





The Suit filed by the Plaintiffs also seek partition of the suit property by metes and bounds and for delivery of the undivided right, title, share and interest, or in the alternative to relief of partition being granted and order, decree is sought to direct the property to be sold through the Court Receiver and the sale proceeds therefrom to be distributed amongst the Plaintiffs and Defendants in equal proportion.

In the Suit, the Plaintiffs have also prayed for certain interim directions, pending the hearing and final disposal of the Suit, which include appointment of the Receiver to sell the suit property on such terms and conditions as it deems fit and also a direction to hand over original share certificate to Defendant No.5-Society, where the flat is situated and further direct the Society to take necessary steps to record the name of the Plaintiffs as members.

During the pendency of the Suit, Interim Application is taken out by the Plaintiffs seeking following reliefs :

(a) The Defendant Nos.1 to 4, their servants, agents, representatives and/or any person/s claim through or under them be ordered and directed by an order and direction of this Hon'ble Court to forthwith restore the Plaintiffs' peaceful possession, occupation, enjoyment of the suit property as co-owners thereof;

(b) The Defendant Nos.1 to 4, their servants, agents, representatives and/or any person/s claiming through or under be restrained by a temporary order and injunction of this Hon'ble Court from dealing with or disposing of and/or creating any interest of any third party over the said suit property or any part thereof in any manner whatsoever and/or from entering into any transaction/agreement pertaining to the suit property in favour of any third person and/or from parting with and or handing over the possession of the suit property to any third party and/or from taking any steps pertaining to the suit property and/or from doing any acts prejudicial to the interest in any manner whatsoever of the Plaintiffs;

(c) this Hon'ble Court be pleased to appoint the Learned Receiver, Bombay High Court, and/or any other fit



person, as may be deemed fit by this Hon'ble Court, as receiver of the suit property, with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908, including the rights to sell the suit property, and/or appoint agents of the court Receiver in respect of the suit property, on such terms and conditions as it deems fit;

(d) the Defendant No.1 to 4 be directed by this Hon'ble Court to forthwith handover the original share certificate to Defendant No.5 and Defendant No.5 be directed by this Hon'ble Court to take immediate and necessary steps for recording the names of the Plaintiffs as members on the Share Certificate and in all relevant records of the Society pertaining to the suit property, in place of deceased Sharda Devi and Defendant No.5 be also directed to deposit the amended original Share Certificate with this Hon'ble Court for safe custody.

2] The Interim Application is contested by Respondent No.5-Society though other Respondents (original Defendant Nos.1 to 4) do not intend to contest the grant of relief in favour of the Plaintiffs, in terms of prayer clause (d).

3] I have heard the learned counsel Mr.Rohan Sawant for the Applicant and Mr.Rohan Kadam for the Society-Respondent No.5.

The circular issued by the Registrar, Co-operative Housing Societies dated 18.02.1994 is the basis on which the Society opposed the application and Mr Kadam , who is representing the Society has argued that under the Maharashtra Co-operative Societies Act, it is the duty of the Society to ensure that the document presented to it for mutating name of the members in place of the original members of the Society, pursuant to his/her demise, must be a document duly stamped and registered. According to him, the circular is issued by the Government as a word of caution to be taken before registering a



member and the circular came to be issued since it was noticed that the Agreement entered between the flat-holder and flat purchaser at the time of transfer of flat in a Co-operative Housing Society are not registered and as such the State Government do not get the stamp duty with the result that there occurs financial loss to the State Government and, therefore, following direction is issued through the said Circular :

“ To avoid this loss, whenever transfer proposals come before the Managing Committee for consideration, the Managing Committee to ensure that the registration fee and stamp duty is paid.”

The Committee should demand the receipt of payment of registration fee and stamp duty alongwith transfer proposal. The membership or transfer should not be effected if the Agreement is not registered with the Government.”

4] The learned counsel Mr.Kadam would press into service the amended provision Section 154B-13 of the Maharashtra Co-operative Housing Societies Act introduced in the Act of 1960 with effect from 09.03.2019 which is comprised in Chapter XIII-B introduced in the Cooperative Housing Societies Act with effect from 23.07.2019 governing the co-operative housing societies.

By placing reliance upon the said provision, he would submit that the Society is permitted to transfer the share, right, title and interest of the property of the deceased member in the society only in the manner prescribed therein and in no other way. He would specifically submit that the nomination of the member would create a limited right and mere nomination does not either vest title or disrupt the title of persons who are interested in the estate of a deceased under order law of succession.



He would place reliance upon the decision of this Court in the case of **Chitra Haldipur vs. Shahid Bhagat Singh CSH Ltd. & Ors.**<sup>1</sup>

5] The application which seek the relief reproduced above would disclose that Sharda Devi Singhanian, wife of Sohanlal Singhanian had three sons and one daughter. Her husband Sohanlal Singhanian predeceased her. The Plaintiffs are the legal heirs of Shardadevi. One Mr.Pushpa Rani Garg was the neice of Mr.Sohanlal and she had three sons and one daughter. Pushpa Rani and Sharda Devi jointly acquired and purchased the suit property vide an Agreement for Sale dated 24.11.1965 and they became joint owners of the suit property having undivided equal share therein.

The original share certificate of the society pertaining to the suit property being share Certificate No.11 for 5 fully paid up shares of 50/- each reflected names of Pushpa Rani and Sharda Devi as joint owners.

It was agreed between the purchasers of the said property that it would be occupied by one Mahendra Kumar Lohia, brother of Sharda Devi and his family, as he was looking after the common business interest of family of Sharda Devi. At subsequent point of time, since Defendant No.1 started residing in the suit property, which compelled Mr.Mahendra Kumar Lohia to move out of the suit property. It was agreed between Pushpa Rani and Sharda Devi that two bed rooms in the suit property would be reserved for each of them and they and their family members both, will have unlimited access to the suit property. Though Sharda Devi or her family members were not residing in the suit property, they were in legal and constructive possession of the suit property alongwith Pushpa Rani.

While Sharda Devi, was alive, she intended to and on more than

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<sup>1</sup>2007(1) Mh.L.J. 388



one occasion expressed her desire and wish to her family members that after her demise her 50% share in the suit property should devolve upon the Plaintiffs, her grandsons. In and around September 1997, she intimated the Plaintiffs in respect of the 50% share in the suit property and addressed a letter on 15.10.1997 to the Defendant No.5 along with prescribed nomination form in respect of 50% share in the suit property in the following proportion :

- (i) Plaintiff 1 – 33%
- (ii) Plaintiff 2 – 33%
- (iii) Plaintiff 3 – 17% and
- (iv) Plaintiff 4 - 17%

The nomination was placed before the Managing Committee of the Society and it was approved and accordingly the name of the Plaintiffs was recorded in the nomination register of Defendant No.5 in the year 1998 in respect of 50% share of Sharda Devi in the suit property. On 31.08.1999 Sharda Devi expired intested.

It is upon her death, the Plaintiffs vide letter dated 18.07.2000 addressed to Defendant No.5 for transferring the shares of Sharda Devi in their name, being her nominees. A copy of the relevant documents necessary for giving effect to the nomination were also forwarded, but there was hesitancy on part of the Defendant No.5 to record their names as share holders of her 50% share in the suit property.

6] The Plaintiffs placed on record the Memorandum of Family Arrangement made on 07.04.2000 under which the assets belonging to Sharda Devi and her late husband Sohanlal came to be distributed. Amongst the other properties, all the members/legal heirs of Sharda Devi confirmed/acknowledged and accepted the Plaintiffs as owner of



50% share of the suit property held by Sharda Devi. Resultantly, the Plaintiffs claim that all members of her family/her legal heirs, released all their rights, title, interest and claims in respect of the 50% share in the suit property in their favour and they were entitled to be considered as owners in respect of 50% of the suit property.

The learned counsel Mr.Savant representing the Plaintiffs would invite my attention to the Memorandum of Family Arrangement which is entered between the three sons and one daughter of Sharda Devi and her other legal heirs, 16 in number with their relationship specifically set out in the first schedule and the family arrangement specifically make reference to the event of death of Sharda Devi on 31.08.1999.

It record that prior to his death, Mr.Sonanal Singhania called his three sons and one daughter to express a wish that upon his death the property should be inherited by Sharda Devi, should she survive him and his sons and daughter supported his decision. Since Sohanlal, predeceased Sharda Devi, his estate remained under her administration and even Sharda Devi expressed her wish to her sons and daughter in respect of her own estate as well as estate devolved upon her, on demise of her late husband and she set out the manner in which they should inherit it and indicated her desire to make a will or testament recording her desire.

The Memorandum record that her children consented to support any arrangement for dispossession of her estate without any reservations and recital in the Memorandum further narrate that to their knowledge a Will was executed with one Mr.A.C. Agrawal and Mukesh Jain, affixing their signatures as attesting witnesses, but the Will was never traced. However, in order to give effect to the last wish of their mother, the Family Arrangement was worked out and comprised in the



Memorandum which dealt with several properties, movable and immovable and one clause specifically dealt with the suit property where an understanding was recorded as under :

(e) Insofar as the residential flat or apartment jointly owned by the said Smt.Sharda Devi Singhania alongwith her co-owner, Smt.Pushpa Devi Garg, in a Building known as "Embassy Apartments" at L. Jagmohandas Marg, Mumbai and her foregoing interest in the co-operative society owning the said building is concerned, the said Smt. Sharda Devi Singhania had already filed nomination in respect thereof in favour of the parties of the Ninth, Fifteenth, Fifth and Sixth parts in the ratio of 33%, 33%, 17% and 17% respectively and the same shall accordingly be deemed to have been transmitted in favour of the said four persons and the same representing as it does, the deceased's wish, shall constitute the devolution thereof in the said four nominees.

The Family Arrangement also contain following recital

(5) The foregoing constitutes the entire agreement between the parties and supersedes any previous understandings, arrangements, authorizations, whether or not reduced to writing, it being the intention that any variation of the terms hereof shall only be made and take effect if and to the extent the parties hereto execute an agreement in writing modifying the terms hereof.

7] In the year 2019, on the Suit being filed Mr.Bimalkumar Singhania before the Delhi High Court for specific performance of the Memorandum of Family Arrangement, the Suit was referred for mediation and Settlement Agreement was arrived at through the mediation process which was reduced into writing on 24.03.2021, wherein the legal heirs of Sharda Devi again confirmed the Plaintiffs that they are the owners of the suit property 50% held by Sharda Devi by and by taking Settlement Agreement on record the Suit filed before the Delhi High Court was disposed off.

A specific submission advanced on behalf of the Plaintiffs through Mr. Savant is, this Settlement Agreement further confirms that the Plaintiffs have undisputed right, title, share and interest in the undivided suit property to the extent of 50% and there was never any dispute amongst the legal heirs as regards their entitlement to the 50%



undivided share in the suit property.

Based upon the aforesaid documents, the Plaintiffs claim that they are entitled for getting their names mutated as members in the share certificate of the Society to the extent of their entitlement i.e. 50%, but it is the Respondent No.5 Society, which is creating obstacle in their say.

8] In the background facts, I have carefully perused the Memorandum of Family Arrangement as well as the Settlement Agreement. The Settlement Agreement form the basis of the Decree granted in favour of the mother of Plaintiffs by the Delhi High Court.

The question therefore, that arises before me is, whether the Settlement Agreement creates any right for the first time in favour of the Plaintiffs and therefore whether the said document requires registration and can be given effect to without it being adequately stamped?

Admittedly, the Family Settlement is recorded in the Memorandum dated 07.04.2000 and for its implementation, the Consent Terms were drawn on the basis of which the Delhi High Court decreed the Suit, thereby clearly manifesting that the Consent Terms have resolved the disputes between the parties since there was understanding that effect shall be given to the Memorandum of Understanding between the Parties. The question fall for consideration is, whether the document of Family Arrangement and Settlement Agreement would amount to "Conveyance" as defined under Section 2(g) of the Maharashtra Stamp Act, which is broadly defined to include every decree or final order of the Court where the property is transferred or vested in any other person intervivos.

9] The ancillary question which fall for consideration is whether the



Family Arrangement which have recorded understanding between all the family members require registration under Section 171B of the Registration Act 1908.

While construing the term “family”, the Hon’ble Apex Court in the case of **Kale and Others v. Deputy Director of Consolidation and Others**<sup>2</sup>, held that the term “family” has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim.

The Hon’ble Apex Court, has, while defining the term “Family” and analyzing the scope of “family arrangement”, in the case of **Kale and Others**, observed thus :

“9. Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise *Kerr on Fraud* at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:

"The principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend."

The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of



concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are seated for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In Halsbury's Laws of England, Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

"A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements."

10] The Apex Court in Para 10, propounded the following propositions to create a binding effect of the Family Arrangement and it is worded as under :

"10 In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions :

"(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the



terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not be involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.”

.. It is well settled position of law that the courts should make every effort to give effect to a Family Settlement upon the broad and general ground that its object is to settle the existing or future disputes regarding the property amongst the member of a family. The word ‘family’ has been construed in a broader sense by not restricting it only to a group of persons who are recognized in law as having right of succession or having a claim to a share in the property in dispute as what is aimed to be achieved through a family settlement is good will and ensure amity amongst the persons bearing relationship with one another.

11] While dealing with a document which was nothing more than a Memorandum, has been created to do in case of **Tek Bahadur Bhujil vs. Debt Singh Bhujil & Others**<sup>3</sup>, the Apex Court held as under :

“Ultimately the aim of a Family Settlement/Arrangement is to resolve the present dispute in a family or to avoid the disputes which may come up at some

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<sup>3</sup>AIR 1966 SC 292



future point of time, by arriving at settlement which is acceptable to every person. The aim of such an arrangement/settlement being to avoid conflict of legal claims in praesenti or in future and the approach of the Court must be to link strongly in favour of the family arrangement to maintain harmony in the family and to avoid in anticipation further disputes which may create cavotie situation and an element of distrust against each other. In Krishna Beharilal vs. Gulabchand, (1971) 1 SCC 837, the word 'family' was given a wide connotation and it was held that it cannot be confined only to group of persons who were recognized by law as having right of succession or claim to have share and it was specifically held as under :

“ To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all belong to one family. As observed by this Court in Ram Charan Das v. Girjanandini Devi the word “family” in the context of a family arrangement is not to be understood in a narrow sense of being a group of persons who are recognized in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a family arrangement.”

12] The decision in the case of Kale and others (supra) was followed by Full bench of the Bombay High Court in the case of **Chief Controlling Revenue Authority vs. Abdul Karim Ebrahim Baiwa (Shri) and Others**<sup>4</sup>, where the Court was confronted with an elaborate document titled as “Memorandum of Family Arrangement” devoted to execution part bearing names of the respective parties and the question that arose whether the document is covered under Article 55 of the Stamp Act. The Revenue Department was of the opinion that it was Conveyance and therefore, Article 25 would be attracted.

13] On going through the said document, it was held that a business

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<sup>4</sup>2000 Supp Bom CR 353 (FB)



run by two who prosper and expanded into various other business, subsequently when the younger generation of each branch grew up resulted into disagreement and discontent and in this scenario with the help of mediators the entire dispute between the parties with regard to business and other properties came to be settled and recorded in the said document. The Full Bench in Para 4 and 5 recorded as under :

4. It will be seen from the division that has been agreed by and between that respective share that has fallen to respective member in each of these businesses, has been taken into consideration for the prupsoe of family unit of 100% and accordingly, dealt with for being distributed or divided amongst other family memebtrs which in turn will again be taken as origianl percentage or extent of share in the business and be acted upon accordingly.

5. That is why, there is Clause 29 of the document to the effect that the parties hereto shall sign and execute or caused to besigned and executed all such documents, deeds writings and or instruments as may be necessary for giving effect to and to implement this agreement.

14] Since the Agreement which amounted to settlement of disputes by way of family arrangement, the Full Bench recorded, it was nothing bu mere record of fact which has taken place between the parties with the efforts of the Mediators and settlement of disputes *interse*.

By relying upon the decision of the Apex court in the case of Kale & Others (supra), it was made clear that the decision was arrived on the footing of the Agreement that might have been arrived as per Clause 29 and therefore if any duty is payable, it shall be paid in accordance with law.

Considering the scope of the term “family” and “family settlement” as construed , since it is not in dispute that the Plaintiffs are also legal heirs of Sharda Devi, but what is sought to be argued by Mr. Kadam and what is contended by Mr. Kadam that upon death of Sharda Devi, who died intested by operation of law the property devolve upto her class I heirs being her three sons and daughter and therefore the Plaintiffs who are the grand children of Sharda Devi at



that stage were not entitled to inherit it, but they would have to wait till the succession opens on death of either of the sons or daughter of Sharda Devi and, therefore, by the family arrangement, when the rights are conferred upon grand children, it is nothing but creation of rights in their favour by the other members of the family and this would amount to transfer of the property in their favour, who at the first blush though may appear to be an impressive argument, but when I have gone through the recitals in the Memorandum of Family Arrangement, I have no option, but to reject the said submission.

15] The family arrangement document which clearly record the last wish of Sharda Devi and when all the members of the family, who ere enlisted in Schedule I, appended thereto, being 16 in number decided to give effect to her last wish and which was also evident from the nomination made by her in their favour of the 9<sup>th</sup>, 15<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> parts as 33%, 33%, 17%, 17% respectively, the family arrangement recorded that the respective shares have been transmitted in favour of the four persons as per deceased's wish and it shall constitute devolution thereof in the four nominees. The principles laid down in Kale and others, when invoked and applied to the scenario it becomes apparent that the family attempted to honour the wish of the deceased though oral and decided to give effect to it and ultimately what is most relevant is the Plaintiffs are not complete strangers to the deceased, but they are grandchildren of Sharda Devi and in any case one or the other day they would inherit the said property, as her grand children. Therefore, when the family came to to carve out an arrangement amongst themselves and distributed the estate of the deceased by arriving at an amicable settlement and they specifically agreed that the arrangement was worked out for ensuring maintenance of the family



peace and harmony and none of them shall take any step which might be repugnant to the object of maintaining family peace and harmony, I do not think that by any stretch of imagination, the document could be said to have created the rights in the Plaintiffs for the first time for that there is transfer of property from one set of members of the family to other set of members of family as the Plaintiffs undisputedly belong to the family of Sharda Devi and Sohanlal being their grand parents.

Since this family arrangement record antecedent title to the parties to the properties, it would not fall in the category of document which deserve registration on the ground that it operated as “conveyance”.

16] Admittedly, it is only an arrangement which declares for future what rights and what properties parties possess, is a document of title and is registered.

The submission of Mr. Kadam is that even compromise decree which create right in property in presenting for first time is registerable is well accepted principle, but in the present case, the compromise decree is based on the document in form of settlement which itself is nothing less but to arrangement the Memorandum of Family Arrangement already made in the year 2000.

Hence, though the Suit is decreed by consent on 15.04.2021, based on a Settlement Agreement dated 24.03.2021, I can merely conclude that the Settlement Agreement does not create any right, is only an attempt to give effect to the Memorandum of Family Arrangement dated 07.04.2000.

Section 154B-13 which is a provision in respect of the provision for transfer of interest on death of a member reads thus :



154B-13. Transfer of interest on death of a Member

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.

A meaningful reading of the provision would reveal that on death of a member of the Society , it is imperative for the Society to transfer his share and interest to a person on the basis of testamentary documents or succession certificate or legal heirship or document of family arrangement and when such family arrangement is brought before the Society it is duty bound to give effect to the same and since I have already considered the said document to be not registerable under the Maharashtra Stamp Act, the decision of the Respondent No.5-Society continuing the nominees as provisional members till the stamp duty is paid or the document is registered, cannot be held to be permissible in law.

17] The reliance placed upon by Mr. Kadam on the decision of this Court in the case of **R.N.A. Classic CHS Ltd. Mumbai vs. Deputy \ Registrar, Co-Operative Societies, Mumbai & Ors.**<sup>5</sup>, which has construed the circular dated 18.02.1994 is also not of any support to him as the learned Single Judge (Sawant, J) (as he was then) has rightly discern the object of the circular to ensure that the stamp duty is

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5 2014 (4) Mh.L.J. 938



paid by the parties so that revenue of the Government is protected.

The learned Judge has again relied upon the decision in the case of Kale & Ors.(*supra*), the principles laid down has already been referred to and applied by me to the facts in hand.

Hence, the Interim Application filed by the Plaintiffs/Applicants is granted in terms of prayer clause (d), with a modification that Defendant Nos.1 to 4 are directed to return original share certificate to Defendant No.1.

As per the understanding reached between the parties, the Defendant No.1 shall deposit the share certificate with Defendant No.5, if such a request is made by the Plaintiffs, for the purpose of recording any further transfer, provided that it is thereafter returned to Defendant No.1.

As far as prayer clause (a) to (c) are concerned, the Applicants are at liberty to seek those reliefs by filing separate applications, as and when the contingency arises.

Interim Application stands disposed off in above terms.

**[BHARATI DANGRE, J]**