

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 101 OF 2025
WITH
INTERIM APPLICATION NO. 1702 OF 2025

Jagannath Baijnath Tiwari

Appellant

.. (Org. Plaintiff)

Versus

Ashok Jagannath Tiwari & Anr.

Respondents

.. (Org. Defendants)

.....

- Mr. M.A. Ansari, Advocate for Appellant

.....

CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 27, 2025

P. C.:

1. Heard Mr. Ansari, learned Advocate for Appellant - Org. Plaintiff.

2. It is seen that Respondent No. 2 who is Org. Defendant No. 2 is the younger son of Appellant - Plaintiff. He has been duly served and he has appeared through Advocate. Name of his Advocate has been flashed on the sticker of High Court website despite which neither Respondent No. 2 nor his Advocate is present. Appellant before me is 80 years old. He is also present before me. Though challenge in the Appeal from Order (AO) is to the order dated 18.12.2024, after going through the same, it is *prima facie* seen that grievance of Appellant - Plaintiff has not been appropriately considered by the learned Trial Court. The suit house / property admittedly belongs to the Plaintiff.

He is the statutory tenant thereof. Defendant Nos. 1 and 2 are his two sons. Defendant No. 1 in his wisdom has conceded and appeared before the Trial Court stating that he would submit to the orders of the Court. Defendant No. 2 has objected and contested the case of Plaintiff father. It is seen that Defendant No. 2 claims to be a social worker and is residing in the suit premises along with Plaintiff. There are other issues also but according to Mr. Ansari, the primary issue stems from the fact that Defendant No. 2 does not have a consistent means of livelihood and is therefor harassing the Plaintiff.

3.t Mr. Ansari would draw my attention to the fact that Plaintiff is suffering from age related issues as well as Asthma and it is the duty of the Defendants - sons to take care of him. He would submit that suit premises is admeasuring 109 sq.ft. and Defendant Nos. 1 and 2 along with their respective wives and children are staying in the same premises. He would submit that for the past five years, Appellant Plaintiff has been constantly harassed by Defendants and more specifically Defendant No. 2 by seeking share in the tenancy right / suit premises. He would submit that Plaintiff is pressurized by Defendant No. 2 to quit and surrender the tenancy rights and thereafter distribute the proceeds received therefrom.

4. Reliance is placed by Mr. Ansari on the decision of the Supreme Court in the case of *Maria Margarida Sequeria Fernandes & Ors. v.*

*Erasmo Jack De Sequeria (dead) through LRs.*¹ and more specifically paragraph No. 101 thereof wherein substantive guidelines have been given by the Supreme Court in respect of dealing with such cases. Further reliance is placed by Mr. Ansari on the decision of this Court in the case of *Conrad Dias of Bombay v. Joseph Dias of Bombay*². He would submit that both Defendants do not have a semblance of any right whatsoever in the suit premises and despite they being the sons of the Plaintiff and they have required to take care of the Plaintiff and provide care and support to the Plaintiff, the facts in the present case are to the contrary. He would submit that Plaintiff is harassed and beaten by Defendants. Suit is filed for declaration and permanent injunction.

5. After hearing Mr. Ansari and perusing the record of the case, I am of the clear opinion that if Defendant No. 2 persists in his behaviour with the Plaintiff, this Court will have to step in even though the present proceeding is Appeal from Order against the impugned order. This Court is not helpless and can pass appropriate directions to the law enforcement agency namely the Police Authorities to take appropriate steps to protect the well being of the Plaintiff who is 80 years old if he apprehends nuisance and harassment at the hands of his own sons and more specifically

1 AIR 2021 SC 1727

2 AIR 1995 BOM 210

Defendant No. 2. One of the grievance made by Plaintiff's Advocate is that since Defendant No. 2 is a social worker, due to his political influence, Police are not taking any action against him despite several complaints been filed by Plaintiff and the latest being on 08.11.2002. All complaints have been field with Nagpada Police Station.

6. Defendant No. 2 is therefore put to the notice. He should not be under the impression that Plaintiff is helpless or for that matter even this Court is helpless. In such a fact situation, appropriate orders can undoubtedly be passed by this Court.

7. Defendant No. 2 is directed to remain present in Court on the next adjourned date personally. In the event if he does not remain present, this Court shall be constrained to issueailable / non-ailable warrant against him to secure his presence which shall be noted by him.

8. Copy of this order shall be served on Advocate for Defendant No. 2 as also Defendant No. 2 by Mr. Ansari forthwith. Copy shall also be served on the Senior Inspector of Nagpada Police Station by Advocate for Plaintiff and the concerned In-charge shall visit the suit premises and ascertain the grievance of the Plaintiff father and ensure that Defendant No. 2 does not harass or abuse him.

9. All parties are directed to act on a certified copy of this order.

10. Defendant No. 2 and his Advocate shall remain present on the next adjourned date and accordingly make their submissions. After hearing them, appropriate orders / directions shall be passed by this Court which shall be noted by Defendants.

11. Stand over to **4th December, 2025** under the caption "**First on Board.**"

Amberkar

[MILIND N. JADHAV, J.]

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2025.11.27
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