

**OFFICE OF THE JT. REGISTRAR  
REGISTRAR COOPERATIVE SOCIETIES, GOVT. OF NCT OF DELHI  
OLD COURT BUILDING, PARLIAMENT STREET, NEW DELHI-110001**

F.Jt. RCS/ u/s-91/Appeal-30/2020 /1736-39

Dated: 05/02/2021

**IN THE MATTER OF:**

Ms. Mamta Gupta & Asha Gupta,  
Flat No.4403, Ashoka Enclave CGHS Ltd.,  
Plot No. 8-A, Sector -11,  
Dwarka, New Delhi – 110 075

.....Appellants

**Versus**

The President/Secretary,  
Ashoka Enclave CGHS Ltd.,  
Plot No. 8-A, Sector -11,  
Dwarka, New Delhi – 110 075

.....Respondent

**ORDER**

This order shall dispose of the appeal dated 02.11.2019 filed under Section 91 of DCS Act, 2003 by Ms. Mamta Gupta & Asha Gupta against the rejection letters dated October, 2018 and 17.03.2019 issued by the Secretary of Ashoka Enclave CGHS Ltd.

The appeal has been filed by the Appellants against the society "Ashoka Enclave CGHS Ltd." for non transferring the membership in favour of the Appellants. The Appellants have stated in the appeal that they had purchased a flat no. 4403 from Sh. Rama Shankar Singh, Original Owner of the flat of the society having Membership no. 455 vide Sale Deed which was registered with the Sub Registrar-IX, New Delhi on 16.06.2017 and subsequently a rectification deed was also registered with the Sub Registrar-IX on 12.09.2017. NOC for the sale/purchase of the said flat was issued by the respondent society on 10.06.2017. Since the original share certificate of Sh. Rama Shankar Singh was transferred by him in his wife/Smt. Saraswati's name, new membership number of the said share in the name of Smt. Saraswati is 551. The endorsement regarding the new share in the name of Smt. Saraswati having membership number 551 was done by the society on 24.10.2015. The original conveyance deed was executed by DDA in the name of Sh. Rama Shankar Singh and there is no gift deed/ transfer agreement that was executed by Sh. Rama Shankar Singh in favour of Smt. Saraswati evidencing the transfer of the said flat in the name of Smt. Saraswati in either DDA's record or Sub-Registrar's record. Therefore a Sale Deed was executed between Sh. Rama Shankar Singh and Appellants which was Registered with office of Sub-Registrar IX. An affidavit dated 11.09.2017 was also submitted by Sh. Rama Shankar Singh stating that the membership of his share having membership no. 455 was transferred by the respondent society in his wife's name having new membership no. 551 on 24.10.2015 but the Gift Deed could not be executed/registered in Sub-Registrar's office and the owner of the flat remained Sh. Rama Shankar Singh. In a separate affidavit dated 11.09.2017 given by Smt. Saraswati w/o Sh. Rama Shankar Singh, she has stated that she has no objection in transfer of membership, along with all the deposit of the said flat in the name of appellants. The appellants have further mentioned that in spite of completing all the required documentation/legal formalities along with the clarification given by them in support of their application dated 19.11.2017, the same was dismissed by the respondent





society in October 2018 and another application dated 13.01.2019 was also rejected by the respondent society vide letter dated 17.03.2019.

Notices were issued to the parties and in its furtherance the respondent society has filed its reply/objection wherein it is submitted that it was not permissible to transfer the share and the interest by the member to his wife unless duly registered Gift Deed is executed after payment of the requisite stamp duty. To this extent, the approval of the transfer of share/membership from Sh. Rama Shankar Singh to his wife Smt. Saraswati by the Ex. Managing committee was illegal. The respondent society further submitted that the original member sold the flat to the appellants though he had admittedly transferred his interest in the flat to his wife and as such Sh. Rama Shankar Singh has no locus standi to transfer the interest in favour of the appellants and no prior permission from the society to transfer the interest of the flat by way of sale was obtained by Sh. Rama Shankar Singh as per provisions of Delhi Co-operative Society Rules 2007. The respondent society also stated that the material facts were concealed and the sale deed got executed by Sh. Rama Shankar Singh and filing of affidavit by Smt. Saraswati shall not change the facts. The society also submitted that the appellants have submitted application for joint membership though appellants are not in first degree blood relation. The society has relied upon Rule 22 of the DCS Rule, 2007 which says that a co-operative society may admit joint member provided the proposed joint membership is restricted to only person in first degree blood relationship and Rule 2(g) of the DCS Rule defines the first degree blood relation as- father, mother, brother, sister, son, daughter or spouse. The respondent society therefore refused to approve the joint membership of the appellants.

The appellants in their rejoinder dated 16.1.2021 submitted that Sh.-Rama Shankar Singh has rightfully sold the flat to appellants by way of registered Sale Deed and Rectification Deed. The appellants further stated that there is no provision in Transfer of Property Act 1882 which debars purchasing of a property by persons who are not in first degree blood relation. The appellant further stated that the membership of said flat can be considered for first owner i.e. Smt. Mamta Gupta and second owner Smt. Asha Gupta shall file an affidavit in this regard that she do not have any objection in case Smt. Mamta Gupta alone is given the membership of the society. The respondent society has also filed written argument on 27.01.2021 wherein objections/ submissions mentioned in its earlier reply have been reiterated.

I have heard the arguments and have gone through the documents on records.

The society has rejected the application for transfer of membership on three grounds, namely *i.* Sh Rama Shankar Singh, original member of the society is not the owner of the flat as he has transferred his membership to his wife's name even though without any valid document of transfer, *ii.* A person who is not in first degree blood relation cannot be admitted as a joint member as per provisions of Rule 22 of DCS Rules 2007 and *iii.* Since the previous MC has not handed over documents/records to the present MC, the appellants were requested to reconcile the receipts for payments of flat no.: 4403 and pay balance amount due to the society at the earliest.

The appellants Ms Mamta Gupta and Ms Asha Gupta have applied for transfer of membership in their favour based on a registered Sale Deed and a registered Rectification Deed. The registered Sale Deed has been executed by the Original Owner/member Sh Rama Shankar Singh in favour of both the appellants. The society is objecting to locus standii of Sh Rama Shankar Singh to execute the sale deed as he has transferred membership in his wife's name. The validity of the registered Sale Deed cannot be challenged in the present proceedings. The society has not produced any document to show that the registered Sale





Deed has been cancelled by any Competent Court of Law. There is no valid legal ground for not relying upon the registered Sale Deed in question. Therefore, membership can be granted to the appellants based on the registered Sale Deed as per the provisions of Section 91 of the DCS Act 2003.

The society contends that no valid legal document was executed by the original member in favour of his wife on the basis of which membership was transferred in the records of the society in the name of his wife. It is an undisputed fact that original member is Sh. Rama Shankar Singh. It is also undisputed that he got his membership transferred in the records of the society to his wife Smt Saraswati. In the absence of a valid legal document evidencing transfer of title from the original member Sh Rama Shankar Singh to his wife Smt Saraswati, mere transfer of membership in the records of the society does not transfer title of the flat in question from Sh Rama Shankar Singh to his wife Smt Saraswati. Membership in a society can be transferred based on valid transfer documents but transfer of membership does not by itself amounts to transfer of title in the absence of valid transfer documents. The contention of the society that since membership in the records of the society stands in the name of Smt Saraswati, wife of original member Sh Rama Shankar Singh, therefore even in the absence of any valid transfer document executed by Sh Rama Shankar Singh in favour of his wife, the title vests with Smt Saraswati and not with Sh Rama Shankar Singh is legally untenable and is liable to be rejected. The contention of the society that Sh Rama Shankar Singh does not have locus standii to execute the Sale Deed is also rejected in view of above discussions.

Relevant portion of Rule 22 of DCS Rules 2007 on which the society has relied upon reads as follows:-

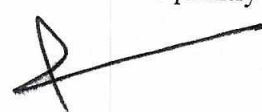
*22. PROCEDURE FOR ADMISSION OF JOINT MEMBER, MINOR AND PERSON OF UNSOUND MIND AND INHERITING THE SHARE OR INTEREST OF DECEASED MEMBER.*

*(1). A co-operative society may admit joint member provided the proposed joint member make a declaration in writing that the person whose name stands first in the share certificate shall have the right to vote and all other rights shall be enjoyed jointly and severally and liabilities shall be borne jointly and severally by them as provided under the Act, the rules and the bye-laws:*

*Provided that in case of inability of the person whose name stands first in share certificate, he/she can authorize the other to vote and attend the meeting on his behalf.*

*Provided further that in case of co-operative group housing/house building society, the joint membership shall be restricted to only person in first degree blood relationship.*

The present appeal has been filed under section 91 of DCS Act 2003 which pertains to transfer of membership by way of purchase of flat in question by virtue of a registered sale deed. The appellants have purchased the flat in question by virtue of a registered Sale Deed and thus both have a legal share in the property/flat in question and both are its joint legal owners. Admission of membership and transfer of membership stand on different footing altogether. Members are admitted originally when a society is formed and subsequently the



members are entitled to and are given ownership of flats. Admission of joint members at that initial stage amounts to grant of joint ownership in the property concerned. Rule 22 of DCS Rules 2007 pertains to admission of membership and not to transfer of membership. Rule 22 of DCS Rules 2007 has no relevance in the present case in hand as the present case pertains to transfer of flat by way of purchase through a registered Sale Deed by virtue of which both the appellants have become joint owner of the flat in question. Provisions of DCS Act 2003 and DCS Rules 2007 cannot curtail the ownership right of a person who becomes a joint owner by virtue of a registered Sale Deed. In view of the above discussions, reliance of the society on Rule 22 of DCS Rules 2007 for rejection of application for grant of membership is also not sustainable.


Further, the society vide its letter dated 10.06.2017 has itself stated that all the dues pertaining to flat no.: 4403 have been cleared. The grant of membership cannot be withheld on ground of reconciliation of accounts from 10.06.2017 to 19.10.2018 i.e. date of application for transfer of membership.

In view of the above, all the contentions of the society regarding rejection of application for transfer of membership are legally not sustainable and are rejected. The appeal is allowed and the rejection letters issued in October 2018 and 17.03.2019 of the society are set aside. As all other documents submitted by the appellants are in consonance with the provisions of Section 91 of DCS Act 2003 and DCS Rules 2007, it is hereby ordered that the respondent society will transfer the membership in favour of both the appellants within two weeks from the date of receipt of this order after charging transfer fee of five hundred rupees and share money and admission fee as per the provisions of the bye-laws of the society if not already paid by the appellants.

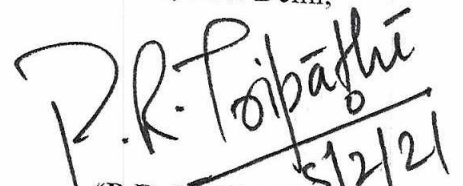
The appeal is disposed of accordingly.

Copy to:-

1. AR(Section-01), Registrar Cooperative Societies, Parliament Street, New Delhi,
2. AR/AD (Computer Cell ), Registrar Cooperative Societies, Parliament Street, New Delhi,  
for uploading on the website of the RCS.

  
(P.R. TRIPATHI)  
Jt. Registrar/Appellate Authority  
Joint Registrar

O/o Registrar, Co-operative Societies  
Govt. of N.C.T. of Delhi.  
Old Court Building, Parliament Street  
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(P.R. TRIPATHI)

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