



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

Date of decision: 25th AUGUST, 2022

IN THE MATTER OF:

+ **LPA 446/2022, CAV 204/2022, CM APPLs. 32398-99/2022**

NEERAJ BHASIN

..... Appellant

Through: Mr. Saurabh Balwani, Mr. Farhat Arif, Advocates

versus

DIVISIONAL COMMISSIONER, DELHI & ORS. Respondent

Through: Mr. Ashim Vachher, Mr. Vaibhav Dabas, Mr. Kunal Lakra, Advocates for Respondent No.2

Mr. Viraj R. Datar, Sr. Advocate with Mr. Saurav Joon, Advocate for Respondent No.3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. The instant Letters Patent Appeal has been filed by the Appellant seeking quashing of the Order dated 08.07.2022, passed by the Learned Single Judge of this Court in W.P. (C) No. 9757/2022. The Learned Single Judge *vide* the Impugned Order has upheld the Order dated 29.06.2022 passed by the Divisional Commissioner, acting as the Appellate Authority under the Maintenance and Welfare of Parents and Senior Citizens Act,



2007 (hereinafter referred to as 'the said Act'), in Appeal No. 497/2022 which dismissed the Appellant's application seeking stay on the Order dated 13.05.2022 (hereinafter referred to as 'the *Eviction Order*') evicting the Appellant from property being, D-1101, New Friends Colony, New Delhi-110025 (*hereinafter referred to as 'the said Property'*).

2. The instant Letters Patent Appeal is the culmination of three rounds of litigation. The facts presented below also indicate that the parties have filed other civil suits, and petitions against each other, which are also pending adjudication. The relevant facts in brief are as follows,

- i. The Appellant is the elder son of Mrs. Sumana Bhasin (Respondent No.2 herein), and has a younger daughter *namely*, Monica Bhasin.
- ii. It appears that back in 1988, the Appellant, along this wife (Respondent No. 3 herein) was allowed to reside on the second floor of the said disputed property, which is the self-acquired property of Respondent No. 2 and her late husband.
- iii. Thereafter, in 2007, as the relations between Appellant and his wife (Respondent No.3 herein) turned sour, his wife filed a complaint alleging domestic violence against him. The Metropolitan Magistrate, before whom the said complaint was pending, *vide* Orders dated 26.04.2007 and 29.09.2007 restrained the Appellant herein from entering into the said disputed premises. Owing to this, the Appellant was unable to reside at the said disputed premises between 2007 and 2019. During this period, the Appellant was residing at Goa, and also at his other flats in New Delhi.



- iv. It has been stated that these complaints were dismissed by the Metropolitan Magistrate in 2015, and the appeal arising from them was also dismissed by the Sessions Court in 2019. Thereafter, Respondent No. 3/ Appellant's wife filed a Petition under Section 482 of the Code of Criminal Procedure, 1973 being CrI. MC. No. 1875/2019, seeking quashing of the Order passed by the Sessions Court. During the pendency of this Petition, the Appellant herein and his wife filed a joint application seeking referral of the said Petition to mediation. It was stated in the said Application seeking referral that since this pertained to the marital discord between the Appellant and his wife, all other Respondents be dropped from the proceedings.
- v. Owing to the success of the mediation, a Settlement Agreement dated 06.07.2021, was drawn up between the Appellant and his wife. It is pertinent to note a clause in this Settlement Agreement stated that the Appellant would transfer his property located at Sukhdev Vihar to his wife, and that she would in turn hand over the possession of the said disputed Property to the Appellant herein. The Appellant claims that the Settlement Agreement was entered into with the knowledge and acquiescence of Respondent No. 2, and is hence, bound by it. However, Respondent No. 2 has categorically denied being a party to the mediation, and claims that it was drawn up behind her back.
- vi. In the interim, the Appellant's father passed away in April 2014. *Vide* a Will dated 16.08.2010, the Appellant's father explicitly excluded him from getting a share in the said disputed property. The Appellant claims that the said Will was found in December



2014, and that his father excluded him for the sole reason that he did not want his daughter-in-law to have a claim in his property. On the other hand, Respondent No. 2 claims that she found the Will in 2017, and that her husband's decision was a culmination of the ill-treatment meted out to him by his son and daughter-in-law. The validity of the said Will has been disputed by the Appellant and is presently pending adjudication before the Learned District Judge, South-East, Saket Courts, New Delhi in CS 8207 of 2016 titled '*Shiv Kumar Bhasin v. Sumana Bhasin and Anr.*'

- vii. It has been stated by the Appellant, that in 2015 despite the existence of the said Will, Respondent No. 2 and her daughter/Appellant's sister approached him to enter into an oral family settlement, wherein they recognised the Appellant's 1/3rd undivided share in the said disputed property. It is stated that the terms of the said settlement were recorded in a Memorandum of Family Settlement dated 27.01.2015 (hereinafter referred to as "MOFS"). The Appellant had sought to place reliance upon this MOFS to seek a stay on the Eviction Order. However, the validity of this MOFS has been outrightly denied by the Respondent No. 2 before the Appellate Authority, and the Learned Single Judge of this Court as well.
- viii. Finally, on 19.02.2019, Respondent No. 2 filed an Application/ Complaint before the Dy. Commissioner/District Magistrate under Rule 22(3)(1)(i) of the Maintenance and Welfare of Parents and Senior Citizens (Amended) Rules, 2016 against the



Appellant, and his then wife/Respondent No. 3 seeking their eviction from the said Property, *inter alia*, on the ground that:

“Complaint submits that she is unable to meet her domestic expenses and her medical bills have also risen. She wants to be able to financially support herself and come out of the mental, emotional and financial trauma she is presently facing. Thus she requests that the Respondents be evicted from the subject property.”

- ix. On 13.05.2022, the Deputy Commissioner/District Magistrate passed an Order stating that the Appellant and Respondent No. 3 must vacate the said Property within 30 days of the receipt of the Eviction Order.
- x. Being aggrieved by the Eviction Order, the Appellant filed an Appeal No. 497/2022 assailing it before the Divisional Commissioner, acting as the Appellate Authority under said Act. However, owing to a vacancy in the office of the Divisional Commissioner, the Appellant was constrained to file WP(C) No. 9210/2022 CM APPL. No. 27631/2022 (for stay) before the Learned Single Judge.
- xi. The Learned Single Judge *vide* Order dated 03.06.2022 passed the following directions:

“3. In view of the aforesaid, the petition shall stand disposed of with a direction to the Divisional Commissioner to take up the stay application as moved in the appeal expeditiously. Till such time as the said Application is taken up and considered by the Divisional Commissioner, no coercive steps including that of eviction shall be taken against the petitioner pursuant to the impugned order of 13 May 2022...”



- xii. On 29.06.2022, the Divisional Commissioner disposed of the Stay Application filed along with the said Appeal (“**Appellate Authority’s Order**”) with the following observations:

“Prima facie as per will the suit property is in the name of the Respondent. Further the appellant submitted a family settlement agreement, but the respondent refused to accept the settlement as true and it is a matter of trial before the Hon’ble Civil Court. The Appellant has his own property so no irreparable harm will be caused to him if he shifted from the suit property...In light of the aforesaid facts and circumstances, the stay application of the Appellant is hereby dismissed.”

- xiii. Aggrieved by the above Order passed by the Divisional Commissioner, the Appellant filed WP(C) No. 9757/2022 seeking its quashing, along with interim relief of stay.
- xiv. *Vide* the Order dated 08.07.2022, the Learned Single Judge passed the Impugned Order upholding the Order dated 29.06.2022 passed by the Divisional Commissioner.
- xv. Now, upon being aggrieved by the Impugned Order of the Learned Single Judge, the Appellant has preferred the instant Letters Patent Appeal.
3. Learned counsel for the Appellant argued that the Learned Single Judge erred in relying upon the complaint, insofar as it has been made by the Appellant’s sister, and not Respondent No. 2. It was further argued that the Learned Single Judge failed to take into account that the Appellant had even given away his share in the property of Sukhdev Vihar to his wife i.e Respondent No. 3.



4. The learned counsel for the Appellant has placed heavy reliance upon the MOFS, which states that the Appellant has a right to reside at the second floor of the disputed Property and the Learned Single Judge has failed to appreciate the MoFS document. It has further been argued that the Learned Single Judge has erroneously exceeded its own jurisdiction as it has adjudicated on the validity of the Will and MOFS.

5. Further reliance has been placed upon, Preeti Satija vs. Raj Kumari & Anr., **207 (2014) DLT 78 (DB)**, to argue that even if a son is disowned by a parent, the intestate death of that parent would still lead to devolution of property upon that son.

6. *Per contra*, the counsel for the Respondent No. 2 contends that the Act has been brought to protect the interest of senior citizens. Further, he brings it to this Court's attention that the Appellant was not residing in the Disputed Property, and had been residing in Goa since 2007, where he is gainfully employed. The Learned Counsel also states that the Appellant has concealed that the settlement arrived at after the mediation was drawn up ex-parte and behind the back of Respondent No.2 and the Respondent No. 2 was not aware of the same.

7. The Learned Counsel for the Respondent No. 2 has relied upon various judgments, *inter alia*, Aarshya Gulati v. Govt. of NCT of Delhi, **261 (2019) DLT 373 DB**, and Justice Shanti Sarup Dewan v. Union Territory of Chandigarh, **2013 SCC OnLine P&H 20369**, to argue that the competent authority under the said Act has the jurisdiction to order eviction in cases wherein the senior citizen has a right in the property.

8. Heard the counsels for the Appellant, and the Respondent and perused the material on record.



9. The instant LPA is the result of the learned Single Judge refusing to interfere with an order rejecting an application for stay passed by the Divisional Commissioner. The Learned Counsel for the Appellant has repeatedly sought to place reliance upon the MOFS, and the Settlement Agreement to claim his right in the Disputed Property. The Appellant has also sought to challenge the validity of the Will, whereby his father did not give the Appellant a share in the Disputed Property. As is evident, various other suits, and petitions have been filed by the parties against each other, and are pending adjudication in various civil courts.

10. From a perusal of the record, it appears that Respondent No. 2 filed a complaint with the Dy. Commissioner/District Magistrate dated 19.02.2019 seeking an eviction of the Appellant and his wife. It further appears that the complaint was filed as Respondent No. 2 was unable to meet her financial needs, and had also faced extreme emotional neglect at the hands of the Appellant, and his wife. The Appellant herein, and his wife also had the occasion to file their replies to the said Complaint, and hence had an occasion to controvert the assertions levelled against them. Thereafter, the Respondent No. 2 has filed a detailed rejoinder, which has also been reproduced in the Eviction Order. Before passing the Eviction Order, the Appellant and Respondent No. 2 were heard at length, and were also given the opportunity to submit their written statements. It was observed in the Eviction Order that the Disputed Property was the self-acquired property of Respondent No. 2's husband. Further, *vide* the Will dated 16.08.2010, the Disputed Property was entirely bequeathed to the Respondent No. 2 and her daughter. After recording the above, the Order stated that the Respondent No. 2 and Appellant cannot reside together. It was also noted that the Respondent No. 2 was responsible



for the upkeep of the Disputed property, which was also adding to her financial burdens.

11. It was against this Eviction Order that the Appellant sought an appeal before the Divisional Commissioner, along with an application seeking stay on its operation. While disposing of the stay application, the Divisional Commissioner recorded the submissions made by the Appellant, and dismissed the stay application on grounds that *a)* the existence of the MOFS has been disputed and is pending adjudication, *b)* the Appellant has his own property, hence no irreparable harm is likely to be caused to him, and *c)* the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 and its amended rules have been framed for the benefit and protection of senior citizens. Considering that this is a stay application, the Divisional Commissioner rightly did not delve into the validity of the disputed documents *viz.* the MOFS, and the Will, and based his findings on the *prima facie* materials present before him.

12. The said Order was challenged in W.P.(C)9757/2022. The Learned Single Judge of this Court considered the propriety of the Order dismissing the application seeking stay. The Learned Single Judge went through the complaints filed by Respondent No. 2, and considered the competing submissions made by counsels for the Appellant and the Respondent No. 2. The Learned Single Judge held that at the stage of an appeal preferred under Article 226/227 of the Constitution of India, the various contentions touching upon the civil rights claimed by the parties in respect of the Disputed Property were subservient to the principal considerations of the Act i.e. the security and safety of senior citizens.

13. The Learned Single judge noted that the Appellant had moved out of the Disputed Property way back in 2006-2007. Further, upon a perusal of the



complaints, it is evident that there exist serious allegations of abuse against the Appellant and his wife. The Learned Single Judge has also rightly refrained from granting any relief on the basis of the MOFS, considering that its validity has been outrightly denied by the Respondent No. 2. Hence, since it is well settled that the high Court ought not to exercise its jurisdiction under Articles 226/227 to adjudicate hotly disputed questions of law, the Learned Single Judge rightly refrained from commenting upon the validity of various disputed documents. This was necessary more so in the present scenario, as the appeal against the Eviction Order is still pending.

14. This Court has had the occasion of going through the orders of both, the Divisional Commissioner, and the Learned Single Judge whereby both these courts have dismissed the Appellant's plea of stay on the Eviction Order. It is evident that the previous two courts have carefully analysed the facts pertaining to the present case, in view of the objective of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Moreover both, the Appellate Authority, and the Learned Single Judge, have carefully scrutinised these factual issues to arrive at the same conclusions. Both the courts have rightly stated that since the MOFS has been outrightly denied by the Respondent No. 2, and is pending adjudication, the same cannot be relied upon to stay the Eviction Order. As also noted, the existence of the Will, *prima facie* does indicate that the Appellant does not have a right in the Disputed Property. Further, the courts have also rightly noted that since the Appellant has not even been residing in the Disputed Property as he moved to Goa back in 2007, and also had a flat at Sukhdev Vihar, New Delhi, he would not be prejudiced by the Eviction Order. As these are muddled questions of fact, this Court cannot revisit them in this jurisdiction after concurrent



findings have been rendered in this respect by a statutory authority, and the Learned Single Judge of this Court.

15. Further, contrary to the contention of the Appellant, the Learned Single Judge did not interpret the MOFS, or the Will and has categorically refrained from doing so. Hence, this Court finds no force in the argument of the Appellant that the Learned Single Judge had exceeded its jurisdiction by examining the MOFS and Will. Further, the reliance upon the Settlement Agreement is also misplaced insofar as Respondent No. 2 was evidently not a party to it.

16. The judgment of Preeti Satija (*Supra*), also does not come to the rescue of the Appellant since the facts of the instant case are easily distinguishable as the Appellant's father did not die intestate, and had executed a Will, albeit pending adjudication, excluding the Appellant.

17. In light of the foregoing observations, this Court does not find any infirmity with the Impugned Order, and is disinclined to interfere with it.

18. The appeal against the Eviction Order is presently pending before the Divisional Commissioner, who is well equipped to determine the propriety of the Eviction Order in its entirety. The observations of this Court are not to prejudice the proceedings pending before the Divisional Commissioner.

19. With these observations, the petition is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

AUGUST 25, 2022/Rahul