

IN THE HIGH COURT OF MADHYA PRADESH AT

JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PURUSHAINDR KUMAR KAURAV

WRIT APPEAL NO. 214 OF 2021

Between:-

- 1. GANESH, S/O LATE NAMDEV SITOLE, AGED ABOUT 36 YEARS, BY OCCUPATION LABOUR, R/O PREM NAGAR, KHANDWA, TAHSIL AND DISTRICT KHANDWA (M.P.).**
- 2. CHANDA BAI, W/O GANESH, AGED ABOUT 34 YEARS, BY OCCUPATION HOUSE WIFE, R/O PREM NAGAR, KHANDWA, TAHSIL AND DISTRICT KHANDWA (M.P.).**

.....APPELLANTS

(BY SHRI AVINASH ZARGAR - ADVOCATE)

AND

- 1. SMT. INDU BAI, WD/O LATE NAMDEV, AGED ABOUT 62 YEARS, BY OCCUPATION HOUSE HOLD WORK, R/O PREM NAGAR, KHANDWA, TAHSIL AND DISTRICT KHANDWA (M.P.).**
- 2. SMT. PADMA BAI, W/O LATE SURESH, AGED ABOUT 64 YEARS, BY OCCUPATION HOUSE HOLD WORK, R/O PREM NAGAR, KHANDWA, TAHSIL AND DISTRICT KHANDWA (M.P.).**

...RESPONDENTS

(BY SHRI ARPAN J. PAWAR - ADVOCATE)

Reserved on : 18.04.2022
Delivered on : 25.04.2022

This appeal coming on for hearing this day, Hon'ble Shri Justice Purushaindra Kumar Kaurav, passed the following :-

ORDER

This *intra* Court appeal takes exception to order dated 10.02.2021, passed by the learned Single Judge in Writ Petition No. 2679 of 2020, whereby, petition filed by the appellants has been dismissed.

2. The facts of the case are that the appellants are husband and wife respectively. The respondent No.1-Smt. Indu Bai is the mother of appellant No.1-Ganesh and respondent No.2-Smt. Padma Bai is the sister-in-law (Aunt) of the respondent No.1. Both the respondents are widows. The respondents approached the Tribunal constituted under the provisions of **Maintenance and Welfare of Parents and Senior Citizens Act, 2007** (hereinafter referred to as the 'Act of 2007' for short), with an application stating therein that they were peacefully residing in the house owned by them and after death of the husband of respondent No.1 on 13.08.2018, the appellant No.1 has started harassing the respondents. It has also been alleged that the appellant No.1 ousted the respondents from the house and since then respondents were residing elsewhere. It was, therefore, prayed that

appellants be evicted from the house while putting the respondents in possession of the said house with further prayer to direct the appellants not to interfere into the possession of respondents from the house in question.

3. The appellants filed reply to the said application and denied the allegations. On 06.08.2020, the Sub Divisional Officer (hereinafter referred to as the 'Tribunal' for short) after recording the evidence of parties, came to the conclusion that during his life time, the husband of the respondent No.1 had purchased land admeasuring 600 sq.ft over Khasra No.918, by a registered sale deed dated 22.07.2007, thereupon house was constructed. The Tribunal, therefore, in exercise of the powers vested under the Act of 2007 vide order dated 06.08.2020 directed that within a period of thirty days, the house of the respondent No.1 be vacated by the appellants, failing which the concerned Police Station was directed to ensure the compliance of the said order. Against the order passed by the Tribunal the appellants approached the appellate Authority i.e. Collector Khandwa, who vide order dated 06.09.2020 dismissed the same on the ground that Section 16 of the Act of 2007 only provides a remedy of appeal to a senior citizen or a parent aggrieved by an order of Tribunal. Since the appeal was not found to be maintainable at the instance of appellants, therefore, the same was dismissed. The appellants, therefore, filed Miscellaneous Petition before this Court, which has also been dismissed by the learned Single Judge. Hence, the appellants are in the present *intra* Court appeal.

4. After issuance of the notice, this Court vide order dated 09.03.2021, stayed the operation of impugned order on the following conditions :-

“(1) That the appellant No.1 Ganesh shall pay Rs.5000/- within first week of every month commencing from first week of April, 2021 in the bank account of his mother Smt. Indu Bai (respondent No.1 herein), the details whereof shall be communicated to the appellants by her within a week.

(2) That the appellants shall allow the respondent No.1 mother and respondent No.2 aunt to come back to the disputed house and shall not create any hindrance/obstruction of use of the property by them.

(3) That subject to the compliance of above two conditions, the appellant No.1 shall be allowed to continue to occupy one room of the house with his family where he is presently residing.”

5. On 01.02.2022, we found that possibly the dispute can be resolved amicably between the parties, therefore, the matter was referred to Mediation Center at Khandwa. However, vide communication dated 05.03.2022, from the Mediation Center we gathered that the mediation remained unsuccessful.

6. Learned counsel appearing for appellants submits that in absence of specific provision for eviction, the Tribunal should not have directed for eviction of the appellants when the appellant No.1 is a co-owner of the house in question. He relied upon a decision of the Hon’ble Supreme Court in the matter of ***S. Vanitha Vs. Deputy Commissioner, Bengaluru Urban District and others***¹ and submits that appropriate interference is called for.

1 2020 SCC On-Line SC 1023

7. Learned counsel appearing for respondents opposed the prayer and he submits that the Tribunal constituted under the Act of 2007, has rightly exercised the power directing eviction of the appellants. He further stated that learned Single Judge has rightly analyzed the decision in the matter of *S. Vanitha (supra)* and it has been held that the Tribunal is empowered to pass an order of eviction taking into consideration the Scheme of the Act of 2007. According to him, no interference is called for.

8. We have heard learned counsel for the parties and perused the record.

9. The Act of 2007, has been enacted for protection of life and property of senior citizens or a parent as the case may be. The Bill introduced before the Parliament provides for :-

“(a) appropriate mechanism to be set-up to provide need-based maintenance to the parents and senior citizens;

(b) providing better medical facilities to senior citizens;

(c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;

(d) setting-up of oldage homes in every district.”

10. A perusal of statements of objects and reasons of the Act of 2007, shows that a large number of elderly are not being looked after by their family. Many older persons, particularly widowed women are forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This

clearly reveals that aging has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. It has been desired that simple, inexpensive and speedy provisions may be made to claim maintenance by suffering parents. Section 2(b) of the Act of 2007, defines “*maintenance*” to include provision for food, clothing, residence and medical attendance and treatment. Section 2(f) defines “*property*” to mean property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property. Section 3 of the Act of 2007, provides that the Act to have overriding effect on the provisions of any other Acts which are inconsistent with the provisions of the Act of 2007. Section 4 of the Act of 2007, provides an entitlement of maintenance to a parent and a senior citizen, who is unable to maintain himself from his own earning or out of property owned by him. Sub-section (2) of Section 4, obligates that the children or relatives as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life. Section 5 of the Act of 2007, provides for filing of an application for maintenance under Section 4. Section 6 deals with the jurisdiction and procedure for the proceedings under Section 5. Section 7 prescribes for constitution of “Maintenance Tribunal”. Section 8 provides for summary procedure in case of inquiry. Section 9 provides for order of maintenance. There are various other provisions under Chapter-V for the protection of life and property of parents and senior citizens.

11. A perusal of overall Scheme of the Act of 2007 would clearly demonstrate that the intention of the legislature is to ensure that the parents and senior citizens should be ensured food, clothing, residence, medical attendance and treatment etc. The maintenance includes the provisions for food, clothing, medical assistance, treatment and residence. The provisions of Act of 2007 have been given overriding effect by virtue of Section 3 of the Act of 2007 on the provisions of any other enactment.

12. In the instant case, the house in question admittedly belongs to the respondents. The appellants are claiming the right of co-ownership which has not yet been determined by any competent Court. The fact has come on record to show that respondents are residing elsewhere and the house in question is occupied by the appellants. It is unfortunate to note that the appellant No.1 being son of the respondent No.1 is objecting for the shelter of her widowed mother that too in a house purchased and constructed by late husband of the respondent No.1 herself.

13. So far as the argument of learned counsel for appellants that the Tribunal is not empowered under the Act of 2007 to pass an order of eviction is concerned, the same does not have any substance and deserves to be rejected under the facts of the present case. In para 4 to 6 of the application, submitted by the respondent No.1 before the Tribunal, the following averments have been made :-

“4. यह कि स्व. नामदेव की मृत्यु दिनांक 13.08.2018 को होने के बाद से आवेदक क्रं 1 का पुत्र गणेश शराब पीने का आदि हो गया। आये दिन गणेश व उसकी पत्नी चंदा वाद विवाद करने लगी। मकान में रहने नहीं देते। गणेश पेशान का पैसा भी चाकू अड़ाकर छुड़ा लेता है। लगातार मारपीट व दूर्व्यवहार कर रहे है। अब तो हद कर दिया है।

दोनों वरिष्ठ नागरिकों को प्रताड़ित कर मकान से बाहर कर दिया है, जबकि मकान में उनका कोई हक नहीं है।

5. यह कि दिनांक 20.11.2019 को मारपीट कर घर से निकालने पर आवेदकगण सिटी कोतवाली खंडवा में रिपोर्ट करने गये थे, परन्तु पुलिस द्वारा उनके विरुद्ध प्रतिबंधात्मक कार्यवाही कर एसडीएम न्यायालय में पेश किया गया था। जहाँ उन्हें जमानत करनी पड़ी थी। इसकी शिकायत कलेक्टर महोदय एवं पुलिस अधीक्षक महोदय को भी की गयी थी।

6. यह कि प्रार्थीगण वृद्ध व ननद है। स्व. नामदेव के साथ मकान में रहती थी। पेंशन से गुजारा करती है। घर से निकालने के बाद रिश्तेदारों के यहाँ रह रही है। गणेश व उसकी पत्नी से उन्हें जान का खतरा है, प्रताड़ित वे दुर्व्यवहार करते हैं।

अतः अपरोक्त आधारों पर श्रीमान् से विनम्र निवेदन है कि उन्हें निम्न सहायता प्रदान करने की कृपा करें। ”

14. It is, thus, seen that the respondent No.1 was requesting for right of “residence” in her own house. The object of the Act of 2007 not only includes maintenance, provision for food, clothing, medical assistance and treatment, but it also includes provision for “residence”. Moreso, the respondents were ousted from the house in question by the appellants depriving them to enjoy the right of “residence” and, therefore, taking into consideration the overall object of the Act of 2007, it cannot be said that the order passed by the Tribunal is illegal or improper.

15. So far as the judgment relied upon by learned counsel appearing for appellants in the case of *S. Vanitha (supra)* is concerned, the same would not have any application in the present facts and circumstances of the case. In the case of *S. Vanitha (supra)*, the order of eviction was passed against daughter-in-law on an application filed by her father-in-law. There was matrimonial dispute between the husband and wife and it was the case of the daughter-in-law that at the instance

of her husband, her father-in-law resorted to malicious proceeding with the sole intent to evict her from the suit premises. She claimed that proceedings were collusive in nature and was an attempt by her husband and father-in-law to evict her from her matrimonial home. The Hon'ble Supreme Court has considered the provisions of Protection of Women from Domestic Violence Act, 2005 which provides for various protection to a woman in juxtaposition to the provisions of the Act of 2007. The Hon'ble Supreme Court has noted that a significant object of the legislation under the Act of (Domestic Violence Act) is to provide for and recognize the rights of woman to secure housing and to recognize the rights of a woman to reside in a matrimonial home or a share household, whether or not she had any title or right in the shared household and the law protecting the interest of senior citizen is intended to ensure that they are not left destitute or at the mercy of their children or relatives. Equally, the purpose of the Act of 2005 cannot be ignored. Both sets of legislation have to be harmoniously construed. The right of a woman to secure a residence, order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Act of 2007. It is under the aforesaid facts and circumstances of the case, an interference was made by the Hon'ble Supreme Court against the order of eviction passed by the Tribunal against daughter-in-law, namely, *S. Vanitha (supra)* in that case. The facts of the present case are not the same and, therefore, the principle laid down in the case of *S. Vanitha (supra)* would not be applicable.

16. Under the aforesaid facts and circumstances of the case, we do not find any reason to interfere with the order dated 06.08.2020 passed by the Tribunal as affirmed by the learned Single Judge by its order dated 10.2.2021. Hence, the instant *intra* Court appeal is dismissed.

17. At this stage, we find that on 06.08.2020, the Tribunal has passed the order which remained unexecuted till date. Hence, under the aforesaid circumstances, we direct that the order dated 06.08.2020 be implemented within four weeks by the respondents-authorities.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDR KUMAR KAURAV)
JUDGE

A.Praj.