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

Date of decision: 15th MARCH, 2024

IN THE MATTER OF:

+ W.P.(C) 11853/2021 & CM APPL. 36693/2021

ARSHDEEP SINGH AND ANR.

..... Petitioners

Through: Mr. Deepak Biswas and Mr. Harshit Gupta, Advocates.

versus

GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. Rishikesh Kumar, ASC for GNCTD with Ms. Sheenu Priya, Mr. Sudhir Kumar Shukla, Mr. Atik Gill, Mr. Sudhir, Advocates.
Mr. Arjun Sayal, Mr. Shrayan Das, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioners have approached this Court challenging an Order dated 28.09.2021 passed by the Appellate Authority of Divisional Commissioner allowing Appeal No. PA/Div.Comm./Appeal No.262/2020/397-403 filed by the Respondents herein and setting aside the Order passed by the learned District Magistrate which is the original authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
2. The facts in brief are that the property bearing No. A-94, South



Extension Part-II, New Delhi-110049 was purchased by two brothers Surinder Singh and Devinder Singh by way of registered sale deed dated 24.09.1969.

3. A perusal of the sale deed reveals that Surinder Singh and Devinder Singh, their assignees and successors have been described as the vendees/purchasers of the property. Surinder Singh passed away intestate on 08.07.2009. Since he did not have a wife or children, the property devolved on his Class-II legal heirs, which includes the Petitioners herein. A table given in the petition discloses there are 14 such Class-II legal heirs on the date of the filing of the petition.

4. Admittedly, Petitioners No.1 and 2 who are successors-in-interest of Devinder Singh are residing in the said property along with the Respondent/Devinder Singh, the uncle and who is also one of the purchasers.

5. An application under Rule 22(3)(1) and (4) of the Delhi Maintenance and Welfare of Parents and Senior Citizen Rules, 2009 (*hereinafter called as the 'Rules'*) was filed by Respondent No.3 and 4 for the purpose of eviction of the Petitioners.

6. The short question which has been raised by the learned Counsel for the Petitioners is that the forums under the Senior Citizens Act do not have the jurisdiction to entertain the said petition inasmuch as the Petitioners are not the children of Devinder Singh and they are not legally obliged to maintain their uncle Devinder Singh. It is stated that the children of Devinder Singh are alive and are also residing in the same premises who are legally and morally under an obligation to maintain their parent. He also states that perusal of the Rule 22(1) indicates that eviction order can be



passed only against the son/ daughter/legal heir of the person who files the eviction petition. He states that none of the ingredients are satisfied to invoke the jurisdiction of the forums under the Act and the petition ought not to have been entertained at all at the first instance.

7. Material on record also discloses that a suit has been filed by the Petitioners partition. It is stated by learned Counsel for the Respondents that the application for interim injunction restraining the Respondents from evicting the Petitioners has not been granted.

8. Heard learned Counsel for the parties and perused the material on record.

9. Undoubtedly, the purpose of the Senior Citizens Act is to provide more effective provisions of maintenance and welfare of the parents and senior citizens guaranteed and recognized under the Act. Section 4 of the Act casts an obligation on children or relative to maintain the senior citizens. In the facts of the present case, the primary obligation to maintain Devinder Singh lies on his children and definitely not on the Petitioners herein who are the Class-II legal heirs of his brother.

10. It is also undisputed that the Petitioners herein are claiming a right and interest in the property on the basis of them being Class-II legal heirs of Surinder Singh and a portion of the property has devolved on them on the death of Surinder Singh.

11. The Petitioners, therefore, are co-owners of inchoate shares of the property which is to be ascertained in a suit for partition which already stands filed.

12. Rule 22(3)(1) and (4) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 reads as under:-



“22. Action plan for the protection of life and property of senior citizens. –

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

(i) A senior citizen may make an application before the Dy. Commissioner/District Magistrate (DM) of his district for eviction of his son and daughter or legal heir from his self acquired 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.

(iii) The Sub Divisional Magistrate shall immediately submit its report to the Deputy Commissioner/DM for final orders within 21 days from the date of receipt of the complaint/application.

(iv) The Deputy Commissioner/DM during summary proceedings for the protection of senior citizen parents shall consider all the relevant provisions of the said Act 2007. If the Deputy Commissioner/DM is of opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and ill treating him and yet is occupying the self acquired property of the senior citizen, and that they should be evicted, the Deputy Commissioner/DM shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be



issued against them/him/her.

(v) The notice shall—

(a) specify the grounds on which the order of eviction is proposed to be made ; and

(b) require all persons concerned, that is to say, all persons who are , or may be, in occupation of, or claim interest in, the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

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(4) Appeal

(i) The appeal against the order of Dy. Commissioner/DM shall lie before the Divisional Commissioner, Delhi.

(ii) Provisions regarding disposal of appeal before Appellate Tribunal shall apply mutatis mutandis to the appeals before the Divisional Commissioner, Delhi.”

13. A perusal of Rule 22(3) reveals that such an application is maintainable only against the son/daughter /legal heir of the senior citizen. No doubt, in the absence of his own children, the Petitioners are also his legal heirs but since Class-I legal heirs of Devinder Singh are alive and they live with Devinder Singh, there is no legal/moral obligation on the part of the Petitioners who are Class-II legal heirs to maintain Devinder Singh.

14. In that view of the matter, this Court is of the opinion that forums under the Senior Citizens Act had no jurisdiction to entertain this petition under the Senior Citizens Act but at the same time it goes without saying



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that the Petitioners shall not take advantage of this order and create problems for the senior citizen. Both parties are directed to reside peacefully in the property, subject to the final outcome of the suit.

15. The writ petition stands allowed. The order is set aside. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

MARCH 15, 2024

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