

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

WRIT PETITION NO. 9002 OF 2023

Vijay Shantaram Desai

...Petitioner

V/s.

Shantaram Shankar Desai and Anr.

...Respondents

**WITH
WRIT PETITION NO.11744 OF 2024**

Vijay Shantaram Desai

...Petitioner

V/s.

Shantaram Shankar Desai and Ors.

...Respondents

Mr. Prashant D. Patil *for the Petitioner.*

Dr. Uday Warunjikar *with Mr. Jenish D. Jain and Mr.
Dattaram Bile i/b. Mr. Sumit Kate for Respondent No.1.*

Ms. Dhruti Kapadia, *AGP for Respondent No.4-State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 10 January 2025.

P.C. :

1) Writ Petition No.9002 of 2023 challenges order dated 19 June 2023 passed by the Maintenance Tribunal directing Petitioner to vacate the possession of the house of Respondent No.1-senior citizen. It appears that the Maintenance Tribunal

did not grant prayer of the Respondent No.1-senior citizen for award of monthly maintenance on account of which he filed appeal before the Appellate Authority. The Appeal was allowed by order dated 18 December 2023, which order is challenged in Writ Petition No.11744 of 2024. Petitioner and other son (Respondent No.2) are directed to pay maintenance of Rs.1,500/- each to the senior citizen by the Appellate Authority vide order dated 18 December 2023.

2) While Petitioner does not have any grievance about payment of maintenance of Rs.1,500/- by him to the senior citizen he has still challenged order dated 18 December 2023 only because the same confirms the earlier direction of the Maintenance Tribunal dated 19 June 2023 for vacation of the house. Thus, the real grievance of the Petitioner in these two Petitions is with regard to the direction of the Maintenance Tribunal for vacation of the house.

3) I have heard Mr. Patil, the learned counsel appearing for the Petitioner, Dr. Warunjikar, the learned counsel appearing for Respondent No.1-senior citizen and Ms Kapadia for Respondent - State.

4) After having heard the submissions canvassed by the learned counsel appearing for the parties, there appears to be no dispute to the position that the house in question is actually owned by Respondent No.1-senior citizen. Petitioner relies upon

Transfer Deed allegedly executed by the senior citizen in his favour by which the house admeasuring room 12 x 10 sq.ft is shown to have been transferred in his name by the senior citizen. The said Transfer Deed is neither adequately stamped nor registered and it is highly questionable as to whether Petitioner can claim any right, title or interest in the room in question on the basis of the said Transfer Deed. The position that appears as of now is that Respondent No.1-senior citizen continues to be owner in respect of the room in question. Since Respondent No.1-senior citizen does not reside with the Petitioner and is made to reside somewhere else, I do not find any patent error in the order passed by the Maintenance Tribunal in directing Petitioner to vacate possession of the said room. In fact, during the course of hearing of the present Petition it is borne out that Petitioner himself does not reside in the said room and has rented out the same to third party. I therefore, do not see any difficulty why Petitioner should not vacate the possession of the room and hand it over to Respondent No.1-senior citizen. Resultantly, I do not find any reason to interfere in the impugned orders. Writ Petitions are accordingly **rejected**.

5) Petitioner shall however, be at liberty to file Civil Suit for claiming right in respect of the room in question.

6) After the order is dictated, Mr. Patil would pray for reasonable time to vacate the possession of the room in question as the same is rented out to a licensee. Accordingly, Petitioner is

granted time of two months to vacate possession of the room and hand it over to Respondent No.1-senior citizen.

[SANDEEP V. MARNE, J.]