

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.19487 OF 2024

Sandeep Ravinder Garud and Ors.

...Petitioners

V/s.

The State of Maharashtra and Ors.

...Respondents

Ms. Gauri Joglekar with Mr. Praful Patil, Mr. Prasad M. Hamunkar
and Ms. Divya Thorat i/b. M/s. Meraki Legal Associates for the
Petitioners.

Mr. B.B. Dahiphale, AGP for Respondent -State.

Mr. Shaunak Bhatt i/b. Mr. Jayesh Bhatt for Respondent No.5.

CORAM : SANDEEP V. MARNE, J.

Dated : 6 January 2025.

P.C. :

1) Petition challenges order dated 28 October 2024 passed by the Appellate Tribunal and Additional Collector, Mumbai Suburban District dismissing Petitioners' Appeal No.49 of 2024 and confirming the order dated 26 July 2024 passed by the Maintenance Tribunal under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007. By order dated 26 July 2024, the Maintenance Tribunal has directed the Petitioners to vacate the possession of Room No.15 and handover the vacant possession thereof to Respondent No.5-senior citizen.

2) I have heard Ms. Gauri Joglekar, the learned counsel appearing for the Petitioners and Mr. Shaunak Bhatt, the learned

counsel appearing for Respondent No.5 and Mr. Dahiphale, the learned AGP for Respondent Nos.1 to 4-State.

3) Having considered the submissions canvassed by the learned counsel appearing for the parties, there appears to be great deal of confusion regarding the exact relationship between Petitioner No.1 and Respondent No.5-senior citizen. Ms. Joglekar repeatedly canvassed before me that Petitioner No.1 is real nephew of Respondent No.5. However, in paragraphs 1 and 5A of the Petition, Petitioners have averred that Petitioner No.1 is the adoptive son of Respondent No.5. Similarly, in the letter dated 20 August 2021 addressed to the Senior Police Inspector, Petitioner No.1 took a specific plea that he is the son of Respondent No.5. However, it appears that on account of inability of Petitioners to lead any evidence in support of claim of adoption, they have now conceded to the position that Petitioner No.1 is not the adoptive son of Respondent No.5. Instead, a plea is now raised that Petitioner No.1 is the real nephew of Respondent No.5. It is sought to be suggested that Room No.15 was originally in the ownership of grandmother of Petitioner No.1 and that therefore, father of Petitioner No.1 had 50% share in Room No.15, which has been inherited by Petitioner No.1. However, this story has not been pleaded anywhere either in the pleadings filed before the Maintenance Tribunal or Appellate Tribunal as well as in various correspondence made to various authorities. As of now Room No.15 appears to be in the name of Respondent No.5-senior citizen. If Petitioners believe that Petitioner No.1 has any right, title or interest or share in Room No.15 it will be open for Petitioner No.1 to institute appropriate civil proceedings by filing a Suit for partition for claiming share in Room No.15. As of now, there is nothing on record to indicate any semblance of right in favour of Petitioner No.1 in respect of Room

No.15. In fact, the very claim of Petitioners that Petitioner No.1 is real nephew of Respondent No.5 is not borne out by records in any manner. However, in case Petitioners can establish Petitioner No.1 is the real nephew of Respondent No.5 and is entitled to inherit any share in Room No.15, it will be open for Petitioners to adopt necessary proceedings in respect of the said claim.

4) Maintenance Tribunal has rightly passed order dated 26 July 2024 directing the Petitioners to vacate possession of Room No.15. The Maintenance Tribunal cannot adjudicate the alleged claim of Petitioners about 50% share in Room No.15. It is highly doubtful whether such claim was even raised before the Maintenance Tribunal by the Petitioners. They have not produced copy of the reply filed before the Maintenance Tribunal alongwith the Petition.

5) Considering the above position no interference is warranted in the impugned order passed by Appellate Tribunal. The Writ Petition is devoid of merits, and it is accordingly **dismissed**. However, it is clarified that dismissal of the Petition shall not come in the way of Petitioners exercising remedy in respect of their alleged claim of share in Room No.15 before the appropriate court of law.

[SANDEEP V. MARNE, J.]