

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 12195 OF 2025
IN
FIRST APPEAL NO. 1930 OF 2025

Rekha Deepak Shinde ...Applicant

IN THE MATTER BETWEEN

Mandakini Gopal Shinde (since deceased) ...Appellants
through her Lrs 1(a) to 1(c)

Versus

Gopal Ganpatrao Shinde (deleted since ...Respondents
deceased) and Ors.

WITH
INTERIM APPLICATION NO. 12196 OF 2025
IN
FIRST APPEAL NO. 1931 OF 2025

Rekha Deepak Shinde ...Applicant

IN THE MATTER BETWEEN

Rekha Deepak Shinde & Ors. ...Appellants

Versus

Arvind Gopal Shinde and Ors. ...Respondents

Mr. Prashant Karande a/w Mr. Praful Pawar and Mr. Sudam Patil for the
Applicants in both IAs.

Ms. Neeta Karnik, Senior Advocate with Rudresh Jagdale i/b Rohit
Mangsale for Respondent No.2 in IA/12195/2025 & Respondent No. 1
in IA/12196/2025.

CORAM : M.M. SATHAYE, J.
DATE : 19th DECEMBER, 2025

P.C. :

1. Heard learned Counsel for the parties. Perused the record.

2. These two appeals are arising out of common Judgment and Decrees dated 08.08.2025 passed in Suit No. 3348 of 2013 and Suit No. 1316 of 2014. Appellants (younger daughter-in-law and grandchildren) are claiming through mother – original Plaintiff in Suit No. 3348 of 2013. Other suit is filed by father and elder son.

3. Above applications are filed by Appellant – Rekha Deepak Shinde praying for interim stay to the impugned Judgment and Decree in both suits, for interim injunction restraining Respondent Society from acting upon Gift Deed dated 26.07.2012, for interim injunction against Respondent Mr. Arvind Gopal Shinde from creating third party interest or parting with notional possession of suit flat and from disturbing the Applicant's possession thereof.

4. Suit No. 3348 of 2013 is dismissed and therefore, there is no question of granting stay to the dismissal. Prayer to that extent is rejected.

5. Suit No. 1316 of 2014 has been decreed, thereby restraining the Appellants from entering and/or remaining upon or using any portion of the suit flat and from disturbing the exclusive possession of Arvind Gopal Shinde and also from dispossessing him from the suit flat.

6. Suit No. 3348/2013 was filed by the Appellants seeking declaration that the Appellants are entitled to 50% undivided share in right, title and interest in the suit flat and to declare that Gift Deed dated 26.07.2012 executed by Dr. Gopal Ganpatrao Shinde in favour of elder son Arvind Gopal Shinde is not binding on the Appellants. Perpetual injunction was sought against Society from acting upon the

said Gift Deed. Perpetual injunction was also sought against Arvind Gopal Shinde from creating third party interest or parting with notional possession of suit flat. Perpetual injunction was also sought restraining Arvind Gopal Shinde from disturbing the Appellants' possession.

7. The suit was initially filed by the mother in the family-Smt. Mandakini Gopal Shinde against her husband (father in the family) Gopal Ganpatrao Shinde and elder son Arvind Gopal Shinde and the younger son Deepak Gopal Shinde. During pendency of the suit, original Plaintiff Mandakini expired and the younger son Deepak also expired and the legal heirs of Deepak were transposed as Plaintiffs.

8. As on today, for all practical purposes, the dispute is between elder brother-in-law - Arvind Gopal Shinde and younger sister-in-law Rekha Deepak Shinde, who are fighting for the suit flat which is Flat No.1 on the first floor of building known as 'Amar Kunj', Plot No. 1/377 situated at Shivaji Park, Dadar (W), Mumbai. It is about 850 sq. ft. carpet area flat, according to Mr. Karande. Needless to mention that the dispute between the brother-in-law and sister-in-law is in respect of a valuable property located at prime location at Dadar, Mumbai, worth crores.

9. The case of original Plaintiff Smt. Mandakini was as under. That she has contributed part of the consideration at the time of purchase of the suit flat some time in 1969. That she contributed the money from her saving in the kitty. That her elder sister Sanjivini used to visit Mumbai, whose 2 children Arun and Usha used to stay with Mandakini and her husband for better education. That the said Sanjivini used to pay cash of Rs.100/- per month for reimbursement of expenses

of her children. That she had money from selling her *stridhan* and using such money (stridhan and kitty) she had contributed Rs.10,500/- for the purchase of the suit flat.

10. The father of elder son contested the suit contending *inter alia* that the suit is false and frivolous. That father has executed Gift Deed in favour of elder son and the elder son has become owner. That the younger son Deepak was a wasted person and heavily alcoholic. That Smt. Mandakini had no right, title and interest in the suit flat. That the legal heirs of Deepak i.e. transposed Plaintiffs have harassed the father and elder son physically and mentally. That the daughter in the family (Defendant No.5 in Suit No. 3348/2013 – Vijaya) has supported the case of father and elder son. That police complaints were required to be filed in view of the harassment.

11. The Trial Court, after framing necessary issues in both the suits, under common impugned Judgment, held that it is not proved that Smt. Mandakini had contributed any funds for the purchase of suit flat or has become owner of 50% share therein. It is held that Smt. Mandakini and legal heirs of younger son Deepak could not prove that Gift Deed executed in favour of elder son Arvind is invalid. It is further held that the father and son has proved that the father has acquired the suit flat from his independent income and title of the suit flat has been transferred to elder son Arvind under Gift Deed. It is further held as proved that the Appellants (legal heirs of younger son Deepak) are unauthorisedly obstructing the father and elder son from enjoying the possession of the suit flat. On appreciation of evidence, the suit filed by the Appellants is dismissed and suit filed by Respondent Arvind has been decreed as aforesaid. Under the impugned decree, the Appellants

are directed to vacate the suit flat and handover the possession to Respondent Arvind.

12. Learned Counsel Mr. Karande for the Appellants submitted that the Appellant - Rekha is about 61 years old and the decree of possession must be stayed. He submitted that the Appellants are claiming only 50% share and there is no obstruction to Respondent Arvind for use of suit flat. It is submitted that one bed room with balcony and common bathroom/toilet is being used by Appellant - Rekha and some articles / goods are kept in old kitchen (converted into room by Dr. Shinde). He submitted that about 220 sq ft carpet area is in her use. He submitted that the Society must be directed not to act on the Gift Deed. He submitted that under Order dated 17.11.2014 passed by this Court, the Society was restrained from acting upon Gift Deed and in criminal appeal filed by Appellant - Rekha against father Gopal and elder son Arvind, under order dated 01.03.2021, they were restrained from disturbing peaceful possession of Appellant - Rekha in respect of master bedroom No.1 of the suit flat in a Domestic Violence dispute. He submitted that under order dated 27.06.2023 passed under Domestic Violence Act, Arvind was restrained from dispossessing the Appellant - Rekha from suit flat without following due process of law.

13. Learned Senior Advocate Ms. Karnik appearing for Respondent-Arvind, on the other hand opposed grant of any interim relief. She submitted that father and elder son of the family have suffered physical and mental harassment at the hands of Appellant - Rekha. She submitted that father and elder son faced criminal cases under the Protection of Women from Domestic Violence Act, 2005. She submitted that despite court-commissioner being appointed by the Trial Court to examine original Plaintiff Smt. Mandakini, the present

Appellant - Rekha made sure that Smt. Mandakini did not lead evidence, even on commission. She submitted that there is no evidence in support of the case of contribution of funds by Smt. Mandakini and oral evidence led is of daughter of Mandakini's elder sister, who has deposed on the basis of what is allegedly told to her by her mother Sanjivini. She submitted that no indulgence should be shown to the Appellants. She disputed that only 220 sq.ft. area is in Appellants' possession. She submitted that there is no restrain order against the parties in the suit.

14. I have considered the submissions and perused the impugned Judgment. Trial Court has found that frivolous applications are moved by Appellant - Rekha against father-in-law and elder brother-in-law in the family and that they were made to face unwarranted litigation. It is also seen from the record that police complaints were required to be filed between the parties.

15. Brother-in-law (elder son) and sister-in-law (wife of younger son) in a family are fighting with each other tooth and nail, and both sides are bent upon pressing allegations against each other. Valuable property at prime location of Mumbai seems to be the driving factor. Close family members have kept aside relationship and are fighting like enemies. In that view of the matter both sides do not deserve any sympathetic consideration.

16. On going through the impugned judgment, *prima facie*, evidence led in support of the case of contribution made by mother Smt. Mandakini is very weak. The Gift Deed executed by father in favour of elder brother has been found to be valid. On appreciation of evidence,

the Appellants are directed to vacate the suit flat. In such circumstances, if the impugned decree is to be stayed, then Respondent Arvind will be deprived of the fruits of the decree.

17. Appellants are claiming right in the suit flat under an alleged Will of mother Smt. Mandakini by which alleged 50% share in the suit flat is bequeathed in their favour. There is no dispute that a testamentary suit is pending in this Court about the alleged Will and the Respondent Arvind is contesting the same. It is also not disputed that there is no order in favour of Appellants in the said testamentary suit on the basis of alleged Will.

18. In such factual background, there is apparently no strong *prima facie* case in favour of Appellants. Nor she deserves any special consideration on the basis of age etc. in view of the conduct recorded in the impugned Judgment. As the substantive first appeal is pending, the decree of possession needs to be stayed; however, the same cannot be ordered unconditionally. The Appellants must compensate Respondent Arvind by deposit of market rent.

19. The claim of 50% share on the basis of case of contribution of funds by Smt. Mandakini and its alleged bequeath through Will, both are not proved as on today. Therefore, the Appellants must compensate Respondent Arvind at market rent for 100% area of the suit flat.

20. Mr. Karande has placed on record 2 leave and license documents dated November 2025 and August 2023 of flats in surrounding area. Said documents indicate market rent of about Rs. 20,000/- to Rs. 40,000/- per month for small flats of 200-350 sq. ft.

These are very small flats as compared to suit flat.

21. Mr Karande for the Appellants submitted that market value of the suit flat is something between Rs.2 to 2.5 crores.

22. Ms. Karnik for the Respondents, has placed on record one leave and license document dated July 2025 for 1000 st. ft flat at Dadar in the vicinity showing market rent as Rs. 1,20,000/- per month (Rs. 120/- per sq.ft. per month). Mr. Karande submits that this a new building of 2007 and must be in better condition. Another leave and license is of October 2025 for 550 sq. ft. flat in Bandra area, away from suit flat.

23. Considering the market price suggested by the Appellants themselves of Rs. 2.5 Crores, and further considering that the immovable property such as flat in the city of Mumbai fetches about 3% of the market price as annual rental income, the suit flat is worth fetching about 7,50,000/- per year which translates to Rs.62,500/- per month (Rs. 73/- per sq.ft. per month). However considering that a flat of 1000 sq.ft. area in the vicinity is fetching much higher amount, suitable increase in assessment is necessary also keeping in view that suit flat is old one. Considering these figures, average of Rs. 120/- and Rs. 73/- = Rs. 95/- per sq. ft. per month can be taken as a safe figure. Accordingly, market rent for the suit flat is fixed at Rs. 80,750/- per month.

24. In that view of the matter, the interim applications are disposed of by passing following order.

(i) **Subject to condition** of Appellants depositing Rs.80,750/- per month in this Court on or before 10th of each month

starting from 01.01.2026, the impugned decree (to the extent that it directs vacating the suit flat and handover of possession) is stayed.

(ii) The Respondent Society is restrained from acting on the Gift Deed in favour of Respondent Arvind.

(iii) In case of any 2 consecutive defaults, the above interim relief shall stand vacated.

25. The Appellants are restrained from obstructing the Respondents in their entry, egress, use, occupation and enjoyment of entire suit flat.

26. At this stage, a request is made by learned senior Advocate for the Respondents No.2 that the Appellants be restrained from creating third party interest or from inducting third person in the suit flat since the decree of eviction is stayed and the society is also directed not to act on gift deed. Learned Counsel for the Appellants submits that no such injunction existed during pendency of the suit nor there was any such apprehension expressed earlier.

27. Considering that on appreciation of evidence, the suit has been decreed in favour of Respondent No.2 accepting his exclusive ownership and further considering that the possession of the Appellants is being protected under the above conditional stay, the Appellants are directed to file undertaking in this Court within a period of 4 weeks from today that they shall neither create third party interest nor induct any third person in the suit flat. The conditional stay granted above shall operate only after filing such undertaking.

28. Interim Applications are disposed of in above terms.

(M.M. SATHAYE, J.)