

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.197 OF 2025
WITH
INTERIM APPLICATION NO.6479 OF 2025
IN
APPEAL FROM ORDER NO.197 OF 2025

Desmond Gabriel Desa and Anr. .. Appellants
Versus
Basta Philomena Desa and Anr. .. Respondents

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• Mr Dharmendra Damani, Advocate for Appellants.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 18, 2026.

P.C.:

1. Heard Mr. Damani, learned Advocate for Petitioners .
2. This Appeal from Order challenges the order dated 17.03.2022, passed in Notice of Motion 1562 of 2021 in Civil Suit 3352 of 2019 passed by learned Trial Court. The Motion was taken out by Appellants who are Defendant Nos. 1 and 2 before Trial Court seeking direction for execution of Permanent Alternate Accommodation Agreement (for short “PAAA”) in respect of suit premises. The said request is rejected by Trial Court. Civil Suit is filed in 2019 by Basta Philomena Desa (Plaintiff) who is mother of Defendant No. 1, Desmond Desa and Defendant No. 3, Debra Lobo. Defendant No. 2 is wife of Defendant No. 1.

3. Case of Plaintiff is that she acquired the suit premises from her own funds and permitted Defendant No. 1 – son and his wife (Defendant No. 2) to stay in the suit premises. The suit premises is a flat situated in Highrise Cooperating Housing Society Borivali. The original Agreement for Sale of suit premises however stands in the names of Defendant No. 1 and Plaintiff as joint purchasers. Name of Defendant No. 1 is at Sr. No. 1 and name of Defendant No. 2 is at Sr. No. 2.

4. Mr. Damani informs the Court that in the interregnum i.e., very recently on 06.04.2026, Plaintiff Basta Philomena Desa expired. He places on record Funeral Service Report of the cemetery where Plaintiff was buried. He would submit that her Death Certificate is not yet received from the Municipal Corporation and will be received shortly.

5. In his usual fairness, he would submit that Plaintiff Basta Philomena is survived by 4 children namely Defendant No. 1 – son and Defendant No. 3 – daughter and third son Denzil Desa and fourth daughter Doris Mascarenhas both residing in Canada. He would submit that both Denzil and Doris are not party to the suit proceedings concerning the suit premises / flat. Dispute in suit premises was between the mother Basta and her son Desmond i.e. Defendant No. 1 only. He would submit that Plaintiff recently filed Application in Trial

Court for transposition of Defendant No.3 i.e. her daughter as Plaintiff No. 2 for prosecuting the Suit along with her. He would submit that in the view of Plaintiff's untimely demise, her legal heirs would be required to be impleaded which includes her son and daughter residing in Canada.

6. He would submit that in the interregnum, Plaintiff, prior to her demise executed a registered Gift Deed of the suit premises in favour of Defendant No.3 – daughter and therefore Plaintiff had filed Application for impleadment of Defendant No. 3 as Plaintiff No. 2 . Next he would submit that Defendant No. 1 – Desmond, who is Appellant No. 1 before this Court, separately challenged the Gift Deed given by his mother Basta i.e. Plaintiff in a separate Suit proceeding which is pending in the Civil Court. Lastly, he would submit that suit premises is situated in a building which is 40 years old and is going for re-development. He would submit that it is admitted case of Plaintiff that Defendant No. 1 and 2 were residing in the same flat and Plaintiff had moved along with her daughter namely Defendant No. 3 and was staying separately with her. In such a scenario, he would persuade the Court to pass appropriate orders in accordance with the decisions of the Court in such re-development matters while title is in dispute and pending adjudication in accordance with law as laid down in the case of *Ritesh Halder V/s. Elite Housing LLP and Ors.*¹ and *Vipul*

¹ Commercial Arbitration Appeal (L) No.14486 of 2025 decided on 24th June 2025

Fatehchand Shah V/s. Nav Samir Cooperative Housing Society and Ors,² inter alia, pertaining to payment of transit rent, corpus and other charges.

7. I have heard Mr. Damani and perused the record on the case. *Prima facie*, Mr. Damani is right since the case of Appellants is squarely covered by the aforementioned decisions of this Court. It is also seen that present matter has been listed on board since December 2024 and Respondent Nos. 1 and 2 namely Plaintiff and Defendant No. 3 have been duly served. The matter has reached hearing on several dates previously and it is seen that none has appeared for Plaintiff and Defendant No. 3 in present Appeal from Order. Affidavit of service is filed and taken on record. The matter was listed before this Court on 05.02.2026 when none appeared for the Plaintiff and Defendant No.3. Unfortunately Plaintiff expired on 06.04.2026 i.e. between 05.02.2026 (last date) and today. Today when the matter is called out, none appears for Defendant No.3 who is Respondent No.2 herein.

8. On merits is it seen that the only reason for rejection of Defendant Nos. 1 and 2's Motion by Trial Court is due to injunctive relief passed against them in 2019 restraining them from creating third party rights because they are in possession of suit premises. However if Society is going for re-development and parties are before

² Commercial Appeal (L) No.25162 of 2023 decided on 10th October 2023

Court, then Court will have to step in and pass appropriate orders to determine the *inter se* rights *qua* transit rent, corpus and other charges receivable by the parties on handing over of suit premises / flat to Developer/ Society. However, in the present case, unfortunate incident of Plaintiff passing away has occurred. Plaintiff is survived by four children as stated hereinabove. Plaintiff gifted her share in suit flat to Defendant No. 3 by registered Gift Deed. Hence, in these circumstances at the outset, record of the case needs to be completed in terms of array of parties and necessary amendment. In my opinion, in such facts where Plaintiff has expired, case of Defendant Nos. 1 and 2 will be covered by the decisions of this Court regarding re-development and orders to be passed in the interim. I will refrain from doing the same and direct the Trial Court to undertake said exercise in accordance with law and settled decision of this Court.

9. In case of *Ritesh Halдар (Supra)* and *Vipul Fatehchand Shah (Supra)* subject to appropriate steps being taken by heirs of the deceased Plaintiff to amend the clause title of suit Plaint and implead all proper and necessary parties thereto. It is directed that the reason mentioned by Trial Court while passing the impugned order is not correct merely because there is injunction in favour of original Plaintiff granted by Trial Court earlier. No right of original Plaintiff will be defeated if appropriate orders are passed in such re-development

matters. Case of Defendant Nos. 1 and 2 is squarely seeking execution of PAAA on the premise that they are in possession. Hence until the *lis* of entitlement is determined between Plaintiff and Defendant No.1 there can be no impediment for Trial Court to pass appropriate orders for execution of PAAA, transit rent, corpus and for other charges in accordance with the principles laid down in the aforementioned rulings / decisions of this Court. Though I am aware of fact that Plaintiff has expired in so far as the principle of law is concerned, the same has not been applied correctly by the learned Trial Court however Trial Court cannot be blamed for the same since it passed its order prior to the above decisions of this Court and did not have benefit of the said decision.

10. Hence, in the above facts and circumstances appropriate order would be set aside the order dated 17.03.2022 and direct the Trial Court to re-determine and decide Notice of Motion No.1562 of 2021 in accordance with law after the necessary parties are all impleaded by the heirs of deceased Plaintiff. Hence order dated 17.03.2022 is set aside. Leave and liberty is given to Defendant No. 3 and other two children of Plaintiff who are living in Canada to implead themselves in the Civil Suit and Notice of Motion No.1562 of 2021 in accordance with law. Once the impleadement is complied with the learned Trial Court is directed to re-hear Notice of Motion No.1562 of

2021 in accordance with law and after hearing all parties thereto pass appropriate order. If legal heirs of Deceased Plaintiff apply to Trial Court, it shall allow said applications for impleadment in accordance with law. All contentions of the parties are expressly kept open.

11. With the above directions Appeal from Order No.197 of 2025 and Interim Application No. 6479 of 2025 are both disposed.

[MILIND N. JADHAV, J.]

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