

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17149 of 2023

1. Anil Prakash Son of Late Lalit Lal, Resident of Eastern side of 2nd floor, House No. 19, Montessori School Lane, Boring Road, P.S. Sri Krishna Puri, District-Patna.
2. Sunita Sinha, Wife of Anil Prakash, Resident of Eastern side of 2nd floor, House No. 19, Montessori School Lane, Boring Road, P.S. Sri Krishna Puri, District-Patna.
3. Pakash Abhishek, Son of Anil Prakash, Resident of Eastern side of 2nd floor, House No. 19, Montessori School Lane, Boring Road, P.S. Sri Krishna Puri, District-Patna.
4. Arun Prakash, Son of Late Lalit Lal, Resident of Ground floor, House No. 19, Montessori School Lane, Boring Road, P.S. Sri Krishna Puri, District-Patna.
5. Sangita Sinha, Wife of Arun Prakash, Resident of Ground floor, House No. 19, Montessori School Lane, Boring Road, P.S. Sri Krishna Puri, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Patna.
2. District Magistrate, Patna-cum-Presiding Officer, Appellate (Maintenance), Tribunal, Patna.
3. The Chairman, Maintenance Tribunal-cum-Sub-Divisional Officer, Patna Sadar, District- Patna.
4. Deputy Superintendent of Police, Sachivalaya, Patna.
5. The Officer-in-Charge, Sri Krishna Puri Police Station, Patna.
6. Smt. Nirmala Sinha, Wife of Late Lalit Lal, Resident of House No. 19, Montessori School Lane, Boring Road, P.S. Sri Krishna Puri, District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Verma
For the Respondent/s : Mr. Standing Counsel 15

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 28-03-2024

Heard the parties.

2. The present application has been filed for
quashing the order dated 25.08.2023 passed by the Collector-



cum-District Magistrate, Patna in Maintenance of Parents Appeal Case No. 03/2020-21, by which the District Magistrate, Patna has declared the building, which is subject matter of the dispute, to be a self acquired property of the respondent no.6 and directed to hand over the building to the respondent no.6 without any objection with further direction that the order of the competent Civil Court would take effect after it is passed. The appeal arises out of the order of the Presiding Officer, Maintenance-cum-Sub Divisional Officer, Patna Sadar, Patna in Tribunal Case No. 72 of 2019 by which the Sub-Divisional Officer, Patna Sadar has relegated the petitioner to approach the Civil Court.

3. The case of the petitioner is that a house bearing House No.19 situated at Montessari School Lane, Boring Road, Patna was constructed by the husband of the private respondent no. 6 and the father of petitioner nos.1 and 4 from the nucleus of joint Hindu Family fund and the husband of the respondent no.6 along with his three sons and their family started residing in the said house in their separate allotted premises. Because of a petty issue, one of the sons of respondent no.6 namely Amar Prakash and his family created chaos in the family and this fact has been brought to the notice



of the *karta* of the family namely, Lalit Lal (now deceased) by the other two sons of respondent no.6 i.e. petitioner nos. 1 and 4 but he did not take any step rather he supported Amar Prakash as he was the youngest son and he used to pressurize his mother and father to transfer the entire property/building at Patna including the ancestral property i.e. 28 bighas of land situated at village-Ramchandrapura, Police Station-Tilaithu in the district of Rohtas. Ultimately, the petitioner nos.1 and 4 i.e other sons of respondent no.6 filed Title Partition Suit bearing No.179/2019 on 16.07.2019 claiming partition and apportioning of 2/6th share in the property including the house in question.

4. After the Title Suit was filed, notices were issued to the parties and after knowing about the filing of the title suit, Amar Prakash got filed Tribunal Case No.72/2019 before the Sub-Divisional Officer, Patna Sadar-cum-Chairman Tribunal by his mother arraying the petitioners as parties in the said case.

5. It is the case of the petitioners that the respondent no.6 mislead the Tribunal by saying that the property belongs to her as the same was her self acquired property, whereas the averments made in the plaint itself speaks that the said property belonged to her husband as his self acquired



property and all the sons of the applicant i.e. respondent no.6 were/are residing in the said premises with their family members and after death of the applicant's husband, the same would devolve upon the legal heirs including other sons i.e. petitioner no.1 and 4 and others. The petitioners, after knowing the fact of filing of the case, appeared before the Tribunal and filed their written statement and gave point-wise reply to the averments made in the case and also disclosed about the factum of the pendency of the title partition suit before the competent Civil Court and also discussed the fact that the property is joint Hindu family property, which was the subject matter of division in the competent Civil Court where they sought for partitioning the property as per their respective shares.

6. The Chairman-cum-Sub-Divisional Officer, Patna Sadar after hearing both the parties and after considering the material on record, has disposed of the Tribunal Case No. 72/2019 vide order dated 14.03.2020 with a direction to the respondent no.6 to provide uninterrupted water supply to the petitioners and liberty was also given to the respondent no.6 to approach the competent civil court for redressal of her grievances. Against the order dated 14.03.2020, the respondent no.6 approached this Court by filing C.W.J.C. No.3335 of 2021.



During the pendency of the aforesaid writ petition, respondent no. 6 preferred an appeal before the Appellate Tribunal-cum-District Magistrate, Patna vide Tribunal Appeal No.3 of 2020-21 who vide his order dated 22.1.2022 directed the petitioners to vacate the self acquired house of the private respondent no.6 and hand-over the vacant possession of the same to the respondent no. 6 and the aforesaid order was challenged by the present petitioners in CWJC No.3753 of 2022. Taking note of the aforesaid facts, this Court vide order dated 22.3.2022 dismissed CWJC No.3335 of 2021 as having become infructuous.

7. In view of the order of the Appellate Authority, the Sub-Divisional Officer, Patna Sadar deputed the Block Cooperative Officer as Magistrate and directed him to consult the Officer-in-Charge of Sri Krishna Puri Police Station to ensure compliance of the order dated 22.1.2022 passed in Tribunal Appeal No.3/2020-2021.

8. It is further the case of the petitioners that this Court vide judgment and order dated 31.7.2023 passed in CWJC No. 3753 of 2022 quashed the aforesaid order dated 22.1.2022 passed by the appellate authority and remitted the matter back to the appellate authority for fresh adjudication after



hearing the parties. Pursuant to the order of this Court, the appellate authority i.e. Appellate Tribunal-cum-District Magistrate, Patna heard the parties again and passed the impugned order dated 25.8.2023 by which the appellate authority has declared the building, which is subject matter of the dispute, to be a self acquired property of the respondent no.6 and directed the petitioners to hand over the building to the respondent no.6. Hence, this writ petition.

9. Learned counsel for the petitioners submits that the Appellate Authority i.e. the District Magistrate, Patna has passed the impugned order without going into the merits of the case and without considering the import of the order passed by this Court. He further submits that the husband of the respondent no.6 allowed his three sons i.e. petitioner nos. 1 and 4 as well as Amar Prakash to live together and they were living together since 1994 in the house in question. The respondent no.6 under the influence of her youngest son and his family, made false allegations against these petitioners who are her sons.

10. Learned counsel for the petitioners also submits that the Chairman-cum- Sub Divisional Officer, Patna Sadar has found that the dispute between the parties as family



feud and held that the disconnection of water supply of the petitioner is illegal and thereafter passed the order dated 14.03.2020 directing the respondent no.6 for ensuring uninterrupted water supply to the petitioners and liberty was also given to the respondent no.6 to approach the competent civil court for redressal of her grievances. He also submits that the respondent no.6 has assailed the aforesaid order of the Chairman before this Court and also challenged the same order before the Appellate Authority i.e. the District Magistrate, Patna, which amounts to forum shopping and when this fact came to the knowledge of this Court, this Court had dismissed the writ petition filed by the respondent no.6 as having become infructuous.

11. It has been submitted by the learned counsel for the petitioner that the order of the Appellate Tribunal-cum-District Magistrate, Patna is not in accordance with law as the tribunal has no power to pass an order for eviction and therefore the same cannot sustained. It has further been submitted by the learned counsel for the petitioner that so far as the Will in question is concerned the same is not genuine as the same does not satisfy the provisions of Section 63 of the Indian Succession Act, 1925 as well as Section 68 and 71 of the Indian Evidence



Act.

12. Learned counsel for the petitioners further submits that the respondent no. 6 gets rent of Rs. 36000/- from the building in question and apart from that she also gets family pension which is sufficient for her livelihood.

13. Learned counsel for the petitioners has relied upon a Judgment of this Court passed in the case of ***Ravi Shankar and Ors. Vs. The State of Bihar and Ors.*** reported in ***2024 (1) PLJR 502***. He has also relied upon a judgment dated 18.8.2023 passed by the Allahabad High Court in the case of ***Krishna Kumar Vs. State of Uttar Pradesh 2023 : AHC-LKO 54220***.

14. The case of the respondent no.6 is that when the husband of the respondent no.6 was alive had filed an informatory petition dated 24.10.2019 under Section 39 of the Code of Criminal Procedure against all the petitioners of this case wherein he stated about his sufferings at the hands of these petitioners. It is also the case of the respondent no.6 that the property in question is a self-acquired property of her husband namely Lalit Lal and therefore the appellate authority has rightly passed the order of eviction dated 25.08.2023. It is also the case of the respondent no.6 that a Title Partition Suit No.



179 of 2019 was filed by Anil Prakash and Arun Prakash (petitioner nos. 1 and 4) against their own father, brother namely Amar Prakash and two sisters but the respondent no. 6 was not made a party in the said Title Partition Suit despite being a necessary party. The property which is situated in Patna is the self-acquired property of the husband of the respondent no. 6 and subsequently the husband of respondent no.6 created a Registered Will in favour of his wife regarding the property in question and there is no provision in law to partition self-acquired property against the Will of the testator.

15. It has further been stated on behalf of respondent no.6 that due to the criminal activities of the petitioners, the respondent no. 6 had also filed a criminal case bearing S.K. Puri Case No. 416 of 2019 dated 22.11.2019 registered under section 419, 420, 504, 506, 34 of the Indian Penal Code. She had also filed an application under section 145 of the Cr.P.C. in the Court of Sub Divisional Magistrate, in which a report dated 06.06.2020 was submitted by Sri Krishna Puri Police Station. The said report specifically states that the Sri Krishna Puri P.S. Case no. 416 of 2019 was registered against the petitioners and the report also states that the second floor of the house in question is being illegally occupied by the



petitioners.

16. It has further been stated on behalf of the respondent no.6 that another Miscellaneous Case No. 528210123052304618, dated 23/05/2023 was filed by the respondent no.6 against the petitioners, wherein in the final report dated 01.08.2023, it has been specifically stated that the respondent no. 6 namely Nirmala Sinha is an old lady whose life and property are in danger and the S.K. Puri Police Station/public authority was given direction to protect the physical and mental well-being of the respondent no. 6 but no action was ever taken by the authorities concerned.

17. It has further been stated by the respondent no. 6 that due to the heinous atrocities committed by the petitioners, a public notice was issued by Late Lalit Lal i.e. husband of respondent no. 6 on 22.10.2020 in the daily newspaper 'Aaj' in which it was stated that the late husband of the respondent no.6 disentitled the rights of the petitioners in his self-acquired properties. It has further been stated that Tribunal Case No.72 of 2019 was filed by the respondent no. 6 on 17.12.2019 under the relevant provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, wherein prayer was made for a direction to the present writ petitioners to



vacate the premises/building in question. Thereafter, the Tribunal disposed of the Tribunal Case No.72 of 2019 vide order dated 14/03/2020.

18. It has also been argued that despite the opportunity given to the petitioners, they did not file any reply / written statement before the appellate Court and finally the Appellate Authority pronounced the order dated 22.01.2022 in Appeal Case No. 03 of 2020-21. The husband of the respondent no. 6 had executed a registered Will dated 13/03/2020 before registering officer, Patna with regard to House - 19, Rakwa- 2 Katha, Khata No. 51, Khesra No.- 932, Thana. - 3 and Tauji 5453, Holding No. 616/417, Circle No. 247, Ward No. 23. The testator of the said Will is the husband of the respondent no. 6 namely Late Lalit Lal and the Legatee is the respondent no.6. It is further submitted that the said property was purchased/self-acquired by late husband of respondent no. 6 and under the provisions of the section 30 of Hindu Succession Act, 1956, Indian Succession Act, 1925 and Registration Act, 1908, the respondent no. 6, after the demise of her husband, became the absolute owner of the above-said property by the virtue of section 14 of the Hindu Succession Act, 1956.

19. Learned counsel for the respondents have



relied upon a judgment of the Hon'ble Apex Court passed in the case of *S. Vanita Vs. The Deputy Commissioner, Bengaluru Urban District and Ors. reported in 2021 15 SCC 730*.

20. I have considered the submissions of the parties and perused the materials on record. From the record, it appears that earlier the petitioners have moved before this Court in C.W.J.C. No.3753 of 2022 against the Appellate order dated 22.01.2022 passed in Senior Citizen (Mother-Father) Appeal Case No.03 of 2020-21 and the same was disposed by a coordinate Bench of this Court vide judgment and order dated 31.07.2023 with the following direction:-

“25. Having regard to the facts and circumstances of the case, this Court finds that several vital aspects of the matter, as detailed hereinabove in the preceding paragraphs, have not been considered by the learned Court of Collector-cum-District Magistrate, Patna, while passing the impugned order dated 22.01.2022 in Appeal Case No. 3 of 2021-22, hence, for the reasons mentioned hereinabove, this Court finds that the impugned order dated 22.01.2022 is neither just nor legal, hence stands vitiated in the eyes of law, thus, this Court deems it fit and



proper to quash the impugned order dated 22.01.2022 and remand the matter back to the learned Court of Collector-cum-District Magistrate, Patna, for fresh adjudication, after hearing the parties. In order to protect the interest of the private Respondent No. 3, this Court deems it fit and proper to direct the petitioners to file their objections / written statement in the aforesaid Appeal Case No. 3 of 2021-22 on or before 18th of August, 2023, whereafter, the learned Court of Collector-cum-District Magistrate, Patna, shall hear the parties on 25.8.2023 at 10:30 am. and thereafter, pass an order afresh in the aforesaid Appeal No. 3 of 2021-22 within a fortnight i.e. on or before 10th of September, 2023. It is needless to state that in case of default by any of the parties to adhere to the aforesaid timeline, the Ld. Collector-cum-District Magistrate, Patna shall proceed ex-parte.”

21. Thereafter, the impugned order 25.08.2023 was passed by the Appellate Authority in Senior Citizens (Mother-Father) Appeal Case No.3 of 2020-21 which is the



impugned in this writ petition. The order has been challenged mainly on two grounds that the respondent no.6 is getting sufficient maintenance by way of rent of Rs.36,000/- per month and pension of sizeable amount.

22. The application dated 09.12.2019 was filed by the respondent no. 6 under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 with the following prayer.

अतः श्रीमान् से अनुरोध है कि विपक्षीगण को नोटिस निर्गत किया जाय तथा उनलोगों पर कानूनी कार्रवाई किया जाय ताकि आवेदिका के पति द्वारा स्वअर्जित जमीन मकान में विपक्षीगण न रहें ताकि आवेदिका एवं आवेदिका के पति का जीवन शांतिपूर्वक व्यतीत हो।”

23. From the prayer of the application dated 09.12.2019 filed by the respondent no.6 under the Act, it appears that the respondent no.6 has prayed for eviction of the petitioners and not claiming any maintenance amount and it is also clear that the petitioners are the sons and daughter-in-laws of the respondent no.6 and they are residing in the house in question which is being claimed by the respondent no. 6 as her exclusive property after the death of her husband. She claims the property under a registered Will executed by her late husband.

24. The object of the *Maintenance and Welfare*



of Parents and Senior Citizen Act, 2007 is to protect and provide for more effective provisions for maintenance and welfare of parents and senior citizens. From the reading of various provisions of the aforesaid Act, it is clear that the aforesaid Act provides for maintaining the senior citizens and this shall not be used as a tool for recovery of possession from a party who has some right in the property.

25. In the present case, it is an admitted position that the Title Suit is pending between the parties in the District Court and they are yet to be decided. This Court in the case of ***Ravi Shankar vs. State of Bihar (supra)*** in Paragraph nos. 34 to 39 has held as follows:-

"34. From the allegations raised it is clear that the son was a permissive occupant though according to the 8th respondent it was never intended that he stay in the rest house with his family and that too, occupy more than one room. The Advocate Commissioner has spoken about a common residence with the parents, which as of now is not in existence. The parents and the son and his family are residing in different places, the former at a rented accommodation and the latter in the rest house occupying three rooms; though there is allegation of harassment and nuisance. The fact that the parents and the son and his family are not living in one building would not enable a prayer for eviction. The rest house, which is a separate building is where the son resides with his family. However, the claim of the father is that he is unable to maintain himself with the



meagre pension and that he only has the income generated from the rest house to sustain himself. The said contention is raised alongside the assertion in the application that the eldest son, who is living along with the parents in the rental accommodation, takes care of his old aged parents and arranges all medical necessities. It has to be pertinently noticed that the allegation of income from the rest house being the only sustenance of the 8th respondent, was one ground which did not find a place in the application. In fact, the specific contention was that the father was willing to accommodate the son and his wife in a rental accommodation to ensure that the son does not live in the house of his wife, along with his in-laws.

*35. In the above circumstances, we cannot find any ground to enable an eviction by the Tribunal constituted under the Senior Citizens Act; which we have found can at best be enforced, only under Section 23(1) of the Act. In fact, the Hon'ble Supreme Court in **S. Vanitha** (supra), only observed that "the Tribunal under the Senior Citizens Act, 2007 may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent. Eviction in other words would be an incident of an enforcement of the right to maintenance and protection. However, this remedy can be granted only after adverting to the competing claims in the dispute" (sic). In the cited case, the aforesaid observation was in the context of the daughter-in-law claiming the building in which she was residing to be a shared household which sharing is in the context of the husband and wife sharing the residence, before the death of the husband. It was to enable continued residence in the said building, she had taken the proceedings under the Domestic Violence Act. As has been noticed by us it was also observed in **S. Vanitha** (supra)*



that, the proceedings under the Domestic Violence Act being later to the application under the Senior Citizens Act would be of little consequence in claiming the right of a shared household.

36. In any event, for the present we are not advertent to the proceedings under the Domestic Violence Act, which is to be adjudicated by the appropriate Court, untrammelled by any observation made herein. But it has to be emphasized that neither is there a claim under Section 23(1) of the Senior Citizens Act nor is there a claim of maintenance. We immediately observe that a claim of maintenance would not be a requirement insofar as an application under Section 23(1) or even under Section 23(2). Though there is no maintenance claimed from the 1st appellant, the younger son of the 8th respondent and there being no whisper in the application, about the income from the rest house being the only sustenance of the aged parents; it cannot but be noticed that the 8th respondent had rights over the property in which now the 1st appellant is staying with his wife and child in three rooms. There is of course a title suit filed by the 1st appellant, which again would have to be considered by the appropriate Court. As of now, since there is no injunction against the exclusive possession of the 8th respondent, the 1st appellant cannot claim any right of residence in the building as a co-owner, just as the father, a senior citizen, cannot seek eviction from the separate residence of the son in a building owned by him, under the Senior Citizens Act. The son also cannot claim a right to residence in a building exclusively owned by the father, by virtue of their relationship alone. Hence, though the allegation is of a permissive occupation, the specific contention of the 8th respondent is that he never intended a continued occupation by the son and that too in more than one room with his



family. The appellants, the husband and wife also does not controvert the assertion of both of them being Patna High Court engaged in fruitful occupations, capable of sustaining themselves with their earnings. In the above circumstances, the son would be liable to pay the rent for the three rooms he occupies, to his father.

37. We have specifically stated that we do not speak on the various proceedings & pending cases between the appellants and the 8th respondent before the various courts; specifically under the Domestic Violence Act and the title suit in the civil court. The observations made by us in this judgment about any proceeding, other than that under the Senior Citizens Act, are prima facie and would not regulate the adjudication of such other proceedings. In this context, we also set aside every such observation made by the learned Single Judge about the sustainability of the title suit and the efficacy of a petition under the Domestic Violence Act.

38. We are of the opinion that there could be no eviction ordered under the Senior Citizens Act since the claim is not under Section 23(1). The claim of the 8th respondent before the Tribunal under the Senior Citizens Act, if at all coming under Section 23(2) of the Act, there can only be an enforcement of the right of maintenance from the property. An occupation whether it is permissive or an encroachment would have the trappings of a transfer, which would dis-entitle the owner of the property from the maintenance by way of rental income generated from the occupied rooms in the rest house. We make it clear that the appellants, as of now, do not have any right to claim the income from the other rooms in the rest house, nor can they obstruct or cause harassment to the other occupants of the rooms; which, if complained of to the District



Magistrate, Patna or the Jurisdictional Station House Officer, the appropriate authority shall take proper measures to avert & avoid the same.

39. Insofar as the rental income entitled from the three rooms occupied by the appellants, we set aside the order of the Tribunal under the Senior Citizens Act for eviction as also the decision of the learned Single Judge, and remand the matter to the District Magistrate, Patna. The District Magistrate, Patna shall conduct an inquiry as to the reasonable rent that could be generated from the three rooms occupied by the appellants and pass an order directing the appellants to pay the same by way of regular remittances in the account of the 8th respondent. We also make it clear that the 8th respondent would be entitled to approach the civil court for eviction, if so desired, which proceeding ought be considered in accordance with law; again untrammelled by any of our observations; which are confined to the proceedings under the Senior Citizens Act."

26. This Court has also considered the question as to whether the family members can be evicted from the property in question when the matter is pending before the Civil Court and has held that the eviction can only be ordered if the senior citizen is not being maintained and for getting the rent from the premises, eviction can be ordered but in the present case, it is an admitted position that the respondent no. 6 is getting pension as well as rent which is sufficient for her maintenance. The provisions of the Senior Citizen Act cannot be exercised as a tool to evict the family members. The petitioners,



who are the children of respondent no.6, were allowed to stay in the house and therefore, they are permissive occupants of the house. The eviction of the petitioners can only be ordered if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent as has been held in **S. Vanitha's case (supra)**. The eviction cannot be ordered under the Act unless it is an incident of an enforcement of right to maintenance and protection and this remedy can only be granted after considering the claims of the parties. In the opinion of this Court, the proceeding initiated by respondent no.6 is not for grant of maintenance to the respondent no.6 but is for eviction of the petitioners and therefore, the same cannot be allowed. Consequential, the impugned order dated 25.08.2023 passed by the appellate authority cannot be sustained.

27. In view of the aforesaid, this writ petition is allowed and the impugned order dated 25.08.2023 passed by the Collector-cum-District Magistrate, Patna in connection with Maintenance of Parents Appeal Case No. 03/2020-21 is set aside.

28. The respondent no.6 is given liberty to pray for expediting the hearing of the Title Suit and if such a prayer is made, the Title Suit must be decided within a year from the



date of receipt/communication of the prayer of the respondent
no. 6. The District Court can proceed ex-parte against the non-
cooperating party.

(Sandeep Kumar, J)

Vikas/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	
Transmission Date	

