

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 243 OF 2025

Sandesh Suresh Dhurie

Appellant

.. (Org. Plaintiff)

Versus

Hrishikesh Suresh Dhurie

Respondent

.. (Org. Defendant)

WITH

APPEAL FROM ORDER NO. 421 OF 2025

WITH

INTERIM APPLICATION (ST) NO. 7963 OF 2025

Hrishikesh Suresh Dhurie

Appellant

.. (Org. Defendant)

Versus

Sandesh Suresh Dhurie

Respondent

.. (Org. Plaintiff)

.....

- Mr. Vedant Gurav i/by Mr. Manoj Jaiswal, Advocate for Plaintiff
- Mr. V.S. Kapse a/w Mr. Upendra Mahadik i/by M/s. Fast Track Legal, Advocate for Defendant

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 9, 2026

P. C.:

1. Appeal from Order No. 243 of 2025 assails the order dated 05.04.2025 passed in Notice of Motion No. 2102 of 2025 [Interim Application (L) No. 31784 of 2023] in Suit No. 3227 of 2024 whereas Appeal from Order No. 421 of 2025 assails the order dated 31.01.2025 passed in Interim Application No. 2363 of 2023 in Notice of Motion No. 571 of 2025 in Suit No. 3227 of 2024. Order dated 31.01.2025 is

passed in the Interim Application taken out under Order XXXIX, Rules 1 and 2 of the Civil Procedure Code, 1908 (for short "**CPC**") seeking restraint against Defendant from creating third party interest in the suit property and direction to Defendant to deposit amounts earned from the suit premises in Court. Plaintiff also seeks appointment of the Court Receiver. Order dated 05.04.2025 is passed in the Interim Application / Notice of Motion filed under Order XXXIX, Rule 1(a) of the CP seeking permission to transfer tenancy rights.

2. Since both the orders are passed in interlocutory proceedings of the same Suit, both the Appeals are heard together and disposed of by this common order.

3. Mr. Sandesh Suresh Dhurie is the Plaintiff whereas Mr. Hrishikesh Suresh Dhurie is the Defendant in the Suit proceedings. For the sake of convenience, parties shall be referred to as "Plaintiff" and "Defendant".

4. Admittedly Suit is filed for partition of the suit property by the Plaintiff. Plaintiff and Defendant are both real brothers. It is seen that suit property is immovable property comprising of land and building situated at Dadar, Mumbai as described in paragraph No. 3 of the Suit plaint. It comprises of seven residential and 16 commercial tenements. It originally belonged to maternal grandfather of the

parties i.e. Shri. Vishnu Pandurang Chavan (deceased) rather the property card of the suit property continues to stand in the name of late Vishnu Pandurang Chavan. It is seen that said Vishnu P. Chavan left behind his legal heirs whose details are given in paragraph No. 6 of the suit Plaint. From there it transpires that mother of the parties to the suit proceedings and sister were the only sole surviving legal heirs alive until 12.01.2012. The mother expired on 12.01.2012 leaving behind Plaintiff and Defendant as her legal heirs.

4.1. It is seen that until 2010, suit property was not transferred on the names of any of the legal heirs. It is averred in the suit plaint that Defendant along with his family and his mother shifted to Room No. 11, Vishnu Nivas Building and Defendant by taking advantage of the old age of mother got prepared, executed and registered a Will dated 14.05.2010 bequeathing the suit property to the Defendant. It is also averred and alleged that Defendant conspired to sell the suit property through their mother and Defendant No. 2 - daughter in law of predeceased son of deceased Vishnu P. Chavan and aunt of Defendant and in regard to the same with M/s. Siroya FM Constructions Pvt Ltd for consideration of Rs. 2,07,00,000/- vide Agreement for Sale dated 24.08.2011. Plaintiff has alleged that the said agreement was signed by Defendant as a witness. It is seen that pursuant to demise of the mother, Defendant filed Testamentary Petition No. 1322 of 2012 in this

Court seeking probate which has been objected to by the Plaintiff. Said proceedings are converted into a Suit and are pending adjudication in this Court at the evidence stage.

4.2. It is alleged in the suit plaint that thereafter Defendant prepared several forged and fabricated documents to evidence the transfer of electricity bills to his name. Therefore Plaintiff has alleged that Defendant has represented himself to be the owner of the suit property and in view thereof agreed to transfer the tenancy of commercial shop No. 1 in the said property by executing tripartite tenancy agreement which is registered before the Sub-Registrar of Assurances claiming to be the owner / landlord.

4.3. It is Plaintiff's case that since Defendant is not the owner / landlord of the suit property and since Testamentary Suit Proceedings are pending adjudication in this Court which is at the stage of evidence and in view of the conduct of Defendant in dealing with the licensee and tenants in the suit property, Plaintiff has approached Court for seeking a declaration for partition of the suit property and entitlement of 50% of the shares and interest in the undivided suit property and in the interregnum sought appropriate injunctive reliefs against Defendant from dealing with the suit property.

4.4. In the aforesaid background, Plaintiff filed the injunction Application bearing Notice of Motion No. 571 of 2025 in which the impugned order dated 31.01.2025 has been passed by the learned Trial Court. By virtue of the said order, Application seeking temporary injunction has been partially allowed restraining the Defendant from creating third party rights in the suit property any further till final decision of the Suit and also directing the Defendant to maintain accounts of income earned from the suit property and expenditure if any in respect of the suit property with further direction to produce the same before the Court as and when directed. Being aggrieved with this order, Defendant has filed Appeal from Order No. 421 of 2025 to challenge the order dated 31.01.2025.

5. Mr. Kapse, learned Advocate for Defendant would submit that he has taken instructions from Defendant and would like to submit to the order of the Court by making a statement that Defendant shall abide by the directions contained in the impugned order dated 31.01.2025 and shall keep all accounts of income earned from the suit property and shall produce the same before the Court as and when directed. In addition he would submit that the directions contained in the order dated 05.04.2025 directing the Defendant to deposit and invest the amount received by way of consideration i.e. the amount of Rs. 72,90,000/- towards the landlord's share shall be duly deposited in

a Nationalized Bank and Defendant shall not withdraw the same till final disposal of the Suit without the leave and permission of the Court. He would submit that Defendant shall also make appropriate disclosures as required and directed by order dated 05.04.2025 in the Motion taken out by the Defendant subsequently and shall comply with the same.

6. ***PER CONTRA***, Mr. Gurav, learned Advocate for Plaintiff would submit that though injunction has been granted on 31.01.2025, Plaintiff is aggrieved with the order dated 05.04.2025. He would submit that said order has been passed in Application taken out by Defendant under O. XXXIX, R. 1(a) of CPC seeking permission to transfer the tenancy. He would submit that since the Suit has been filed by Plaintiff for injunction, said Application ought to have been dismissed in limine and no permission to transfer the tenancy rights should have been given by the Court. He would submit that the said Application pertains to transfer of tenancy of Shop Nos. 5 and 6 situated in the suit property and once the Defendant is restrained from creating third party interest by order dated 31.01.2025 passed by the learned Trial Court, there is no reason for the learned Trial Court to consider the Application for transfer of tenancy and allow the same and pass the order dated 05.04.2025. He would submit that therefore the order dated 05.04.2025 should be quashed and set aside. He

would submit that one of the ground is that the Plaintiff requires the said shop premises for his personal use and therefore tenancy of the said shops should not be transferred to the tenants and the same should be handed over to the Plaintiff for his use. It is argued by Plaintiff that Defendant is not the sole owner of the suit building as yet and Testamentary Petition pertaining to validity of the Will of the deceased is still pending adjudication in this Court and has not been decided as yet in favour of Defendant. He would submit that in that view of the matter, impugned order dated 05.04.2025 is bad in law.

7. I have heard both the learned Advocates appearing for the respective parties and perused the record of the case with their able assistance. Submissions made by both Advocates at the bar have received due consideration of the Court.

8. Issue in the present case is two fold. Plaintiff and Defendant are admittedly sons of Rohini Suresh Dhurie who is the daughter of deceased Vishnu Pandurang Chavan. That apart daughter in law Smt. Jayashree Jayavant Chavan, wife of predeceased son Jayavant Vishnu Chavan is the other legal heir. Both Rohini and Jayashree are entitled to 50% share each in the suit property. Insofar as claim to Rohini's 50% share is concerned dispute is between the Plaintiff and Defendant before me on the basis of the Will. It is seen that Defendant is relying upon the Will of deceased Rohini *qua* her share. However admittedly

the said Will is not probated as yet and the Testamentary Petition / Suit is pending adjudication. However de hors any final order passed in the said Testamentary Petition / Suit, Defendant has acted in respect of the transfer of tenancy with which Plaintiff is aggrieved. It is seen that transfer of tenancy which has been created by Defendant is for the sum of Rs. 2,43,00,000/- which can be seen from the impugned order dated 05.04.2025 in favour of the tenant. However it is the case of Defendant that landlord's share in that transfer comes to Rs. 72,90,000/- which the Defendant is ready and willing to deposit in a Nationalized Bank and he will undertake not to deal with the same until the final decision in the Testamentary Proceedings. To this extent there can be no dispute whatsoever because the learned Trial Court has directed deposit of this amount in the Court. Plaintiff has raised further grievance to the extent that market value of the premises transferred on tenancy is inadequate and not according to its correct market value. Therefore it is the case of Plaintiff that transfer of tenancy should not be allowed by the Trial Court at this stage. Another ground given by the Plaintiff is that Plaintiff himself requires the suit premises for his personal use and therefore no tenancy should be permitted or rather tenancy which has been permitted by the Defendant should be cancelled.

9. Insofar as the Plaintiff is concerned, it is seen that he is in a private job. That apart Testamentary proceedings with respect to the Will of deceased mother bequeathing her share in the suit property to the Defendant are still pending. That apart it is seen that other 50% co-holder / co-sharer of the suit property who is the aunt of the Plaintiff and Defendant has given her consent in favour of Defendant. However the issue which goes to the root of the matter is the fact that transfer of tenancy had taken place much prior to filing of the suit proceedings and this is the reason which has weighed with the Trial Court while passing the impugned order dated 05.04.2025. There is categorical finding returned by the learned Trial Court in the said order that the tenancy of the tenant is not disputed by the Plaintiff neither it is terminated. Further in paragraph No.5 of the order there is another finding returned which records that Plaintiff has not disputed the consideration and in the facts and circumstances of the present case requiring Defendant to deposit the amount which has been received by him and securing the said amount in my opinion is an appropriate order passed by the learned Trial Court.

10. Insofar as the relief sought for by Plaintiff that the tenancy should be cancelled is concerned, it is an issue which can only be agitated after substantive rights of the suit property are crystallized and not at the interim stage. In the event if Plaintiff has a grievance

that the market value of the property is inadequate it is upto the Plaintiff to take appropriate steps to seek recourse to law or if advised amend the suit plaint and pray for appropriate reliefs in the facts and circumstances of the present case. Suit is essentially and primarily for partition of the property. Suit is also incidentally dependent upon the Testamentary proceedings filed in the year 2013 pursuant to the demise of the mother of Plaintiff and Defendant which is pending adjudication in this Court. Present Suit for partition would undoubtedly depend upon the outcome of the said Testamentary proceedings because if the Will of mother is probated in favour of Defendant then the suit will automatically get worked out. Hence for determining the present Suit before the Trial Court parties will have to wait for the outcome of the Testamentary suit proceedings with respect to the Will of the deceased mother to determine their respective rights. In that view of the matter, I do not find any reason to interfere with the impugned order dated 05.04.2025 which directs deposit of amount of Rs. 72,90,000/- in a Nationalized Bank. In fact it is directed that the said amount be kept in a fixed deposit rather than simplicitor investing it in the bank and the said fixed deposit be renewed from time to time as per the order of the Trial Court and it shall be held subject to the outcome of the suit proceedings which shall be brought to the notice of the Trial Court in the Suit proceedings

and the learned Trial Court will thereafter pass appropriate orders therein in accordance with law.

11. With the above directions and order, both the Appeals from Order are disposed of. Both the impugned orders dated 31.01.2025 and 05.04.2025 are upheld. Liberty to the parties to apply to the Trial Court.

12. Defendant after depositing the amount in the Nationalized Bank and creating fixed deposit shall file an undertaking within a period of two weeks from today before the learned Trial Court and copy of the undertaking shall be given to the Plaintiff. Liberty to the parties to apply before the Trial Court for any further reliefs in accordance with law.

13. Both the Appeals from Order stand disposed in the above terms. Interim Application (St) No. 7963 of 2025 is also disposed.

[MILIND N. JADHAV, J.]

14. After this order is pronounced in Court, Mr. Gurav persuades the Court to stay the order to enable the Appellant in Appeal from Order No.243 of 2025 to challenge the legality and validity of present order before the Superior Court. However considering the observations and findings which are delineated in this order and both the impugned

orders dated 31.01.2025 and 05.04.2025, the request made by Appellant in Appeal from Order No.243 of 2025 is rejected.

[MILIND N. JADHAV, J.]

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