

FIGHT FOR SOBO FLAT

Widow doesn't have right over in-laws' property

High Court and Sessions court rule in septuagenarian couple's favour as their son was merely a nominee



Chandrakant Parikh, 79, and his 73-year-old wife Shobhna Parikh

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Awidow cannot claim right to live in a flat owned by her in-laws where the husband was only an associate member in the share certificate and a nominee in the house, the courts have ruled.

Two orders have been passed on the same ground – one by the Bombay High Court and the other by the Sessions court – both denying access to the widow to a flat in Tardeo owned exclusively by her father-in-law.

The high court was hearing an appeal filed by 46-year-old Vaishali Parikh against her father-in-law Chandrakant and mother-in-law Shobhna – both in their 70s – challenging a city civil court's order. In this case, Parikh was claiming civil rights over the flat. The Sessions court was hearing an appeal filed by the in-laws against a Metropolitan court order in favour of Parikh under the Domestic Violence Act. The documents and facts relied on by both the sides were almost the same in all the cases.

The most important issue raised by Parikh against her in-laws in all the cases is that her late husband Samir was an associate member as well as a nominee for the 750-sq-ft. Tardeo flat. Parikh also claimed that the flat was bought from proceeds of income from a business jointly run by Samir and his father Chandrakant till Samir passed away.

He died after suffering a massive heart attack in August 2013.

The in-laws, through their lawyer Vivek Kantawala, argued before both the courts that the flat was bought by Chandrakant way back in 1978 when Samir was still a minor and wasn't a part of the family business. This showed that the flat was bought exclusively by Chandrakant.

However, Parikh claimed to have lived in the flat for years together till her husband passed away – after which she shifted to Ahmedabad, therefore, she argued before the courts that the Tardeo flat was her matrimonial house. Her lawyer pointed out to section 17 of the DV Act, which had an overriding effect over every other law, which says, "Every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same." She sought to use this section to overrule every argument made by the in-laws.

The Sessions Court, however, observed that even for that section to apply, the husband has to have some right over the flat in question. The fact that Parikh and her son had already moved out of the flat over two years back also went against them.

Justice RD Dhanuka of the high court also observed that simply because Chandrakant had made Samir an associate member in the flat did not mean that any right was created in Samir's favour, which can be used by Parikh to claim any right in her favour.