

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11807 OF 2019

Sima w/o Dipak Ahirrao (Patil)
Age 28 years, Occ. Housewife,
R/o. Plot No. 29, Sihantha Nagar
Sakri Road, Dr. Thakare Road
Dhule, District Dhule.

... Petitioner.

VERSUS

1. The Senior Citizen Appellate Tribunal/
The District Magistrate Dhule,
District Dhule.
2. The Senior Citizen Tribunal/
The Sub-Divisional Officer Dhule,
District Dhule.
3. The Circle Inspector,
Dhule City Dist. Dhule.
4. Shakuntalabai w/o Gangaram Ahirrao,
Age 49 years, Occup. Housewife.
5. Dipak s/o Gangaram Ahirrao,
Age 44 years, Occ. Service,
Respondents No. 4 & 5 r/o. Dighave
Tq. Sakri, District Dhule.

... Respondents.

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Advocate for the Petitioner : Mr. P. B. Patil.
A.G.P. for the Respondent Nos. 1 to 3 : Mr. A. R. Kale.
Advocate for the Respondent No. 4 : Mr. A.S. Savale.
Advocate for Respondent No. 5 : Mr. Menezes Joslyn.

CORAM : **MANGESH S. PATIL, J.**

RESERVED ON : **09/10/2020**

PRONOUNCED ON : **16/10/2020**

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned A.G.P. waives service for respondent Nos. 1 to 3, learned advocate Mr. Savale

waives service for respondent No. 4 and learned advocate Mr. Menezes Joslyn waives service for respondent No. 5. With the consent of both the sides the matter is heard finally at the stage of admission.

2. In this Petition under Article 227 of the Constitution of India the petitioner is impugning the order passed by the Chairman of Senior Citizen Appellate Tribunal in an appeal preferred by the respondent No. 4 under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter 'the Act') whereby her appeal against the order passed by the Presiding Officer of the Senior Citizen Maintenance Tribunal constituted under Section 7 of the Act has been modified and *inter alia* the petitioner is directed to vacate the house property standing in the name of respondent No. 4.

3. The respondent No. 5 is the son of the respondent No. 4 and the petitioner is his wife. For the sake of convenience they are being referred to as mother, son and daughter-in-law. The mother preferred an application under Section 5 of the Act before the Maintenance Tribunal alleging that the son and the daughter-in-law are occupying her self acquired house property at Dhule and have driven her out. She therefore prayed for eviction of the son and the daughter-in-law and also claimed maintenance at the rate of Rs. 15000/- per month.

4. The son admitted the claim and agreed to vacate the house property as well as to pay maintenance to the mother at the rate of Rs. 5000/- per month.

5. The daughter in law opposed the application. She submitted that in fact she along with her husband and two small children were residing with the mother in that house property. However, subsequently the son and the daughter-in-law involved in dispute *inter se*. Fed up with such dispute the mother started residing in their property at village Dighave, Tq. Sakri, District Dhule but the son continued to provide her (mother) financial aid.

She is ready to maintain and cohabit with mother even in the house property at Dhule but the son and mother duo are bent upon to drive her out. She has no other place of residence except the house property at Dhule and she along with her two small children would come to the streets if evicted.

6. The learned Presiding Officer of the Maintenance Tribunal allowed the application of the mother partly. He directed the son and daughter-in-law to provide one of the four rooms duly furnished to the mother from the house at Dhule. In addition, the son was directed to pay to the mother Rs. 5000/- per month as a maintenance.

7. Being aggrieved with such an order mother preferred an appeal under Section 16 of the Act. Her appeal has been partly allowed. The son and the daughter-in-law have been directed to vacate the entire house at Dhule and further directed the son and daughter-in-law to patch up their dispute and to make necessary alternate arrangement for residence. However he maintained the rate of maintenance awarded to the mother. Hence this petition.

8. The learned advocate Mr. Patil for the daughter-in-law apart from raising the disputes on facts and commenting upon the conduct of the mother and son who are hand in gloves and bent upon to harass and evict the daughter-in-law submitted that the Tribunal constituted under the Act do not have powers to pass any order of eviction from an immovable property. According to the learned advocate it is only the right to claim maintenance which can be enforced by a senior citizen pursuant to the provisions of this Act and there is no provision to pass any order in respect of the property, movable or immovable. He would submit that it is only to fasten the liability to pay maintenance it has been provided that the person or children/grand children who inherit the property of the Senior Citizen that a reference to the property can be found in various provisions of the

Act. He would submit that it is but logical that if a person is entitled to inherit a property of a senior citizen there should be a reciprocal liability to maintain the senior citizen. However, he would submit, there is no specific provision which would enable the Maintenance Tribunal and Appellate Tribunal constituted under the Act to pass any order of eviction.

9. Learned advocate Mr. Patil would further submit that a daughter-in-law is not included in the definition of 'children' contained under Clause (a) of Section 2 of the Act and even would not fall under the category of a 'relative' as defined under Clause (g) of that Section. He would therefore submit that the petitioner being the daughter-in-law of the respondent No. 4, no order could have been passed against her, evicting her from the house property at Dhule. In support of his submission the learned advocate would cite the Single Judge Bench decision of the Calcutta High Court in the case of Anand Kumar Agarwal and another Vs. Ashok Kumar Agarwal, (2019) 1 HLR 623 and another Single Judge Bench decision of the Punjab and Haryana High Court in case of Atma Singh Samra Vs. District Magistrate, Jalandhar (2019) 1 ALL MR 14.

10. Per contra, Mr. Savale, learned advocate for the mother would submit that the house property at Dhule is her self acquired property and also pointed out a copy of the registered sale-deed dated 14.01.2011 where under she purchased it. The learned advocate would submit that taking into account the statement of objects and reasons for enacting the Act, it is not intended not merely to provide for a mechanism for the maintenance of senior citizens but even it is avowed object to protect property as well. Though strictly speaking, a daughter-in-law does not fit in the definition of 'children' or 'relative' contained under Section 2(a) and 2(g) respectively, in order to avoid the mischief by the son to defeat the purpose of the statute by presenting the daughter in law as a con, even a daughter-in-law can be made liable to face the consequences covered by the Act. In other words, he would submit that if any other interpretation is to be put, it would be very

easy for a son to defeat the claims of his parents by posing that it is not he but his wife who is in occupation of the property of his parents. He would therefore submit that a daughter-in-law being a member of the family of the son would be equally responsible so far as protection of the property of her parents in law is concerned.

11. The learned advocate would further point out that a coordinate Bench of this Court in the case of **Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane (2019)1 ALL MR 700** has considered the legal provisions and has answered both the questions being put forth by the learned advocate for the daughter-in-law herein. The learned advocate would point out that this Court has specifically held that even an order of eviction from the immovable property can be passed by the Maintenance Tribunal and even a daughter-in-law along with the son would be liable to suffer an order of eviction.

12. The learned advocate would further point out that even in a subsequent matter in the case of **Sadanand B. Joil V. Deputy Collector and Presiding Officer, 2018 SCC OnLine Bom 9278** this Court has followed its earlier decision in the case of **Dattatrey Shivaji Mane (supra)**. The learned advocate would also point out that even the Single Judge of the Delhi High Court has taken the same view in the case of **Sandeep Gulati Vs. Divisional Commissioner, Office of the Secretary-Cum-Divisional Commissioner, Department of Revenue, Govt. of NCT of Delhi and others in Writ Petition (C) 2761/2020.**

13. Learned advocate would further point out that even the Division Bench of Punjab and Haryana High Court in the case of **Justice Shanti Sarup Dewan and another Vs. Union Territory, Chandigarh and others (2014) 2 LAR 133** has passed an order of eviction from the property of the senior citizen against the son. The learned advocate therefore would submit that there is no error committed by the Appellate Tribunal by the impugned

order directing the daughter in law along with her husband to vacate the house property of the mother.

14. I have carefully gone through the papers and have considered the rival submissions as also the decisions cited by them. It does appear that factually, the mother is the absolute owner of the house property at Dhule which she has purchased under a registered sale-deed on 14.01.2011. There is also no dispute that currently the son and the daughter-in-law are occupying that house property and the mother has been residing at Dighave Tq. Sakri, District Dhule.

15. Since there is no challenge by the son to the impugned order confirming the order passed by the Maintenance Tribunal directing him to pay maintenance to the mother at the rate of Rs. 5000/- per month and with which the daughter-in-law cannot be said to be aggrieved by, the scrutiny in the matter in hand is restricted to the impugned direction to the daughter-in-law to vacate the house property.

16. At the first blush the submission of the learned advocate for the daughter-in-law about she being not covered by the definition of 'children' and 'relative' contained in Section 2(a) and 2(g) respectively does appear to be attractive. However, if one applies the mischief rule, object of the Act to protect the property of a senior citizen/parent can be achieved if not only the children as defined under Section 2(a) and not strictly applying the definition of 'relative' contained in Section 2(g), the mischief can be avoided only if even the nearest relatives of the children are taken within the sweep of the definition of 'relative' contained in Section 2(g) which restricts only such heirs of the child of senior citizen who are in possession or would inherit the property of the senior citizen after his death. It would be pretty easy for a son who is estranged from his parents to conveniently take a plea that it is not he but his wife who is occupying the immovable property of his aged parents. If one intends to avoid such mischief being played one will

have to apply the provisions of these acts even against the daughter-in-law.

17. True it is that there could be possibly a case where there is a matrimonial dispute between the son and the daughter-in-law, as is being presented by the fact situation of the matter in hand. In my considered view, as far as applicability of the provisions vis-a-vis the parents and the senior citizens are concerned, the provisions of the Act would be applicable even against the daughter-in-law, even if there is a matrimonial dispute between her and the son of the senior citizen/parents. With all sympathies, such a daughter-in-law could have her own remedies to enforce her rights against her husband. However under the pretext of enforcing her matrimonial rights as against the husband she cannot be allowed to defeat the rights of her parents in law. Though she may not be liable to maintain them, she cannot be permitted to squat over their property, much less by committing a trespass as is admitted by the daughter-in-law in the matter in hand. The aims and objects in promulgating the Act would be met only if one interprets the provisions in the manner discussed herein above.

18. I, therefore, find no hesitation in subscribing to the views taken by this Court in case of Dattatrey Shivaji Mane (supra). Needless to state that a contrary decision taken by the Single Benches of the Calcutta High Court and the Punjab and Haryana High Court not being consistent with the view of this Court in the case of Dattatrey Shivaji Mane (supra) those cannot be followed.

19. In the result, there is no apparent illegality, perversity or arbitrariness in the impugned order.

20. The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)

21. After pronouncement of the judgment, Mr. P.H. Patil, learned Advocate holding for Mr. P.B. Patil, Advocate for the petitioner, submits that the interim relief was in operation till date. The petitioner is a destitute having two small children. She will have to find out alternate accommodation and would need some time. He, therefore, requests that the interim relief may be continued for a period of four weeks.

22. None present for the respondent No. 4-mother.

23. Taking into account the fact that the petitioner is coming with a grievance about there being some dispute between her and her husband and since she has a couple of children, only by way of some sympathy, the interim relief is extended for four weeks from today.

(MANGESH S. PATIL, J.)

mkd/-