

\$~14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 2983/2017 & CrI.M.A.No.17341/2017 (Interim relief)

MOHD YAKUB & ANR. Petitioners

Through: Mohd.Bilal, Advocate

versus

DELHI POLICE Respondent

Through: Mr.Sanjay Lao, ASC for the State
with SI Shailender Kumar, PS Gokal
Puri, Delhi

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **26.10.2017**

1. The petitioners herein are parents of the husband of the respondent No.2 Saheen (father-in-law and mother-in-law respectively of respondent No.2). They have invoked the writ jurisdiction of this Court with the following prayer:

“1. Issue a writ of Mandamus or any other appropriate writ, order or direction to Delhi Police and/or to the Hon'ble Court of Sh.Devender Kr.Garg, Ld.CMM, Karkardooma Courts, wherein the application under Section 156(3) of the Petitioners is pending, to forthwith remove or order to remove Respondent no.2 from the house of the Petitioners.

2. Issue a writ of Mandamus or any other appropriate writ, order or direction to Delhi Police and/or to the Honourable Court of Sh.Devender Kr.Garg, Ld CMM, Karkardooma Courts, wherein the application under Section 156(3) of the Petitioners is pending, to ensure that no further offence or violation of Fundamental Rights of the Petitioners is being committed by the Respondent no.2.

3. *Issue an interim or ad-interim order till the pendency of this writ petition to avoid injustice and monetary damage as being suffered by the Petitioners and to allow the Petitioners such interim and ad-interim relief which will not leave them bereft of means of survival.*

4. *Compensation for the damage and loss suffered by the Petitioners be granted as against both the Respondents.*

5. *Pass any other further orders or directions as this Honourable Court may deem fit and proper under the special facts and circumstances of this case.”*

3. Learned counsel for the petitioner has submitted that the petitioners are old and poor persons who are being harassed by their daughter-in-law as she is in illegal possession of the house of the petitioners, She is constantly threatening them and damaging their new built property. In paragraph 7 of the writ petition it is stated that an alternative remedy in the form of civil suit along with an application for injunction and a petition under Section 156(3) of Cr.P.C. is subsisting. They have preferred to file a writ petition in this Hon'ble Court due to urgency of the matter since there is real apprehension of irreparable harm to property and life.

4. The petitioners are claiming title in property bearing Plot No.278, Gali No.26, Old Mustafabad, Near Akbari Masjid, Opposite B.R.Modern Public School, New Delhi-110094 on the basis of some un-registered documents and in the alternative are pleading themselves to be having right over the property by way of adverse possession. A criminal complaint has already been filed by them which is subjudice before the learned CMM, Karkardooma Court.

5. Learned counsel for the petitioners has been questioned that when the remedy is available to the petitioner not only under the civil law but also criminal complaint case has been filed by them, how the writ petition is

maintainable in respect of private dispute between parties over property. Learned counsel for the petitioner has submitted that they are unable to pay the Court fee for civil litigation.

6. The remedy under the writ jurisdiction cannot be availed just to avoid the payment of the Court fee. The averments made in the writ petition clearly make out to be a case of property dispute between father-in-law and mother-in-law with their daughter-in-law.

7. The scope of interference by the High Court in writ jurisdiction has been discussed by the Supreme Court in the case reported as Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil (2010) 8 SCC 329 wherein it was held as under:-

‘63. It the facts of the present case we find that the petition has been entertained as a writ petition in a dispute between landlord and tenant amongst private parties.

64. It is well settled that a writ petition is a remedy in public law which may be filed by any person but the main respondent should be either Government, Governmental agencies or a State or instrumentalities of a State within the meaning of Article 12. Private individuals cannot be equated with State or instrumentalities of the State. All the respondents in a writ petition cannot be private parties. But private parties acting in collusion with State can be respondents in a writ petition. Under the phraseology of Article 226, High Court can issue writ to any person, but the person against whom writ will be issued must have some statutory or public duty to perform.’

8. In view of the above legal position, the writ petition is not maintainable and the same is hereby dismissed.

PRATIBHA RANI, J.

OCTOBER 26, 2017/ ‘hkaur’

W.P.(CRL) 2983/2017

page 3 of 3