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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9296 OF 2022**

Chetana Gopinath

.... Petitioner.

V/s

Mrs. Shyamala Shivshankar

Thakar & Anr.

..... Respondents.

Ms. Shilpa Nagori for the Petitioner.

Ms. Rita Abraham for Respondent No.1.

Ms. Madhubala Kajle 'B' Panel Counsel for the State-Respondent No.2.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 20, 2022

P.C.:-

1] Challenge in the Petition is to the order dated 18/5/2022 passed by Respondent No.2 under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "said Act" for the sake of brevity).

2] Facts necessary for deciding the Petition are as under:-

3] Shivshankar, father of the present Petitioner, was married to Shyamala i.e. Respondent No.1 to the Petition. Petitioner and

Manisha are daughters blessed out of aforesaid wedlock. Shivshankar alleged to have executed registered Will in favour of Respondent No.1- wife, thereby bequeathing property viz Flat in relation to which Respondent No.1 initiated proceedings for summary eviction of the Petitioner. The said proceedings were decided against the Petitioner vide order impugned dated 18/05/2022 passed by Respondent No.2- Tribunal. As such, this Petition.

4] Counsel for the Petitioner while questioning the order impugned, would urge that the Will executed by deceased father Shivshankar in 1997 is a subject matter of Testamentary Suit No.166 of 2016. In the said Testamentary Suit, claim of the Petitioner is that of being entitled to share in the property i.e. Flat, as it is claimed that said property was purchased out of joint family earnings. Drawing support from the judgment of the Apex Court in the matter of *Smt. S. Vanitha vs. The Deputy Commissioner, Bengaluru Urban District and Ors* delivered in Civil Appeal No.3822 on 15/12/2020 contentions are, there exists a composite dispute in relation to property in question, having regard to the aforesaid proceedings in the form of

Testamentary Suit and the claim of the Petitioner. In such an eventuality, it is claimed that the order impugned is not sustainable and is liable to be quashed and set aside, as entitlement of the Petitioner in law to the suit property is *sub judice* in the aforesaid suit. Counsel would then urge that the Petitioner is a single mother and is residing with Respondent No.1-mother since long. It is claimed that Respondent No.1-mother is being looked after by the Petitioner and her son which fact is not digested by other daughter viz Manisha. As such, Respondent No.1 initiated proceedings at the behest of said daughter so as to oust the Petitioner. It is further claimed that Respondent No.1-mother is getting pension and as such she cannot claim that she is entitled to the suit property or eviction of the Petitioner.

5] While countering the aforesaid submissions, Counsel for Respondent No.1 would urge that Petition is liable to be dismissed for non-joinder of necessary party as other daughter Manisha who was non-applicant/Respondent No.1 before the Tribunal is not impleaded. As such, according to her, claim that proceedings are initiated at the

behest of Manisha by Respondent No.1 cannot be looked into. Further contentions are, property in question was purchased by deceased Shivshankar out of his independent earnings and it being his self acquired property, he has every right to bequeath the same in favour of Respondent No.1. It is further claimed that Petitioner has not initiated any suit for partition and possession.

6] I have appreciated aforesaid contentions.

7] Fact remains that Respondent No.1 initiated proceedings before Respondent No.2 for eviction on the ground of cruelty being practiced by the Petitioner and her son. The allegations against the Petitioner in the proceedings moved by Respondent No.1 are that the Petitioner and her son are ill-treating Respondent No.1-mother and son of the Petitioner has tried to assault Respondent No.1. Fact remains that suit property i.e. Flat No.4, Varun – 1 A-Wing, Raheja Township, Malad (East), Mumbai consists of only one bedroom. Petitioner appears to be married, having a grown up son who is informed to be around 22 years of age. It is also brought on record that Petitioner has

independent source of earning, whereas Respondent No.1 is relying on family pension which she receives after the death of her husband.

8] Certain circumstances are narrated in the Application before Respondent No.2-Tribunal as regards violent behaviour of the son of the Petitioner. A specific instance of 01/10/2021 wherein son of the Petitioner has tried to physically assault in a violent way to Respondent No.1 is also brought to the notice of police authorities of which, rightly so, Tribunal has taken note of.

9] The material brought on record before the Tribunal, conduct of grown up son of the Petitioner and the fact that she has an independent source of income has rightly prompted the Tribunal to hold that Respondent No.1 was treated by the Petitioner and her son with cruelty.

10] As regards issue of summary eviction of the Petitioner is concerned, it has to be noted that Respondent No.1 is aged about more than 88 years. Petitioner has also crossed her age of 50 years and has an independent source of income. She has company of her

son. As stated hereinabove, suit property consists of only one bedroom and it will be difficult to accommodate the Petitioner and her son who has treated Respondent No.1 with cruelty in the very same property.

11] Merely because Testamentary Suit is pending, that by itself will not give any leverage to the Petitioner to claim continuation in the suit property. Rather, it was open for the Petitioner to file a suit for partition and separate possession as it is claimed that she has share in the suit property.

12] Fact that Petitioner is contesting Testamentary Suit sufficiently reflects difference of opinion between the Petitioner and Respondent No.1 which also fortifies the claim of the Respondent No.1.

13] In the aforesaid backdrop, Tribunal, in my opinion, was justified in passing the order of eviction of the Petitioner from the suit property. Reliance placed by the Counsel for the Petitioner on the judgment of the Apex Court in the case of *Smt. S. Vanitha*, cited supra, in my

opinion is misplaced for the reason that facts in the said case were based on pendency of proceedings under the Prevention of Domestic Violence Act, whereas in the case in hand, Petitioner has neither initiated nor facing any proceedings but for Testamentary Suit, by virtue of her claim to contest the Will executed by her deceased father in favour of Respondent No.1 – mother. Apart from above, another sister Manisha was party before the Tribunal being Respondent No.1 who is not impleaded in the present proceedings. Fact remains that in the absence of she being party before this Court, contentions of malafides on the part of Respondent No.1 in initiation of proceedings cannot be gone into.

14] In this backdrop, in my opinion, no case for grant of relief is made out. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)