Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2500 OF 2025
AND
INTERIM APPLICATION NO. 2706 OF 2025
IN
WRIT PETITION NO. 2500 OF 2025

Sean Hendricks …Petitioner
Versus
Euphemia Hendricks …Respondent

Mr Abbas Mokhtiar, with Rajesh B Talekar, for the Petitioner.
Mr V.S. Talkute, for the Respondent.
Ms Maureen Gonsalves, sister of Respondent, present in Court.

CORAM G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATED: 24 FEBRUARY 2025

Oral Order (per G. S. Kulkarni, J.) :-

SHEPHALI SANJAY MORMARE

Digitally signed by SHEPHALI SANJAY MORMARE
Date: 2025.03.10 10:13:16 +0530

1. This petition under Article 226 of the Constitution of India challenges an order dated 15 October 2024 passed by the Presiding Officer, Parents and the Senior Citizens Welfare Tribunal, and Sub-Divisional Officer, Mumbai Western Suburbs, directing the petitioner who is the step son of the respondent, Euphemia Hendricks, to vacate the flat in question being Flat No. *202*, 2nd Floor, Silver Arc Cooperative

Society, Poisar Village, Kandivali (West), Mumbai 400 067 (the "said flat").

2. On the earlier occasion (on 21 February 2025) when we heard learned counsel for the parties, we passed an order appointing Mr Sivakumar, Additional Prothonotary & Senior Master, High Court Bombay to visit the place where the respondent is presently residing at Bandra, at her sister's residence and to place on record a report on the health condition of the respondent, as also to ascertain from her, whether the respondent is willing to stay with the petitioner and his fiance Ms Rupali Mhatre at the disputed flat at Poisar, Kandivali, and/or as to what is her real intention. Accordingly, a report has been submitted by Mr Sivakumar, Additional Prothonotary & Senior Master. We have perused the report.

3. The case of the respondent before the Senior Citizens Tribunal against the petitioner was to the effect that the respondent is the joint owner of the said flat with her deceased husband that the respondent never permitted the petitioner to stay in the flat of the petitioner.

4. It is not in dispute that the respondent is an owner of the flat along with her husband Mr. Andrew Hendricks, who passed away in January

2022. Thereafter, in February 2022 the respondent is stated to have been removed from the flat. She is in a state of severe ill health and staying with her sister Ms Maureen Gonsalves, who is herself 84 years old. Ms Maureen Gonsalves is present in the Court. She is taking care of respondent including all her medical needs. We have also perused the medical reports she has placed before us on behalf of the respondent and also the medical reports prior to February 2022 tendered on behalf of the petitioner.

5. Considering the facts and circumstances of the case that the Tribunal has passed an eviction order restoring the possession of the respondent's flat under the Senior Citizens Act, the learned counsel for the petitioner has taken a fair stand. He does not dispute that the flat in question belongs to respondent-stepmother and that *per se* he would not have any legal right to be asserted qua such flat, much less to assert any right to occupy the said flat.

6. We find that today the position is that the respondent being deprived of her premises/the flat in question, her sister Ms Maureen Gonsalves at Bandra, where the Additional Prothonotary & Senior Master

of this Court has visited to ascertain the fact position as per our order dated 21 February 2025.

7. The facts of the case and the position in law appears to be well settled that during the lifetime of the parents, the children (in the present case the step children) cannot assert any legal rights in respect of the property of the parents, so as to claim ownership or possession of the property. It is held in a decisions of this Court, the proper remedy for the petitioner will be to file a suit subject to the rights of the other legal heirs, which cannot be during the lifetime of the respondent-stepmother. In such context in ***Dinesh Bhanudas Chandanshive vs State of Maharashtra & Ors,***[1] a Division Bench of this Court of which one of us (G.S. Kulkarni, J. was a member) in similar circumstances made the following observations:

> "1. An unfortunate saga of a mother, who is a senior citizen, requiring to initiate proceedings against her son and his wife, who illegally ousted her from her abode, is the subject matter of the present proceedings.
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> 16. … … … It is most unfortunate that the mother in the twilight years of her life, after her husband had passed away, instead of receiving love, affection, care and empathy from her sons and their family members (barring the eldest son), was required to take recourse to legal proceedings in approaching the tribunal, being ousted by her son from her house.

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1 2024 SCC OnLIne Bom 336: AIR 2024 Bom 136: (2024) 2 AIR Bom R 757: (2024) 2 Bom CR 740.

17. The object and intention of the act is to make provisions for maintenance and welfare of the parents and senior citizens guaranteed and recognized under the Constitution. The Statement of objects and reasons of the enactment clearly set out the intention behind the legislation recognizing the core human values of empathy, namely, that the traditional norms and values of the Indian Society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family, consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. That ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. It is also set out that though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time consuming as well as expensive, Hence, a need was felt to have simple, inexpensive and speedy provisions to claim maintenance for parents. It is with such solemn intention the Parliament has enacted the Senior Citizens Act.

22. As seen from the above decisions, it is quite settled that during the life time of the parents, the children cannot assert any legal right whatsoever in respect of the property of their parents claiming exclusive ownership or possession of the parents property. The proper remedy for the petitioner would be to file a suit in the event the other brothers are also claiming any right in the premises and this cannot be during the life time of the mother.

23. Thus, applying the provisions of the Senior Citizens Act and the law as laid down and interpreted in the aforesaid decisions, in our opinion, we do not find any perversity and illegality in any of the findings of the Tribunal. We are hence not persuaded to accept the contentions as urged on behalf of the petitioner. It appears to be quite clear that the mother was residing in the tenement after the demise of her husband in the year 2015. There is no material on record that she has any other independent premises where she can otherwise stay. It also appears that the petitioner had entered the premises visiting the mother and later on refused to remove himself from the premises and obtained occupation of the premises by creating circumstances to achieve her removal from her own

> house. She could not have suffered a "living hell" in her own house. The mother in such circumstances appears to have taken shelter at the small tenement of her elder son Vijay, who is himself in difficult financial situation. It appears that the petitioner also refused to maintain the mother and provide her basic medical needs apart from food and clothing requirements. Also there is no denial of the fact that the petitioner although has his own tenement, the intention of the petitioner to oust the mother was to create third party rights in respect of the tenement. There is no denial of such case as pleaded in the reply affidavit. In our opinion, the above circumstances are quite glaring and it was imperative and imminent for the Tribunal to exercise jurisdiction under the act to pass an order directing the petitioner and his wife to be removed from the premises."

8. In a decision of a Single Judge of this Court (one of us G.S. Kulkarni, J.) in ***Ashish Vinod Dalal & Ors vs Vinod Ramanlal Dalal & Ors***[2] again in a similar context held as under:

> "11. The statement of object and reasons in paragraph 3(c) reflects the intention behind the legislation also to provide for institutionalization of the suitable mechanism for protection of life and property of older persons. Thus, it was certainly appropriate and necessary for the parents in the facts of the present case to invoke the provisions of the Senior Citizens Act to seek a relief against the petitioners qua their property namely the flat in their possession.
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> 12. This is a classic case where the petitioner nos.1 and 2 intend to prevent the parents from leading a normal life at their old age of about 90 years. The several legal proceedings between the parties are the evidence of the feeling of torture and harassment by the parents. The property in question is not an ancestral property on which the petitioner no.1 can claim any legal right so as to keep himself on such property along with his family and foist themselves on the parents against their wishes by remaining on the property without any legal rights.

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2 2021 SCC OnLine Bom 2976: (2022) 1 Mh LJ 511 : (2022) 233 AIC 590.

> This itself is a harassment and/or defeating the parents right to lead a normal life.
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> 13. The tribunal in the impugned order has rightly recognized the rights of the parents on the property, namely the flat in question, in respect of which on the petitioners' own showing there is not a semblance of any right vested in them.
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> 14. Before parting and having noticed that this is a case where the old parents are suffering at the hands of petitioner no.1 the only son and petitioner no.2 – daughter-in-law, it appears that there is certainly some element of truth in the popular saying that "Daughters are daughters forever and sons are sons till they are married" albeit there would surely be exemplary exceptions. Be that as it may, the present case is a sad story of desperate parents who intend to be in peace at such advanced stage in life. Whether such bare minimum expectations and requirement should also be deprived to them by an affluent son, is a thought which the petitioners need to ponder on. Petitioner no.1 appears to be totally blinded in discharging his obligations to cater to his old and needy parents and on the contrary has dragged them into litigation. The vehemence with which arguments were advanced by the learned Counsel for the petitioners also bears testimony to the approach of the petitioners. It is painful to conceive that whatever are the relations between the son and the parents, should the son disown his old aged parents for material gains ? This has become more clear from what Mr. Khandeparkar has said, that recently father was required to be hospitalized. In the entire vehemence of the submissions advanced on the flat, not a whisper was uttered on behalf of the petitioners on any attention the petitioners would like to provide to the father's medical need. I am certainly wrong in presuming such expectations from petitioner nos.1 and 2 considering their relations with the parents."

It appears that what was observed by the Court in paragraph 14 of the aforesaid decision appears to be quite relevant as the respondent's sister who is herself a senior citizen is also a daughter of the parents of the respondent is presently looking after and taking care of the respondent.

9. Contrary to such assumption, the petitioner has asserted that sometime in February 2022, the respondent-step mother was kidnapped. It is difficult to believe that a person who is suffering from partial alzheimer and not in good health could be kidnapped. Be that as it may, in our opinion, this is a fit case where the Tribunal has taken a just and legal view to pass the impugned order. It requires no interference either on the ground of any perversity or any illegality.

10. In the facts and circumstances of the case, the learned counsel for the petitioner has however fairly accepted that the petitioner would not have legal right to continue to reside in the premises with his fiance Rupali Mhatre. He accordingly makes a statement that he will withdraw this petition and remove himself from the said premises within a period of fifteen days from today.

11. Accordingly, let the premises (Flat No. ***202***, 2nd Floor, Silver Arc Cooperative Society, Poisar Village, Kandivali (West), Mumbai 400 067) be vacated by him. The vacant premises be handed over to the representative of the Court Receiver, High Court, Bombay or if it is intended to be vacated on earlier date, 48 hours working days' notice be

given to the advocate for the respondent as also to the Office of the Court Receiver, High Court, Bombay. Ordered accordingly.

12. Considering the facts and circumstances of the case, we permit the that the respondent is looked after by her sister Ms Maureen Gonsalves and the other sisters, if they so desire. They shall take care and provide all medical facilities and assistance to her in the flat in question. The petitioner, if desires, can have visitation rights by video conferencing on every Sunday for fifteen minutes between 10.00 am to 10.30 am. The cellphone number for such video conferencing be provided by the respondent's sister to the advocate for the respondent, who shall then communicate the same to the advocate for the petitioner.

13. Before parting, we may also observe on a significant aspect of the matter, namely, that when the respondent had her own premises wherein she would be entitled to reside and could be medically treated, it cannot be a situation that merely because such premises are not made available to her and/or she is removed from her premises, a situation is brought about that she foists herself on the third parties and in the present case her sister, who has her independent legal right to enjoy her own premises along with her family members. Thus, any unwarranted foisting of the respondent or

on her sister's premises when she has her own premises to which she is entitled to occupy, would result in the sister's legal rights being violated to enjoy her property right guaranteed under Article 300A of the Constitution. Be that as it may be, Ms Maureen Gonsalves along with her other sisters is willing to take care of the respondent and also provide a medical attendant, if the need so arises in the respondent's flat. We accept her stand. A copy of this order be forwarded to the Office of the Court Receiver, who shall take appropriate steps.

14. Learned counsel for the petitioner makes a statement that the arrears of amount of maintenance shall be paid by the petitioner within a period of fifteen days from today and, in so far as the future maintenance is concerned, it shall be paid as directed by the Tribunal before the 10th day of every month. The statement as made on behalf of the petitioner is accepted. The same be deposited by the petitioner in the account number of either the respondent or her sister, which be provided to the petitioner.

15. We appreciate the fair stand taken on behalf of the parties. The petitioner to deposit costs of Rs. 3,000/- with the Additional Prothonotary & Senior Master and the costs of Rs. 2,000/- with the Office of the Court Receiver.

16. The petition is, accordingly, disposed of in the above terms. No costs. In view of disposal of the petition, interim application does not survive. It is also disposed of.

17. Interim or ad-interim orders, if any, shall stand vacated forthwith.

18. All concerned to act on an authenticated copy of this order.

19. In the event of any serious ill-health, the sister of the respondent shall inform all the step children of the respondent of her ill-health.

(ADVAIT M. SETHNA, J.) (G. S. KULKARNI, J.)

Note: This order is modified as per order dated 5 March 2025 for speaking to the minutes.