

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7224 OF 2021

Sou. Kalpana Sunil Revgade

..Petitioner

Versus

Rangnath Tabaji Revgade and Anr.

..Respondents

Mr. Sanjay A. Ghaisas, for the Petitioner.

Mr. Girish R. Agrawal a/w Ms. N. P. Boraste, for the
Respondent No.1.

Mr. S. D. Rayrikar, AGP for the Respondent No.2.

CORAM : NITIN W. SAMBRE, J.

DATE : 22nd JUNE, 2022

P.C.

1. This petition is arising out of impugned order passed by the Tribunal constituted under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as "the Act" for the sake of brevity). Vide order dated 11th February, 2021 passed by the Sub Divisional Officer, Nashik, the petitioner herein in exercise of the powers under the said Act and the rules framed thereunder has directed the petitioner not to reside in the said house and hand over possession of the same to the respondent/owner, so also the possession of shop/block be handed over to the respondent. A further injunction is ordered against the petitioner not to interfere with the possession of the respondent/senior citizen over the suit

property once the same is handed over.

2. Facts necessary for deciding the petition are as under :-

The respondent's son Sunil was married to the petitioner and said couple is blessed with a son. The petitioner is custodian of the said son.

Sunil, son of the respondent expired on 10th November, 2017.

3. The petitioner herein became widow and as such, entered into second marriage with one Sujit Chine on 25th May, 2019.

4. In spite of said second marriage, since the petitioner continued residing in the suit property and also was not permitting the respondent to enjoy the shop/block, the proceeding under Section 5 r/w 3 of the rules was taken out. As a consequence of above proceeding, since the petitioner has not denied the fact about remarriage, the order impugned came to be passed.

5. Counsel for the petitioner while assailing order impugned would invite attention of this Court to the certain definitions viz. 'children' under Section 4(2), Sub Section

(g) which defines 'relative' and Sub Section (1) of Section 4 which defines 'parents'. According to him, plain reading of aforesaid sub-sections will not bring into its ambit 'daughter-in-law' i.e. petitioner herein. As such the claim is, the proceedings itself were not maintainable against the petitioner and that being so, the order impugned becomes without jurisdiction. His further contentions are, a son born out of wedlock of the petitioner with deceased Sunil has every right in the property and that being so, the petitioner was justified in enjoying both the properties viz. flat, so also shop/block, wherein business of Stationary is carried out. It is further claimed that other two sons of the respondents were not impleaded as party to the proceedings. In that view of the matter, since the appropriate or necessary parties were not impleaded, the proceedings were not maintainable and as such, the order impugned is bad for non-joinder of necessary parties. My attention is invited to the fact that based on the order impugned the respondent has taken out execution proceedings.

6. While countering the aforesaid submissions, Mr. Girish Agrawal, counsel appearing for the respondent would urge that once the petitioner has not denied factum of second marriage with one Sujit Chine on 25th May, 2019, the petitioner has lost right whatsoever in the suit property.

According to him, the suit property is self acquired property of the respondent, as is apparent from the sale-deed of the same as reflected at page 39 and other such documents. In that eventuality, it is open for the petitioner to claim that she has any statutory or moral interest in the suit property, so also to her son born out of her wedlock with deceased son of the respondent. According to Mr. Girish Agrawal, the fact of second marriage of the petitioner disentitles her to continue and enjoy the suit property and that being so, the petition is liable to be dismissed.

7. In addition, his submissions are, in the definitions of children, relative and parent as referred *supra* are read in context with the object with which the statute is incorporated. Petitioner/daughter-in-law is very much covered within the ambit of said statute and that being so, the contentions of the petitioner to that extent are liable to be rejected.

8. I have appreciated the submissions.

9. The fact that clause (a) of Section 2 does not expressly cover the daughter-in-law in the definition of 'children ' and also the petitioner cannot be treated as 'relative' within the ambit of clause (g) of Section 2 is apparent on the plain reading. Similarly, the respondent cannot be a parent within the meaning of Section 2(g) of

the Act that of petitioner on plain reading of aforesaid Sections.

10. However, this Court is required to be sensitive to the object with which the enactment is brought into effect. The division bench of the Delhi High had an occasion to consider this very aspect in the matter of ***Darshana Vs. Government of NCT of Delhi and Ors.*** reported in ***2019(1) ALL MR(JOURNAL) 33.***

11. Rule 3 of the Rules framed by the State of Delhi in categorical terms provides maintainability of the proceedings for the purpose of eviction of persons like the petitioner.

12. The division bench of the Delhi High Court then has proceeded to consider the applicability of the Act and availability of remedy to the party like respondent as against daughter-in-law in paragraph 10 has observed thus:-

“10. In fact, in ***Sunny Paul and Anr.*** (supra) this court relied upon the paragraphs of the judgment of the Division Bench in ***Shadab Khairi and Anr.*** (supra). That apart, in Para 26, the learned Single Judge has stated as under:

26. In the present case, excluding daughter-in-law from the scope of Rule 22(3)(1)(i) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 as amended would debilitate the provisions of the Rules and render it incapable to serve the object of Section 22 of the Act. It is difficult to accept that although a senior citizen is entitled to evict his/her son who is maltreating him, he/she has no option but to suffer the ill-treatment at the hands of his/her daughter-in-law. A daughter-in-law's right to reside in the premises of her in-laws cannot be greater than her husband's. The expression "son and daughter or legal heirs" as used in the aforesaid Rules must also take within its sweep the families of the daughter/son, of a senior citizen. The term "legal heirs" must be understood in the broadest sense. Indisputably, a daughter-in-law is also a heir in certain circumstances (widow of a pre-deceased son)."

13. If we apply the said analogy, what can be noticed is petitioner was married with the deceased son of the respondent. As such, she has stepped into shoes of her deceased husband and is claiming her right over the suit property. The such right to the petitioner is not identified under any of the provisions of law or at least no such provisions are brought to the notice of this Court. Once it is established that the petitioner is claiming through her deceased husband and said person in the capacity of son of respondent is covered within the ambit of statute i.e.

Section 2(a) of the Act.

14. The aforesaid act provides mechanism for need based maintenance to the parents and senior citizens better medical facilities, protection of life and property of old persons etc.. In this background, application for eviction at the behest of respondent/parent is even maintainable against child and grandchild pursuant to the provisions of Section 4 of the said Act. Considering the object of the statute, the provisions therein are required to be liberally construed so as to achieve the object of social justice.

15. If the claim of the petitioner is accepted viz. the daughter-in-law is covered by the provisions of the Act, such interpretation will render the statute meaningless or ineffective.

16. By adding the daughter-in-law like the petitioner to the word 'child', same is to be done by purposeful interpretation so as to have the object of the legislature behind the enactment of the statute to be achieved.

17. This takes me to the next submissions as to whether the petitioner has statutory right to continue in the suit property by taking shelter of the son being born

out of her marriage with son of the respondent.

18. The fact that the petitioner has performed second marriage on 25th May, 2019 with one Sujit Chine is neither disputed before the Tribunal nor before this Court. Once the petitioner loses identity qua the daughter-in-law and enters in lawful relation with third person, definitely petitioner ceased to have any right to stake claim/share in the property of respondent in the background of the object with which the act is enacted.

19. The right, if any, to the grandson of the respondent to succeed to the suit property will be required to be established in an independent proceedings and the petitioner cannot take shelter of being custodian of the son born out of her wedlock with the deceased son of the respondent.

20. In the aforesaid background, once the respondent having established before the Tribunal that the suit property was his self-acquired property, the claim of the petitioner that she in the capacity of widowed daughter-in-law is entitled to continue to enjoy the suit property cannot be accepted. As such, said contentions go completely contrary to the provisions of Section 5 read with rules framed thereunder. In this background, in my opinion, the order impugned is quite justified and within

the framework and object of the Act. No case for interference in the extraordinary jurisdiction of this Court is made out.

21. The petition as such fails, dismissed.

22. The execution proceedings in the aforesaid background are expedited.

[NITIN W. SAMBRE, J.]