

IN THE COURT OF THE FINANCIAL COMMISSIONER,
DELHI

Case No.145/2013

**Revision Petition under
section 116 of Delhi
Cooperative Societies Act,
2003**

In the matter of :-

1. **Secretary cum Information Officer
Panchshila Co-operative House Building Society,
Panchshila Park,
Delhi-110017
Through Mr. R.L. Bawa,
Hony. Secretary.**Petitioner

VERSUS

1. **Sh. H.R. Vaish,
S/o Sh. V.R. Vaish,
R/o S-19, Panchshila Park,
New Delhi-110017.**

2. **Registrar Cooperative Societies,
Office of the Registrar of the
Co-operative Societies,
Old Court Building,
Parliament Street
New Delhi-110001.** Respondents

(Represented by Sh. S.S. Rana,
Counsel for Petitioner, Sh. Rajiv Vig,
Counsel for R-1 and Sh. Shyam
Sunder, Counsel for R-2, RCS)

NAINI JAYASEELAN, FINANCIAL COMMISSIONER

Order dated 11.08.2015

1. This order shall dispose of the Revision Petition filed by the Petitioner under Section 116 of the Delhi Cooperative Societies Act, 2003 against the order dated 11.06.2013 passed by the Registrar of Cooperative Societies. Vide this order RCS directed to society to grant membership to Sh. H.R. Vaish who became the owner of second and third floor of property No. S-19, Panchshila Park on the basis of a family settlement.

2. Petitioner society filed a revision petition with the following submissions :

- (a) A perpetual sub-lease dated February 17, 1968 was executed between the President of India as "LESSOR" of the one part and Panchshila Co-operative House Building Society as "LESSEE" and Mrs. Gayatri Vaish as "SUB-LESSEE" in respect of the property No. S-19, Panchshila Park, New Delhi-110017.
- (b) Respondent No. 1 alleged that the property No. S-19, Panchshila Park, New Delhi in the name of Mrs. Gayatri Vaish was partitioned within the family on the basis of the unregistered and unstamped Memorandum of Family Settlement dated May 13, 1999.
- (c) The above said property was converted into freehold vide conveyance deed dated August 31, 2000 in the name of Mrs. Gayatri Vaish mother of the Respondent No.1.
- (d) The Respondent No. 1 filed the application for membership of the Petitioner Society on February 07,2011 with respect to the second and third floor of property No. S-19, Panchshila Park, New Delhi on the basis of the unregistered and unstamped Memorandum of Family settlement dated May 13, 1999 by dissolving the alleged Hindu Undivided Family and partition the property among themselves. As per the perpetual sub-lease dated February 17, 1968 and conveyance deed dated August 31, 2000, Mrs. Gayatri Vaish mother of the Respondent No. 1 is the owner of the said property.
- (e) Delhi Co-operative Societies Act, 2003 does not recognize the Hindu Undivided Family as a class being inducted as a society member. The property No. S-19 of Mrs. Gayatri Vaish cannot be divided or treated as HUF property.
- (f) There shall be no right in the property and shall not devolve on the Respondent No. 1 on the basis of the unregistered and unstamped Memorandum of Family

Settlement dated May 13, 1999. The alleged family settlement shall create no right, title or interest in the light of the judgement of the Hon'ble Apex Court in Suraj Lamp Vs. State of Haryana.

(g) Order passed by the learned Registrar Co-operative Societies is suffering from the apparent error on the face of record as the proviso of the Section 75 of the Delhi Co-operative Societies Act, 2003 clearly mandates that the Society membership shall not be granted to the member unless the original member has constructed and sold the floor.

(h) Learned Registrar Co-operative Societies failed to appreciate the legal and binding provision of clause 6(a) and 6(b) of the perpetual sub-lease deed dated February 17, 1968 wherein the Sub-Lessee Mrs. Gayatri Vaish mother of the Respondent No. 1 could not create or transfer any right, title and interest in favour of any one without the *previous consent in writing of the Lessor DDA, who shall be entitled to refuse the same at its sole discretion.*

(i) Learned Registrar Co-operative Societies failed to appreciate the settled law that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all.

(j) Learned Registrar Co-operative Societies failed to appreciate the proviso to Section 76(4) of Delhi Co-operative Societies Act, 2003: which specifically lays down that notwithstanding anything contained in law for the time being in force, a plot of land or dwelling unit in a building of the Co-operative housing society *shall not be partitioned* for any purpose whatsoever.

(k) The petitioner society has not accepted the family settlement as valid document to transfer any right, title or interest in favour of the Respondent No.1. Learned Registrar Co-operative Societies erroneously held that the petitioner

society has not disputed the fact that the Respondent No. 1 is the owner of the second and third floor of the property No. S-19, Panchshila Park, New Delhi. In fact the petitioner society disputed the ownership of the Respondent No. 1 because the property is in the name of Mrs. Gayatri Vaish.

3. Respondent No. 1 filed the reply to the revision petition and submitted the following :

i. The property under reference was partitioned by an oral family settlement which was thereafter recorded in a Memorandum of a Family Settlement. Hon'ble Supreme Court of India in the case titled "**Kale & Ors. Vs. Deputy Director of Consolidation & Ors.**" in the judgement passed on 21.01.1976 (1976 SCC (3) 119) wherein it has been held in respect of a family settlement that "***it may be even oral, in which case registration is not necessary. Registration is necessary only if the terms are reduced to writing but where the memorandum has been prepared after the family arrangement either for the purpose of record or for information of courts, the memorandum itself does not create or extinguish any rights in immovable property and, therefore, does not fall within the mischief of S.17(2) of the Registration Act and is no compulsorily registerable.***

ii. There is no necessity that the conveyance deed has to be in individual names for membership of a Society. There are innumerable cases where property has been transferred even on basis of an unregistered will and membership has been transferred.

iii. The society has falsely claimed that the property under reference is sub-leased while the property is freehold.

iv. The society has failed to establish that H.R.Vaish has no right to the second and third floors. Section 91 of the DCS Act allows membership without registered title and hence the RCS

has rightly held that the society has not disputed the ownership of H.R.Vaish in respect of the second and third floor of the property in question.

v. Under the scheme of the Co-operative Act, people owning different floors in the properties in the area of society's colony have to be represented for effective and democratic management of the affairs and no injury will be caused to the society, as claimed, if the law is followed.

4. RCS has resubmitted the reply with the following submission:

(1) A family partition is an effective mode of partition of properties by mutual agreement among the family members and the same has force of law and decree are also passed by the courts on the basis of family partition.

(2) Rights cannot be denied merely on the basis that the family settlement is not registered one. It is further submitted that no law is effective retrospectively unless so declared. In Suraj Lamps & Industries Pvt. Ltd. Vs. State of Haryana & Anr. case, the law has not been made applicable retrospectively and, thus, the case has no bearing on the present case as the family settlement is of the year 1999. The society has nothing to do with the family settlement so long the parties to the family partition do not challenge it.

(3) It is a family settlement by virtue of which the first and second floor had come to the share and ownership of the respondent no. 1 and, thus, the respondent no. 1 qualified to become a member under the DCS Act, 2003 and Rules2007. There is no objection to the said family settlement by any family member of Mrs. Gayatri Vaish.

5. Petitioner filed the rejoinder with the following submission:

(a) The Respondent no. 1 is relying on the unregistered and unstamped memorandum of family settlement dated May 13, 1999. Mrs Gayatri Vaish is the sole recorded owner of the property no. S-19, Panchshila Park, New Delhi, which is even confirmed in the conveyance deed dated August 31, 2000. The said property was not HUF property. The factum of possession has no bearing on the issue of granting settlement/agreement is only binding inter se on the family members on the ground of estoppels and third parties outside the family can not be held to be bound by it.

(b) It is reiterated that the Delhi Co-operative Societies Act, 2003 does not recognize the Hindu Undivided Family as a class being inducted as a society member. It is submitted that the said property could not be partitioned as HUF property since the property was a lease-hold property in the name of Mrs Gayatri Vaish and the said property or any part thereof could not be transferred to the Respondent No. 1 without the permission of the DDA.

6. The matter was adjourned on two days for seeking a clarification from the Counsel of the RCS whether any limit has been imposed under the Act/Rules or administratively on the number of members in a society, since the operation of first proviso of Section 75 would/could lead to a large increase in the number of members beyond the number of dwelling units. The Counsel for the RCS clarified that in respect of the increase in the membership in pursuance of first proviso of Section 75, there is no limit on the number of members either in the Act or by way of any administrative order.

7. The present case is covered by the judgement of Hon'ble Supreme Court of India vide Order dated 21.01.1976 in the case titled "**Kale & Ors. Vs. Deputy Director Consolidation & Ors.**" wherein it was held that in the family settlement there is no requirement of its registration.

8. Society in its letter dated 21.10.2011 has itself admitted the part ownership of Sh. H.R. Vaish in respect of property bearing no. S-19, Panchshila Park, New Delhi-110017 but refused to grant the membership for not fulfilling the requirement under Section 75 or 91 of DCS Act, 2003 being the owner in respect of only part of the third floor of the property.

9. RCS in its order dated 11.06.2013 observed that Sh. H.R. Vaish has acquired the floor not through purchase from the plot owner but through the family settlement. But in view of first cooperative principle of voluntary and open membership and second principle of democratic control, denying the membership to a person in possession of two floors will mitigate against cooperative principles.

10. I agree with the stand taken by the RCS and do not find any reason to allow the revision petition. Therefore, revision petition is dismissed and RCS order dated 11.06.2013 is upheld.

11. Pronounced in open court on 11.08.2015.

(NAINI JAYASEELAN)
Financial Commissioner, Delhi