



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1248 OF 2019

Pramod Lakshman Gawand ... Petitioner.

Versus

Tarabai @ Lilabai Lakshman Gawand and Ors. ... Respondents.

Mr. Amar Bhatt i/by Mr. Yogesh D. Keny, for the Petitioner.

Mr. Sachin H. Kankal, for the Respondent No.1.

Mr. Y.D. Patil, AGP for the Respondent-State.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 16, 2024

P. C.:

1. The challenge in the petition is to the order dated 31st October, 2018 passed by the Tribunal under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. By the said order, the Petitioner is directed to handover to the Respondent No.1 possession of the rooms of which forcible possession has been taken by the Petitioner within a period of 7 days from the date of the order.

2. Heard Mr.Bhatt, learned counsel for the Petitioner, Mr.Kankal, learned counsel for Respondent No.1 and Mr.Patil,

learned AGP for the Respondent-State.

3. Mr. Bhatt, learned counsel for the Petitioner submits that the application in question has been filed by one Tarabai and the Aadhar Card at page No.27 of the petition would indicate that lady claims herself to be Lilabai. He would further submit that the Will of his father bequeathed the property to one Tarabai, however, there is no document which has been produced before the Tribunal to show that the Applicant is Tarabai, whereas the Aadhaar card which is annexed at Page 27 of the petition shows the name of Lilabai. According to him, as the identity itself is not established, no order could be passed. He further submits that the Will stated to have been executed by his father is a forged document, as the Will itself records that the father was suffering from Paralysis and as such, he could not have executed the Will. He further submits that the Tribunal without considering all these aspects have passed the order directing him to handover the possession of the 7 rooms.

4. *Per contra*, learned counsel for the Respondent No.1 submits that the application has been made by the step-mother of the Petitioner. He further points out the Will of the Petitioner's

father which is annexed at page No.29 of the petition and would contend that the Will specifically mentions that his first wife Lilabai had expired and thereafter, the marriage between Tarabai and the Petitioner's father had taken place. He would further point out that under the Will, life interest in the rooms is given to Tarabai and thereafter, the property i.e. the 7 rooms is to be divided between the four daughters of Tarabai.

5. Considered the submissions and perused the record.

6. The Application filed before the Tribunal shows the name of Applicant as Tarabai @ Lilabai Lakshman Gawand. The case of the Respondent No.1 is that she is a senior citizen aged 78 years and the Petitioner who is her step-son has thrown her belongings out of the rooms owned by her by virtue of notarised Will of her husband and has started construction on the said premises. It was further pleaded that the complaint in that respect was made to the **Gowandi Police Station** and the BMC. However, no relief was given as she was told that the same was a civil dispute. It is further pleaded that out of the 7 rooms, 5 rooms have been given on rent for her sustenance and that she is residing in two 2 rooms. It is

further pleaded that out of the 9 rooms, 7 rooms were in her possession, whereas the Petitioner was in possession of two rooms. It was further pleaded that without any permission forcible possession of the property was taken and she was abused and assaulted.

7. The Application came to be resisted by the Petitioner and it was contended that the Application has been made only for the purpose of harassment. It was further contended that the Respondent No.1 is not the mother of the Petitioner and that the Respondent No.1 is illegal beneficiary of the pension of his father received from Bhabha Atomic Research Centre, Trombay, Mumbai, in respect of which complaint is already been made. It was further pleaded that the Respondent No.1 was taking advantage of the name of **Lilabai**, which is his mother's name. It was also contended that the Will of his father is forged.

8. The Tribunal had called for the papers on the basis of which pension is disbursed, which showed that the pension is being disbursed in the name of Lilabai, Lakshman Gawand. The Tribunal held that the Will of the petitioner's father is required to

be probated by the Petitioner. The Tribunal held that the objection raised that the Respondent No.1 is not the family member of the Petitioner is contrary to the Will. The Tribunal also observed that the pension is being received by the Respondent No.1 from the Bhabha Atomic Research Centre, Trombay, Mumbai which supports the case of the Respondent No.1. Based on the Will and the fact that the pension was being received by the Respondent No.1, the Tribunal has directed the Petitioner herein to vacate and handover the possession of the property.

9. The proceedings before the Tribunal under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, are summary in nature and the Tribunal is not empowered to decide disputed questions of fact. The Respondent No.1 had come with a specific case that she has been thrown out of the 7 rooms which are now in possession of the Petitioner who is her step-son. In the reply, the Petitioner has admitted that the Respondent No.1 is the recipient of the pension of his father. That being the pleading in the reply to the Application before the Tribunal, the submission which is now sought to be raised

disputing the identity of the Respondent No.1 cannot be accepted. Before the Tribunal, the Petitioner did not contend that there is a dispute about identity of the Respondent No.1. On the contrary, it is specifically contended that Respondent no.1 is the beneficiary of his father's pension, which is illegal.

10. A perusal of the Will, which is annexed at page 29 of the petition would indicate that the Petitioner's father i.e. Lakshman Raghunath Gawand has stated that he had married Tarabai Laxman Gawand after the death of his wife Lilabai Lakshman Gawand and that under the Will, the Respondent No.1 is having life interest in the property. That being so, in event of any dispute as regards the validity of the Will or right, title or interest in the property, or even the dispute as regards the identity of the Respondent No.1 whether the same is Tarabai Lakshman Gawand or Lilabai Lakshman Gawand, the same is required to be agitated in the appropriate Civil Court. Although the Will is of the year 2000, the same is not challenged by the petitioner in any Court of law nor it is contended that he was unaware of the Will. The finding of the Tribunal that Petitioner is required to obtain the

Probate cannot be sustained as the propounder of the Will is the Respondent No.1 and not the Petitioner.

11. Considering that it is admitted by the Petitioner that the Respondent No.1 is the beneficiary of the pension of the Petitioner's father and the Will indicates a bequest in favour of the Respondent No.1, no fault can be found with the order of the Tribunal directing the Petitioner to handover the vacant possession of the 7 rooms. What was required to be adjudicated by the Tribunal was only the restoration of the possession of the 7 rooms which was alleged to have been forcibly taken possession by the Petitioner.

12. Before the Tribunal it does not appear that there was any dispute as regards the identity of the Respondent No.1 and the dispute was only about the relationship that the Respondent No.1 is not the mother of the Petitioner. The title would also indicate that the same has been filed by Tarabai @ Lilabai Lakshman Gawand. It is also admitted that she is the recipient of the pension of the Petitioner's father.

13. In that view of the matter, there is no infirmity in the

order dated 31st October, 2018. Needless to clarify that the Petitioner herein is at liberty to adopt all appropriate proceedings in the Civil Court for establishing his right, title and interest in the property. Petition is devoid of merits and stands dismissed.

(Sharmila U. Deshmukh, J.)

14. At this stage, a request is made for stay of the this order. The order is stayed for a period of six weeks, subject to an undertaking being filed by the Petitioner in this Court within two weeks that in any event no orders are obtained from the Apex Court within a period of six weeks, he will handover the possession of the property.

(Sharmila U. Deshmukh, J.)

(Order is corrected pursuant to the Speaking to the Minutes order dated 25th January, 2024.)