhate,
Age-48 yrs. Occ. Doctor,
No.1 & 2 residing at Flat No.1005,
"D" Building, Avaneesh Apartment,
Kothrud, Pune-411 038

3. Smt. Surekha Anant Dudhbhate,
Age-60 yrs. Occ. Household,
R/at Poona Geriatric Centre,
S.No. 49, Hissa No.2, Behind
Patangrao Kadam's bungalow,
Again Jain Mandir road, ahead
of Gagangiri plots, Ambegaon,
Khurd, New Katraj, Pune-46.
**(Through her Guardian Mrs.Anagha
Jaideep Dudhbhate, The defendant No.2)**

... **Defendants**

Claim : Suit for declaration and injunction.

Appearances :-

Shri A.B.Dhamdhere, the learned advocate for plaintiff.

Shri Rohit Erande, the learned advocate for defendants.

JUDGMENT

(Delivered on this 31st day of October, 2018)

The plaintiff has filed this suit for a declaration that he is the owner of 1/4th share in the flat bearing No. 30, totally admeasuring 518 sqft. (i.e. 48.12 sq.mtrs.) situated on the 4th floor of 'C' building in Archana Nagar Co-operative Housing Society, situated at 39/2/2, Erandwane, Pune-411038. (hereinafter referred as 'suit flat', for short). In addition the plaintiff has seeking the relief of perpetual injunction restraining all the defendants from creating any third party right in the suit flat by any mode, as a consequential relief.

Facts admitted or not seriously disputed or duly proved in the evidence can be stated as under :-

3. The suit flat was self acquired property of late Mr. Anant Dudhbhate, who purchased it from it's promoter M/s A.V.Mule Construction Company vide an agreement of sale dtd. 11/03/1988, which is registered at Sr.No. 3848/88 in the office of Sub-registrar, Haveli No.1, Pune. Said Anant Dudhbhate was the father of plaintiff and defendant No.1 and 3. The relationship between the parties is not in dispute. Admittedly, Mr. Anant Dudhbhate died intestate on 30/01/1996 leaving behind his widow Smt. Sarla Dudhbhate (since

died), his two sons namely Uday (plaintiff), Jaideep (defendant No.1) and one daughter namely Smt.Surekha (defendant No.3). The fact is not seriously in dispute that late Mr. Anant Dudhbhate had appointed his wife Smt. Sarla and Smt. Surekha as nominee for the suit flat. After the death of Anant Dudhbhate, Archananagar Co-operative Housing Society (hereinafter referred as 'Housing Society', for short) has entered name of Smt. Sarla Dudhbhate and Smt. Surekha Dudhbhate, who were registered nominees on the share certificates bearing No. 401 to 405 of the Housing Society, which earlier stood in the name of late Anant Dudhbhate. The fact is not seriously in dispute that defendant No.3 is divorcee and she used to reside along with her parents in the suit flat from the beginning. The fact is also not in dispute that Smt. Surekha (defendant No.3) was alone and had no family support except her mother, late Smt. Sarla who was always concerned about her daughter and for that purpose only, Smt. Sarla had made a Will on 29/03/2010 and bequeathed the suit flat to Surekha. After executing Will, Sarla passed away on 7/2/2011 due to old age and natural causes, leaving behind plaintiff and defendant No.1 and 3 as her only legal heirs.

Disputed facts:

4. The plaintiff come with the case that his mother namely Smt. Sarla (since died) had 1/4th share in the suit flat and therefore, by way of registered Will, she has bequeathed her share in favour of her daughter Smt. Surekha (defendant No.4). It is pleaded that

plaintiff and defendant No.1 each holds 1/4th share in suit flat, while their sister Smt. Surekha (defendant No.3), as per Will of their mother, now holds 1/2 share in the suit flat. It is stated that Smt. Charulata Chinchankar, though not named in the Will as executor or otherwise, informed the Housing Society about bequeath made by Smt. Sarla in favour of Smt. Surekha (defendant No.3). The office bearers of Housing Society, without verifying the facts and examining legalities, involved or without giving any notice or without calling for no objection from the remaining legal heirs, (i.e. plaintiff and defendant No.1) have registered and entered name of Smt. Surekha (defendant No.3) as the sole and absolute owner of the suit flat. It is stated that Housing Society has not followed the due process of law and has erroneously entered and registered the name of Smt. Surekha (defendant No.3) as the sole owner of the suit flat.

5. It is stated that defendant No.2 has filed M.A.No. 316/2010 in Hon'ble District Court, Pune vide Section-50 of The Mental Health Act, 1950 for seeking declaration that Smt. Surekha Dudhbhate (defendant No.3) is lunatic/schizophrenic personality and to get herself appointed as a legal guardian for defendant No.3. Said fact recently came to the notice of plaintiff. It is stated that defendant No.1 and 2, under the garb of acting as a guardian of defendant No.3, want to grab the suit flat. When the fact of pendency of M.A.No. 316/2010 came to the knowledge of plaintiff,

he immediately approached to Hon'ble District Court and filed an application for addition of parties. Accordingly, plaintiff has been impleaded as a party to said application. The plaintiff has filed his objection in said proceeding. It is stated that defendant No.3 is able to make her own decision. However, in order to grab the suit flat defendant No.1 and 2 have filed the said application. It is stated that as per Hindu Succession Act, it is necessary to mutate names of plaintiff and defendant No.1 as a joint owner of suit flat. The Housing Society is also bound to give effect to the succession that operates by law. In this regard, plaintiff has written necessary letters, application to Housing Society, however, said Housing Society did not give any response to the plaintiff. The Housing Society has no right to act against mandate of law and cannot deny legal rights of the plaintiff. Defendant No.1 and 2 are likely to have influenced office bearers of the Housing Society in order to refuse addition of name of plaintiff as co-owner of suit flat. The plaintiff has 1/4th share in suit flat, however, defendant No.1 and 2 and Housing Society have denied the right of plaintiff by their conduct. Therefore, plaintiff constrained to file present suit.

6. Defendant No.1 and 2 have resisted the suit claim by filing their written statement at Exh.18. Except the admitted facts, they have denied the truth and correctness of the averments made by the plaintiff in his plaint. Besides the categorical denial, they have contended that after death of Anant Dudhbhate, Housing Society relying upon the provisions of Maharashtra Co-operative Societies

Act, 1960 and rules made thereunder as well as by-laws of the society, entered the name of Smt. Sarla Dudhbhate (since died) and Smt. Surekha Dudhbhate (defendant No.3) as owners of share certificate of the society and not nominees as alleged. All aforesaid shares are transferred in the name of these two persons right from 1996 and since then, till today, their names as holders of the said shares are very much intact. It is stated that names of Smt. Sarla (since died) and Smt. Surekha (defendant No.3) appears on the share certificate by virtue of oral family arrangement took place between the said family and the sole purpose of making family arrangement was to protect defendant No.3, who was suffering from mental illness since long. It is stated that father of plaintiff late Shri Anant Dudhbhate was all the times, concerned about illness of Smt. Surekha and was worried about the future of Surekha and that is how aforesaid arrangement came to be effected by which Smt. Sarla (since died) and Smt. Surekha (defendant No.3) were made joint owners of the said flat. The family arrangement so made by Late Anant Dudhbhate and other family members was well-known in the family of Dudhbhate and also cognates and agnates. It is stated that by way of letter dtd. 12th September, 2007 plaintiff had offered a sum of Rs. 6 lacs for sale of suit flat. From this conduct on the part of plaintiff, it shows that plaintiff has also accepted his mother Smt. Sarla (since died) and Smt. Surekha Dudhbhate (defendant No.3) as sole owner of the suit flat.

7. It is stated that as per the provisions enshrined in Maharashtra Co-operative Societies Act and rules made thereunder and even by-laws of Housing Society in mutating the names of Smt. Surekha as exclusive owner after demise of Smt. Sarla, as exclusive owner of the suit flat was perfectly lawful and justified. It is stated that nomination made by Late Anant Dudhbhate is legally made document and is not mere formality as it is registered by the Society. In this particular instance, this partakes nature as a Will. It is stated that plaintiff has relied upon the provisions of Hindu Succession Act. However, Hindu Succession Act shall not apply in present case as the provisions of Indian Succession Act shall apply as there exists Will and family arrangement. On these counts, defendant No.1 and 2 have urged for dismissal of the suit with cost.

8. Defendant No.3 also filed her written statement at Exh. 103 through her guardian i.e.defendant No.2 and resisted the suit claim. Defendant No.3 adopted the written statement filed by defendant No.1 and 2 on record at Exh. 18. However, without prejudice thereto, defendant No.3 contended that she is chronic schizophrenic patient since last 30 years and taking treatment from the well-known psychiatrist in Pune Dr. Vidyadhar Watve for all the period till date. It is stated that though she married in the year 1978, got divorce in 1986 due to physical and mental harassment from the in-laws of her matrimonial house. It is stated that at material time, her father was alive and he had a lot of worries for her. Late Anant Dudhbhate was all the times, wishing and worrying

also about her future after his death. Therefore, Late Anant Dudhbhate made nomination in respect of suit flat nominating the same to be passed on in the name of his wife Smt. Sarla (since died) and her. After demise of Anant Dudhbhate Society gave effect to the nomination in the year 1996 after following due process of law. It is stated that Anant Dudhbhate, during his lifetime had paid contribution in consideration amounting to Rs. 50,000/- each to her two brothers Uday and Jaideep (plaintiff and defendant No.1) and also given two wheelers to both of them. It is stated that purchase cost of suit flat in the year 1987 was Rs. 67,000/-. It is stated that her father, therefore, always used to say that he provided equally to all his children and that is why he made nomination in the name of Smt. Sarla and Surekha. Late Anant Dudhbhate had also made a family arrangement verbally. Therefore, by virtue of nomination and Will by Smt. Sarla she became absolute owner of the suit flat. On these counts, defendant No.3 urged for dismissal of the suit.

9. On the basis of pleadings of the respective parties my learned predecessor has framed issues at Exh.47. After conclusion of trial, I have framed one additional issue. After framing additional issue, opportunity was given to lead evidence to respective parties, if any. However, by filing pursis at Exh. 137 and 138 plaintiff and defendants have intimated that they do not want to lead further evidence. The issues framed by my learned predecessor and one additional issue framed by me are as under. I have recorded my

findings thereon for the reasons to follow.

Sr. No	Points	Findings
1	Does the plaintiff proves that he is owner of 1/4th share in a suit flat being heir of Mr. Anant Dudhbhate ?	Yes
2	Does the plaintiff proves that he is entitled for permanent injunction ?	Yes
3	Does the plaintiff is entitled for the reliefs claimed ?	Plaintiff is entitled for the relief of declaration and perpetual injunction
4	What order and decree ?	Suit is decreed without costs.
Additional issue		
1	Whether defendants prove that defendant No.3 is now become sole owner of the suit flat, in view of nomination made by deceased Anant Dudhbhate and family arrangement as well as Will executed by Sarla Anand Dudhbhate ?	No

REASONS

10. In order to substantiate the suit claim, plaintiff has examined himself as P.W.1 at **Exh. 55**. He has also examined Dattatraya Sadashiv Dahibhate as P.W.2 at **Exh.88**. As against this, in order to disprove the suit claim, defendants have examined Dr. Jaideep

Anant Dudhbhate (defendant No.1) as D.W.1 at **Exh.97**, Ujwalla Sunil Barve as D.W.2 at **Exh. 118**. Besides this ocular evidence, both the parties have placed their reliance on documentary evidence which will be referred at the time of discussion of evidence.

As to issue No.1 and additional issue No. 1 :-

11. Both these issues are interlinked, therefore, in order to avoid repetition of reasoning, I have clubbed them together. Herein this case, plaintiff has claiming his 1/4th share in suit flat. As against this, defendants have claiming that defendant No.3 is now become sole owner of the suit flat, in view of nomination made by deceased Anant Dudhbhate and family arrangement as well as Will executed by Sarla Anant Dudhbhate(since died). The fact is not seriously disputed that suit flat was self acquired property of deceased Anant Dudhbhate and he died on 30/01/1996 without making any testamentary disposition of his property. The foundation of claim of plaintiff is right of inheritance as enshrined in Section-8 of Hindu Succession Act and foundation of claim of defendants is nomination by deceased Anant Dudhbhate in favour of Smt. Sarla (since died) and Smt. Surekha (defendant No.3). Moreover, foundation of claim of defendant No.3 is the Will of deceased Sarla. Both the parties have given elaborate evidence in order to prove their respective contentions. Herein this case, the fact of nomination (Exh.64) in favour of Smt. Sarla (since died) and Smt. Surekha (defendant No.3) by deceased Anant Dudhbhate is not in dispute. The fact of

entering the name of Smt. Sarla (since died) and Smt. Surekha (defendant No.3) in share certificate dtd. 24/03/1991 (Exh.66) of Housing Society is not in dispute. The fact of execution of Will dtd. 29/03/2010 (Exh.62) by Smt. Sarla (since died) in favour of Smt. Surekha (defendant No.3) is also not seriously disputed. In this backdrop, there is no need to go in deep water. Even assessment of oral evidence of respective parties is not necessary.

12. At this juncture, in order to resolve the controversy between parties, reference of Section-30 of The Maharashtra Co-operative Societies Act, 1960 r/w Rule-25 of The Maharashtra Co-operative Societies Rules-1961 would be useful.

13. Section-30 of The Maharashtra Co-operative Societies 1960 deals with transfer of interest on death of member. Whereas Rule-25 of The Maharashtra Co-operative Societies 1961 deals with nomination of persons. It is well settled that purpose of making nomination is only to provide for the parties with whom the society must deal on the death of a member and not to create a rule of succession. Succession to estate of deceased must take its course in accordance with the law of succession governing the deceased and his heirs. There is substantial difference between conscious intent of person who makes a nomination and that of a person who executes a Will. In nomination, there is no disposition of the property held by the person making it and has the effect of casting a duty on the Society to transfer such a person's share or interest in

favour of the nominee. Will itself effects a disposition of the property in favour of legatee upon the testator's death. It is well settled that nomination cannot be construed as a Will. After plain reading of Section-30(4) of The Maharashtra Co-operative Societies Act 1960, it reveals that the intention of Section-30 of said Act is to provide for who has to deal with the Society on a death of a member and not to create a new rule of succession. The purpose of nomination is to make certain person with whom the society has to deal and not to create interest in nominee to the exclusion of those who in law, will be entitled to the estate. The purpose is to avoid confusion in case there are disputes between the heirs and legal representatives and to obviate the necessity of obtaining legal representation and to avoid uncertainties as to whom the Society should deal to get proper discharge. Therefore, in the eye of law, the persons who are appointed as a nominee are mere trustees of said properties and nothing more than that.

14. At this juncture, reference of following case laws relied upon by the learned advocate of plaintiff would be useful :-

1. Gopal Vishnu Ghatnekar Vs. Madhukar Vishnu Ghatnekar, 1981(0) Bom.C.R. 1010.
2. Ashok Chand Agarwal Vs. Delhi Administration, (1998)0 Supreme (Del) 861.
3. Ramdas Shivram Sattur Vs. Ramchandra alias Ramchandra Popatlal Shah and Others, 2nd Appeal No. 357/1986 dtd. 24/2/2009 (Bombay High Court).

4. Indra Singh Vs. The Assistant Registrar, Co-operative Societies, Jind and others, (2011)0, Supreme (P&H) 1735.
 5. Shashikiran Ashok Parekh Vs. Rajesh Virendra Agarwal & Others, (2012)0 Supreme (Mah.)797
 6. Indrani Wahi Vs. Registrar of Co-operative Societies & Others, (2016) 0 Supreme (SC) 274.
 7. Shakti Yezdani & Anr. Vs. Jayanand Jayant Salgaonkar & Ors., (2017) 5 All M.R. 307.
 8. Chitra Haldipur Vs. Shahid Bhagat Singh CHS Ltd. & Ors., (2007) 1 All M.R. 393.
 9. M. Vetri Selven Vs. High Court of Judicature at Madras, represented by the Registrar General, 2014(0) Supreme (Mad) 4377.
15. I have gone through the case laws relied upon by the learned advocate for the plaintiff. In all the cases as referred above Hon'ble Apex Court and Hon'ble Madras High Court, Hon'ble Punjab and Haryana High Court and Hon'ble Bombay High Court have taken consistent view that the nominee is mere trustee and only empower to hold the property in trust for the real owners that too, for the purpose of dealing with the Society.
16. Per contra, Mr. Rohit Erande the learned advocate for defendants vehemently submitted before the Court that there was family arrangement between the Dudhbhate family and therefore, deceased Anant Dudhbhate made nomination in favour of Smt. Sarla(since died) and Smt. Surekha (defendant No.3). He invited

my attention towards the conduct of plaintiff by not opposing nomination of deceased Sarla and Smt. Surekha. It is submitted that plaintiff has also not challenged Will dtd. 29/03/2010 (Exh.62) executed by deceased Sarla in favour of Smt. Surekha (defendant No.3). Therefore, plaintiff has no right to claim 1/4th share in the suit flat. In support of his submission, he placed his reliance on following case laws :-

1. Kale & Others Vs. Deputy Director of Consolidation and others, A.I.R. 1976 Supreme Court 807.
2. Sidda Lingayya Vs. Gurulingappa and others, Civil Appeal No. 868 of 2011 decided on 5/9/2017. by Hon'ble Apex Court.
3. Smt. Sarinjan and others Vs. Lokesh, 2010 (0) Supreme (Kar) 469.

17. I have pondered over the submissions made by the learned advocate of respective parties at bar and gone through the case laws relied upon by them. Herein this case, defendant No. 1 and 2 in para-5 of their written statement (Exh.18) have taken plea of family arrangement. But there is no evidence on record which clearly shows that there was family arrangement in between parties in suit. It is to be noted that, the facts in present case and the facts in the case laws, relied upon by the learned advocate of defendants are altogether different. Therefore, they are not entitled to get benefit of the ratio as laid down by Hon'ble Apex Court in said case laws. In the case in hand, the foundation and the source of ownership of defendant No.3 is the nomination. There are no

general laws on nomination, unlike in case of succession where special laws exist, based on religious affinity and bequests under wills of the deceased. Therefore, the rights of the nominee are determined in accordance with the laws governing the subject matter of nomination, whereas, succession rights are determined based on the personal law applicable to the deceased. Nomination, hence, is only a means and not an end. It is a temporary arrangement, so that the shares of the deceased do not remain ownerless, during the period that succession issues are resolved. As per true notions of law, a nominee of a immovable property is a mere trustee entitled to receive the money/proceeds receivable by a deceased person on behalf of his/her legal heirs. The nominee will be in charge of the property only till the court decides who is entitled to the property as per the succession laws. In other words, the nominee is only a caretaker of the property and not the owner of the property. He/she will only hold the asset as a trustee and will be legally bound to transfer the property to the legal heirs. Therefore, by virtue of nomination(Exh.64) Smt. Sarla (since died) and Smt. Surekha (defendant No.3) does not become absolute owner of the property, however, was only empowered to hold the property in trust for the real owners that too for the purpose of dealing with the Society. Therefore, plaintiff being legal heir of deceased Anant Dudhbhate is entitled to claim the title to the shares in the society on the basis of inheritance.

18. Admittedly, parties are Hindus. Therefore, they are governed

under Hindu Succession Act, 1956. At this juncture, reference of Section-8 of Hindu Succession Act. 1956 would be profitable. Section-8 deals with general rules of succession in the case of males. Section-8 of Hindu Succession Act 1956 propounds a new and definite scheme of succession and lays down certain rules of succession to the property of a male Hindu who dies intestate after the commencement of the Act. It is admitted fact on record that Anant Dudhbhate died without making any testamentary disposition. Undisputedly, Anant Dudhbhate died leaving behind widow Sarla (since died) and two sons Uday and Jaideep (plaintiff and defendant No.1) and one daughter Surekha (defendant No.3). At this juncture reference of section 30 of Hindu Succession Act 1956 would be useful. The provision under section 30 of Hindu Succession Act, 1956 is merely an assertion of the general rule that a Hindu may dispose of by will any property which is within his power to bequeath by any testamentary disposition. It is the Explanation, which is really vital and most important part of the section. It might have been enacted in a more direct manner, that the interest of a male Hindu in a Mitakshara coparcenary property, is a property now capable of being disposed by Will, notwithstanding any other rule of law to the contrary. Now, Hindu Succession (Amendment) Act, 2005 empowers a female Hindu with the right to dispose off property by Will (Exh.62). Said bequeath is restricted upto her 1/4th share in suit flat, even though there is no reference or explanation in Will (Exh.62).

19. Thus, after considering the totality of circumstances and after giving anxious consideration to the proposition of law, it can be safely said that deceased Sarla, plaintiff, defendant No.1 and 3 having 1/4th share each in suit flat. Deceased Sarla already bequeathed her right in suit property by way of Will (Exh.62) to Surekha (defendant No.3). Therefore, Surekha become owner of 1 /2 share and not the absolute owner of suit flat. Plaintiff and defendant No.1 having 1/4th share each in suit flat. Therefore, I answer issue No.1 in the affirmative and additional issue No.1 in the negative.

As to issue No.2 and 3 :-

20. I have already held that plaintiff is entitled to have 1/4th share in suit flat. In this case, plaintiff is seeking the relief of declaration and in addition he has also seeking the relief of injunction as a consequential relief. The learned advocate for the defendant tried to convince this Court that in view of proviso of Section-34, mere suit for declaration is not maintainable. I do not find any force in the submission of the learned advocate of defendants. Herein this case, right of the plaintiff over the suit flat was under dispute. The suit flat is in possession of defendant no.1 and 2 through defendant no.3. I have also held that, by virtue of nomination(Exh.64) Smt. Sarla (since died) and Smt. Surekha (defendant No.3) does not become absolute owner of the property, however, was only empowered to hold the property in trust for the real owners that too for the purpose of dealing with the Society. The defendants have merely executed leave and license agreement

and inducted tenant in suit flat. Admittedly, they have not created any third party interest in respect of suit flat. Therefore, at present possession of defendant no. 3 over suit flat is being trustee only. Section-34 of Specific Relief Act provides that any person entitle to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right and the Court, may in it's discretion make therein a declaration that he is so entitle and the plaintiff need not, in such suit, ask for any further relief. The plaintiff has filed present suit for adjudication of his right given under the statute. Therefore, proviso of Section-34 of Specific Relief Act not attracted in present case. Therefore, plaintiff is entitled for the relief of declaration as well as the relief of permanent injunction as prayed for. I, therefore, answer **issue No.2 in the affirmative and issue No. 3 accordingly.**

As to issue No. 4 :-

21. The cumulative effect of the findings recorded as to issue No.1 to 4 is that the suit is liable to be decreed. Considering the peculiar facts and circumstances of the case and relationship between the parties, I do not find it proper to saddle costs of the suit on unsuccessful party. Therefore, in answer to issue No.4 I pass following order.

ORDER

1. Suit is decreed without costs.
2. Plaintiff is hereby declared that he is the owner of

1/4th share in the suit flat.

3. Defendants are restrained by way of permanent injunction from creating any third party right in the suit flat by any mode without following due procedure of law.
4. Decree be drawn up accordingly.

Pune.
31.10.2018

(V. V. Kulkarni)
7th Addl. Judge, Small Causes Court,
& Jt.Civil Judge, Senior Divn., Pune

C E R T I F I C A T E

“I affirm that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of steno : Mrs. A.A.Markale

Court Name : V. V. Kulkarni,
7th Add. Judge Small Causes
Court, Pune

Date of Judgment : 31/10/2018.

Judgment signed by

Presiding Officer on : 12/11/2018.

Judgment uploaded on : 12 /11/2018.

