

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.12970 OF 2025
IN
FAMILY COURT APPEAL NO.123 OF 2014

Umesh Vishnu Athavale .. Applicant
Versus
Amita Umesh Athavale .. Respondent
...

Mr.Prasad Gaonkar for the Applicant.

Ms.Anita Agarwal a/w Ashwini Jadhav for the Respondent.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 23rd JANUARY, 2026

P.C:-

1 Interim Application filed by husband who is the Appellant in Family Court Appeal No.123/2014, seek the following reliefs :-

“a) The Respondent be ordered and directed to execute and register an agreement for Permanent Alternate Accommodation i.e. the new premises in the redeveloped building in lieu of suit premises being Flat No.4, 1st floor, Neelkanth Niwas, Purandare Park Co-op. Housing Society Ltd., Hindu Colony, Dr. Ambedkar Road, Dadar (E), Mumbai - 400 014, alongwith the Applicant-Appellant with the Developer M/s.Shreeji Construction, proprietor Mr.Devesh N. Jani, without prejudice to the rights and contentions of both the parties.

b) During the pendency of the Appeal, the possession of the new premises i.e. the Permanent Alternate Accommodation to be given in lieu of the suit premises be handed over the Applicant-Appellant.”

2 The aforesaid reliefs are sought in the background that the Applicant was running his clinic in Neelkanth Niwas, Purandare Park CHS Ltd. which was undertaken to be redeveloped by M/s.Shreeji Construction.

The Developer executed PAAA in lieu of the existing ownership Flat No.4 and allotment of the new flat in the proposed building. However, it is the claim of the Applicant/ husband that the Respondent wife did not execute the PAAA and there is no dispute that she is a 50% shareholder in the suit property and therefore, the Developer was insisting on the PAAA to be signed by the co owners, as the share certificate till date stand in the name of both.

3 The Developer applied for summary eviction under Section 95(A) of the MHADA Act, 1976 and the proceedings clearly record the presence of both the co owners during the meeting held on 11/03/2022 and it further record that Dr.Umesh Vishnu Athavale, one of the co-owner of premises No.4, who was operating his clinic in the existing premises agreed to vacate the said premises, provided he is given transit compensation and corpus which was given to other members.

There is also reference to the matrimonial proceedings pending between the Parties and the decision of the Family Court was also put forth, with a specific observation that there is an Appeal filed in the High Court arising out of the Judgment and Decree of the Family Court.

4 The contention of the wife was also appreciated and ultimately the order was passed to the effect that the entire redevelopment scheme is being obstructed and continuously delayed on account of the pending matrimonial dispute between the parties and the members of the premises have failed to hand over the possession, and, therefore, an action deserve to be taken under Section 95(A) of the MHADA Act against the occupants.

As a consequence thereof, we are informed that the action was taken and the premises were vacated by the present Applicant in the year 2021.

5 Now by the present Application, the Applicant has prayed for direction to the Respondent/wife to sign the PAAA which is prayer clause (a) in the Application and during the pendency of the Appeal the possession of the new premises be handed over to him as he was in possession of the premises.

6 On hearing the learned counsel for the Applicant as well as the learned counsel representing the Respondent, our attention is also invited to the Judgment of the Family Court dated 22/01/2014, in the two proceedings decided together in form of Petition No. A-759/2005 filed by the husband for seeking a Decree of Divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 and seeking custody of the children. Whereas, the second Petition filed in form of Petition No. B-2/2008 was filed for a declaration that the Petitioner was a sole owner of the said premises

i.e. Flat No.4 Neelkanth Niwas Purandare Park CHS Ltd., i.e., the subject matter of the present Application and the Respondent wife had no right, title, interest or share therein.

7 The husband also sought permission to rectify the Deed of Transfer registered on 26/07/2001 at the office of Sub-Registrar of Assurance Mumbai City, by deleting the name of the Respondent wife as second transferee and the Petitioner to be shown as sole transferee. He also sought an order of injunction permanently restraining the wife from disturbing and interfering with his possession of the suit premises.

As far as the proceedings filed by the husband in Petition B-2/2008, when the issues were recasted, issue No.6 was framed thus:-

“6. Whether the respondent (wife) proves that the suit property including furnitures, fixtures, machineries is/are owned and jointly possessed by the petitioner and the respondent and that she is the joint legal owner having joint legal possession as stated in Paragraph-VII of her written statement ?”

The aforesaid issue is answered in the negative with the following observations :

Issue No.6 :

“128. The petitioner has claimed that he has purchased the suit property, but only for convenience and at the insistence of the respondent he has taken her signature on the document as a joint owner of it. According to the petitioner he has purchased the furnitures, fixtures, machineries himself. However, respondent has claimed that the petitioner has used the amount from their joint Account in ICICI bank for purchase of the furnitures, fixtures and machineries. However, neither of them has proved with documentary evidence that the furnitures, fixtures and machineries are owned and jointly possessed by the petitioner and or joint

with the respondent. As regards the fact that she is the joint legal owner having joint legal possession, adverse inference would have to be drawn with respect to the fact that the petitioner has not placed the share certificate of the society on record. The respondent claims that she had been working out of that premises and preparing her papers etc. However, it is the case of the petitioner that she came into the premises one day and put some of her articles and took photographs of the same. That would not mean that she is in joint legal possession. Moreover, it is the petitioner's case that the respondent is admittedly a full time employee and Head of the Department of the Cheat Medicine of K.E.M. Hospital and is likely to become a Dean shortly. She is not entitled to private practice when she is holding the said post."

The aforesaid issue was contested in the Petition filed by the wife and answered accordingly.

As far as the Petition No. A-759/2005 filed by the Petitioner/Husband is concerned, the issue being framed as to whether the Petitioner had proved that the Respondent had treated him with cruelty and, therefore, it amounts as a ground for divorce, the issue has been answered in the affirmative, but on the issue whether the Petitioner proved, that he is the better of the parents in whose custody the children's welfare would be more secure and protected, has been answered in the negative.

8 In the clear cut finding being rendered in the proceedings filed by the Husband on issue No.6 to which we had made reference, since it is held that she is the co-owner of the subject premises, but she was not in possession of the premises and the issue being answered against her, i.e. in the negative, and by taking into consideration the settled position of law to the effect that when possession of the premises under the re-development is taken from a party, irrespective of any dispute with the party who was not in possession, the possession of the new premises shall be handed over

to the party from whom the possession is taken, we must apply the same principle here. It is the husband who was in possession of the subject flat which was subjected to re-development and therefore it is he who is entitled to be put back in possession.

However, we make it clear and address the concern of Advocate Mrs. Anita Agarwal representing the wife, that the Respondent/wife is entitled and has already been declared as a co-owner of the premises, though she was held to be not in possession and, therefore, if she intend to claim any interest in the said property, alongwith the husband as a co-owner, she can institute appropriate proceedings or file any application in the pending proceedings. The possession of the premises is directed to be handed over to the Applicant/Husband only on the basis, that he is held to be in possession and the possession of the premises is taken from him for the purpose of its re-development under the provisions of the MHADA Act, 1976 and therefore it is imperative that he shall be put back in possession.

9 In the wake of the aforesaid circumstances, we deem it appropriate to grant the Application in terms of prayer clause (a) and (b) by directing the Respondent-wife to sign the PAAA, pursuant thereto the Applicant shall be put in possession of the premises but he shall not act in any manner which shall be detrimental to the interest of the Respondent/wife as she is the 50% co owner of the premises, and he shall not create any third party interest, in the property.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)