

HIGH COURT OF JUDICATUTE AT JABALPUR (M.P.)

SINGLE BENCH : HON'BLE JUSTICE NANDITA DUBEY

Misc. Petition No. 5217/2019

Smt. Amrita Bhatia and others

Vs.

Baljeet Singh Bhatia and others

Shri Sampurn Tiwari, learned counsel for the petitioners.

Smt. Nirmala Nayak, learned counsel for the respondent No.1

Smt. Devika Singh Thakur, learned Govt. Advocate for the respondent/State.

Arguments heard on : 25.11.2019
Order delivered on : 12.02.2020

Whether approved for reporting : **Yes**
Law laid down :
Significant paragraph numbers : **15, 17, 18 & 19**

ORDER

This petition under Article 227 of the Constitution of India is filed by the Ex-daughter-in-law and grandsons of respondent No.1, for setting aside the order

dated 19.09.2019, passed by Additional Collector (City) Jabalpur on an appeal filed under Section 15 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short the Act of 2007) by the respondent No.1.

2. Brief facts necessary for disposal of this petition are that respondent No.1 filed an application on 19.03.2019 under Section 22 of the Act of 2007 read with Rules 19 and 22 of the M.P. Maintenance and Welfare of Parents and Senior Citizen Rules, 2009 (for short the Rules of 2009) before the SDM Jabalpur. It was pleaded that he is owner of house No. A-28. The ex-wife of his son (daughter-in-law) and his two grandsons are residing at first floor of the said house. It was alleged that petitioners misbehave, harass and physically assault the applicant and his wife and threatens to register a false case of outrage of modesty, dowry demand against him and to get him declared lunatic. It was further alleged that the petitioners are asking for partition and to register the house in their name. It was, therefore, prayed that the petitioners be evicted from the premises and to further restrain them from beating or misbehaving with him and from reentering the said house.

3. The petitioners filed a detailed reply denying the allegations in the application. It was contended that petitioner No.1, her ex-husband (since absconding) and her two sons started living separately on the first floor of the house, with the permission of applicant/respondent No.1. The premises, which was in a dilapidated condition, was made habitable and got furnished by petitioner No.1's father. It was further contended that her ex-husband fled away from Jabalpur after taking all money and her jewelery, in the month of June, 2016, for which a missing person report and a complaint of theft was lodged at Police Station, Gorakhpur. It was further stated that to pressurize her to compromise in the criminal cases registered by her against her ex-husband (son of respondent No.1), the present application has been filed.

4. The competent authority, by order dated 07.06.2019, allowed the application holding that property in question is the self acquired property of applicant/respondent No.1 and the petitioners have been living in the said property with the permission of respondent No.1. The SDM further directed that the

petitioners/non-applicants to vacate the premises in question within 30 days. The SDM further directed to ensure that the applicant and his cancer patient wife live peacefully and with dignity in their own house without being harassed and physically assaulted by the petitioners. In addition, the Station Incharge, Police Station, Garha has directed to get the order complied with, if the same is not done by the non-applicants/petitioners within the stipulated time.

5. Apprehending ouster from the property in question, the petitioners filed a review application for recall of the order dated 19.06.2019 on the ground that ex-parte order was passed against them and they were not heard or given any opportunity for producing the evidence nor provided opportunity to cross-examine the applicant/respondent No.1. It was further contended that responsibility to maintain the applicant/respondent No.1 is primarily is of his own son, i.e., defendant No.1, who is absconding for the last three years and not of petitioners/daughter-in-law and grandsons.

6. The competent authority considering that the matter is regarding family dispute and not of maintenance, allowed the review application on 09.07.2019 and recalled the order of eviction.

7. Aggrieved by the aforesaid order, the applicant/respondent No.1 filed an appeal before the Additional Collector (City) Jabalpur. The appellate authority allowed the appeal and set aside the order dated 09.07.2019 passed in the review application and confirmed the order dated 11.06.2019.

8. It is the contention of Shri Sampooran Tiwari, learned counsel appearing for the petitioners that under the Act of 2007, eviction cannot be sought against the daughter-in-law and the respondent No.1 ought to have filed a suit for eviction before the Civil Court. His further argument is that mandatory provision of conciliation has not been followed.

9. Per contra, Smt. Nirmala Nayak, learned counsel for respondent No.1 supported the order impugned. It is submitted that the premises in question is the self acquired

property of respondent No.1 and petitioners have no legal right or title to retain its possession. It is further contended that respondent No.1, who is a 78 years old person and wants to live peacefully at the fag end of his life, he cannot be forced to permit the petitioners, who continuously harass and threatened him to reside in his property.

10. I have heard the learned counsel for the parties at length and perused the record.

11. In order to appreciate the rival contentions, a reference to the relevant provision of the 2007 Act and the 2009 Rules are necessary.

12. Chapter V of the 2007 Act provides for protection of life and property of senior citizen. Section 22 empowers the District Magistrate or to any subordinate officer specified by the District Magistrate to take all measures and prescribe a comprehensive action plan for providing protection of life and property of senior citizens. Section 23 provides that the transfer of property by way of gift or otherwise by the senior citizen to be void under certain circumstances mentioned therein.

13. Section 2(a) defines 'children' as including son, daughter, grandson, granddaughter but does not include a minor. Section 2(g) defines 'Relative' as any legal heir of the childless senior citizen and in possession of or would inherit his property after the death of senior citizen.

14. As per Rule 19(2)(i) of 2009 Rules, it is the duty of District Magistrate to ensure that the life and property of senior citizen of the district are protected and they are able to live with security and dignity. Rule 20 of the 2009 Rules provides for the action plan for protection of life and property of senior citizen.

15. An analysis of the aforesaid provisions and rules shows that the exercise of right under Section 22 regarding protection of life or property of a senior citizen has been conferred irrespective of the fact whether the person who threatens the life or property of senior citizen is related to the senior citizen or not. Section 23 gives jurisdiction to the Tribunal/Authority to declare settlement of transfer of property by a senior citizen as void. The expression 'transfer by way of gift or otherwise' employed in Section 23 should be liberally interpreted to include even transfer

of possession, otherwise than gift. Therefore, under Section 23, the Tribunal can issue an eviction order against the ex-daughter-in-law and grandsons to ensure that the senior citizen may live peacefully in his house.

16. The fact that respondent No.1 is owner of the property is not disputed. Petitioners only stand is that respondent No.1 has permitted his eldest son and his family members (present petitioners) to live separately on the first floor. It is clear that the possession of petitioners is permissive possession. This permission stands terminated the moment the senior citizen makes a complaint to the District Magistrate against petitioners to vacate the premises.

17. In the case of **Rashmi Saxena Vs. Suresh Prakash Saxena and others (WP No. 15453/2016)**, the High Court of Judicature of Rajasthan Bench at Jaipur has held thus :-

“Consideration of Section 23, supra, shows that it contains the word 'transferred', which is followed by the words 'by way of gift or otherwise' and therefore, connotation of the word 'otherwise' would cover within its definition. Almost every mode of transfer is involved not necessarily transfer of title and ownership of property alone but

also physical possession thereof. In other words, the word 'transfer' would also include the transfer of possession. It is trite that when there is doubt about the meaning of a word used in a statute, it has to be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. In the present case, the possession of part of the households by respondent was given to the petitioner as licensee, may be at the time when her marriage with the son of the respondent was subsisting. The fact, however, remains that as of now marriage between two does not subsist and both are strangers to each other. In view of this, the daughter-in-law cannot claim right of residence as against father-in-law, although she can proceed against her husband. This court therefore, does not find any error or infirmity in the impugned orders.”

18. In the case of **Neetu Mittal Vs. Kanta Mittal and others (CM (M) No.105/2008)** the High Court of Delhi at New Delhi has held thus :-

“Where the house is self-acquired house of the parents, a major son, whether married or unmarried, has no legal right to live in that house and he can live in that house only at the mercy of his parents up to the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout the life. Once a person gains majority, he becomes independent and parents have no liability to maintain him. It is different thing that out of love and affection, the parents may continue

to support him even when he becomes financially independent or continue to help him even after his marriage. This help and support of parents to the son is available only out of their love and affection and out of mutual trust and understanding. There is no legal liability on the parents to continue to support a disobedient son or a son which becomes liability on them or a son who dis-respects or dis-regards them or becomes a source of nuisance for them or trouble for them. The parents can always forsake such a son and daughter-in-law and tell them to leave their house and lead their own life and let them live in peace.”

19. Respondent No.1 has claimed that petitioners mentally tortured, harassed and assaulted him and threatened him with registration of false cases against him. Admittedly, the petitioners are living in the house with the permission of respondent No.1. An Ex-daughter-in-law and grandsons had no legal right to live in the self acquired house of respondent No.1. They can only live till respondent No.1 allows them. This permission/ support is available only till there is mutual love and affection between them. Once, mistrust and disrespect creeps in the relationship between parties and the petitioners created nuisance for the respondent No.1, he is not obliged to still suffer their presence in his house and has right to seek eviction of the petitioners from the said premises.

20. The contention of Shri Tiwari that respondent No.1 ought to have filed a civil suit for eviction also holds no merit, as Section 3 of 2007 Act provides that provision of this Act shall have an overriding affect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, on in any instrument having effect by virtue of any enactment other than this Act.

21. Section 27 further bars the jurisdiction of Civil Court in respect of any matter to which provisions of the Act applies. It further provides no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act.

22. As regards petitioners contention that mandatory procedure under Rule 10 has not been followed, it is observed that Rule 10 provides for sending the reference to conciliation officer in case, where against the maintenance claim, both the parties show their willingness for referring the matter to conciliation officer. The present case is not regarding maintenance, even otherwise the relationship between them is very strained, the parties are

at loggerheads and made allegations and counter allegations against each other.

23. In these circumstances, respondent No.1, who is 78 years old, cannot be compelled to allow the petitioners to stay in his property. It is for the respondent No.1 to decide whether he wants to permit petitioners to stay on the first floor of his house or not. The Authority was fully justified in passing an order of eviction against the petitioners.

24. No interference is required in the impugned order. The petition fails and accordingly dismissed.

(Nandita Dubey)
Judge
12/02/2020

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