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

+ W.P.(C) 1053/2019

SH. RAJESH AND ANR.

..... Petitioners

Through: Mr S. S. Rajore, Advocate.

versus

THE STATE THROUGH ITS DISTRICT
MAGISTRATE AND ANR.

..... Respondents

Through: Ms Saumya Tandon, Advocate for
R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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01.02.2019

CM No.4755/2019

1. Allowed, subject to all just exceptions.

W.P.(C) 1053/2019 & CM No.4754/2019

2. The petitioners have filed the present petition, *inter alia*, impugning an order dated 22.01.2019 passed by the Divisional Commissioner (Appellate Authority), rejecting the petitioner's appeal against an order dated 23.10.2018 passed by the District Magistrate under Rule 22 (3) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (hereafter 'the Rules').

3. The order dated 23.10.2018 was passed pursuant to an application made by respondent no.2 (the mother of petitioner no.1). She had complained that the petitioners were ill treating her and she had also been physically assaulted by them. She had also claimed that her husband

(petitioner no.1's father and the father-in-law of petitioner no.2) had also been physically assaulted and had suffered a fracture in the process.

4. It is in this context that respondent no.2 had sought that the petitioners be evicted from her property bearing no.B-121/2, Jagatpuri, Delhi-110051. In order to establish a title on the said property, respondent no.2 had produced a Power of Attorney and other documents indicating that the property in question belonged to her.

5. It is relevant to note that the petitioners did not dispute that the property was purchased in the name of respondent no.2. However, they claimed that father of petitioner no.1 (husband of respondent no.2) was the *karta* of the family and he had out, of the income from ancestral agricultural land located in Aligarh, purchased the property in question in the name of respondent no.2. The petitioners also claimed that in 2005, there was an oral family settlement between the family members and the property was divided into two parts, which were given to the two brothers, namely, petitioner no.1 and his brother (Nanak Chand). It was also contended that the complaint made by respondent no.2 was motivated by the brother of the petitioner no.1 –Nanak Chand.

6. The District Magistrate had examined the allegations of ill treatment. He had, thereafter, noted the object of enactment of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and has passed the impugned order directing that the petitioners be evicted from the premises in question.

7. Aggrieved by the same, the petitioners had filed a writ petition before this Court (**W.P.(C) 12443/2018**), which was disposed of by an order dated 20.11.2018, with liberty to the petitioners to avail of the

alternate remedy of an appeal before the Divisional Commissioner, in terms of Rule 22 (3)(4) of the Rules.

8. The Divisional Commissioner had further examined the contentions raised by the petitioner and had concluded that the petitioner had failed to establish that the property in question as ancestral property. The Appellate Authority had referred to the decision of the Coordinate Bench of this Court in ***Sunny (Minor) v. Raj Singh: (2015) 225 DLT 211*** and the decision of Supreme Court in ***Yudhishter v. Ashok Kumar: (1987) 1 SCC 204***, and concluded that the petitioner was unable to establish that the property in question was a joint property. This Court finds no infirmity with the aforesaid view. Bare oral pleadings to the effect that the property in question was purchased out of the ancestral funds would be of little assistance to the petitioners in establishing that the property in question is an ancestral property. There is also little material to accept the petitioner's contention that there was an oral partition in the year 2005.

9. Having stated the above, it is not necessary to dwell further with regard to the said issues as the provisions of the Rule 22(3) of the Rules permit the senior citizen to seek eviction of son, daughter or relative, notwithstanding that the property in question is not self acquired property. It is relevant to note that the Rules were amended in the year 2017 and Rule 22(3)(1)(i) and (ii) were, *inter alia*, substituted to read as under:-

**“(3) (1) Procedure for eviction from
property/residential building of Senior Citizen/Parents**

(i) A senior citizen/parents may make an application

before the Deputy Commissioner/District Magistrate of his district for eviction of his son and daughter or legal heir from his property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such property on account of his non-maintenance and ill-treatment.

- (ii) The Deputy Commissioner/DM shall immediately forward such application to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case within 15 days from the date of receipt of such application.

10. In view of the aforesaid amended provisions, even if the property is not a self acquired property, a senior citizen would have a right to evict a son, daughter, and relative from the same.

11. In view of the above, this Court finds no infirmity with the impugned order passed by the Divisional Commissioner. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

FEBRUARY 01, 2019
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