

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.528 of 2024

In
Civil Writ Jurisdiction Case No.17149 of 2023

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Smt. Nirmala Sinha W/o Late Lalit Lal, resident of House No. 19, Montessori School Lane, Boring Road, P.S.-Srikrishna Puri, District-Patna.

... .. Appellant/s

Versus

1. The State of Bihar Through The District Magistrate Patna.
2. The 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. Anil Prakash, son of Late Lalit Lal, Resident of the Eastern Side of the 2nd Floor, House No. 19, Montessori School Lane, Boring Road, P.S.-Sri Krishna Puri, Distt-Patna.
7. Sunita Sinha, wife of Anil Prakash, Resident of the Eastern Side of the 2nd Floor, House No. 19, Montessori School Lane, Boring Road, P.S.-Sri Krishna Puri, District-Patna.
8. Prakash Abhishek, son of Anil Prakash, Resident of the Western Side of the 2nd Floor, House No. 19, Montessori School Lane, Boring Road, P.S.-Sri Krishna Puri, District-Patna.
9. Arun Prakash, son of Late Lalit Lal, Resident of the Eastern Side of the Ground Floor, House No. 19, Montessori School Lane, Boring Road, P.S.-Sri Krishna Puri, District-Patna.
10. Sangita Sinha, Wife of Arun Prakash, Resident of the Eastern Side of the Ground Floor, House No. 19, Montessori School Lane, Boring Road, P.S.-Sri Krishna Puri, District-Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rupesh Kumar, Advocate Ms. Neha Narayan, Advocate Ms. Laxmi Kumari, Advocate Mr. Nishant Sinha, Advocate
For the Respondent/s	:	Mr. Saroj Sharma, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)



Date : 08-01-2025

1. Heard learned counsel for the appellant and learned counsel for the State of Bihar.

Re: I. A. no. 1 of 2024

2. The instant interlocutory application has been filed by the appellant praying for condoning the delay of 17 days in filing of the instant appeal.

3. It is submitted by learned counsel for the appellant that against the order dated 28.3.2024, while the limitation expired on 27.4.2024, the appeal was filed after a delay of 17 days ie on 14.5.2024. It was submitted that the delay was not intentional. In fact, the appeal is in time taking into consideration the date of uploading of the judgment.

4. Having heard learned counsel for the parties and taking into consideration the contents of the petition, the Court is satisfied that the appellant has made out a case for condonation of delay. The delay is condoned.

5. I. A. no. 1 of 2024 is allowed.

Re: LPA no. 528 of 2024

6. The instant appeal has been preferred by the writ respondent no.6-appellant against the judgment dated 28.3.2024 whereby the learned Single Judge was pleased to allow CWJC



no.17149 of 2023 filed by the writ petitioners-respondent nos. 6 to 10 and set aside the order dated 25.8.2023 passed by the Collector-cum-District Magistrate, Patna in Maintenance of Parents Appeal Case No. 03/2020-21.

7. The subject matter of the property in dispute is a four storey house bearing House No. 19 in Montessori School Lane, Boring Road under Police Station Sri Krishna Puri in the town of Patna.

8. The husband of the writ respondent no.6-appellant Late Lalit Lal had three sons and two daughters namely Anil Prakash (writ petitioner no.1), Arun Prakash (writ petitioner no.4), Amar Prakash, Arti Prakash and Jyoti Prakash. The writ petitioner nos. 2 and 3 happen to be the wife and son of Anil Prakash while the writ petitioner no.5 is the wife of Arun Prakash. As a result of dispute between the parties, the writ petitioner nos. 1 and 4 filed Title Partition Suit no.179/2019 on 16.7.2019 in the Court of learned Sub Judge-I, Patna against their father Sri Lalit Lal and others praying therein for a preliminary decree of partition with respect to their 2/6 share (1/6 each) in property described in Schedule-1 to Schedule-5 of the plaint and for other reliefs. It may be mentioned here itself that Schedule-3 of the plaint in the title suit is the House no.19



situated at Patna in Montessori School Lane, the subject matter of the instant case.

9. It is the case of the writ petitioners that Amar Prakash got the writ respondent no.6 to file Case no. 72/2019 before the Sub Divisional Officer, Patna Sadar-cum-Chairman, Tribunal. The case of the writ respondent no.6 was that the house was constructed out of the personal earnings of her husband. As the writ petitioners were continuously fighting, as such it was prayed that they be evicted from the said house so that the writ respondent no.6 along with her husband can live peacefully in the self-acquired house of her husband. Notices were issued in the said case to the writ petitioners who filed their response. By order dated 14.3.2020, the Chairman, Tribunal-cum-Sub Divisional Officer, Patna Sadar was pleased to observe that the contesting parties were mother and son and the dispute between them related to the house at Patna. He observed that it was not appropriate for the writ respondent no.6 to stop the supply of water over a family dispute. As such, the writ respondent no.6 was directed to provide uninterrupted supply of water to the writ petitioners and so far as evicting her sons from the house in question is concerned, she can move the appropriate Court for the reliefs.



10. The writ respondent no.6 preferred CWJC no.3335 of 2021 and also filed Tribunal Appeal no.3/2020-21. By order dated 22.1.2022, the Collector-cum-District Magistrate, Patna was pleased to decide the appeal filed by writ respondent no.6 holding the property in question to be a self-acquired property of the husband of writ respondent no.6 and directing the writ petitioners to handover possession of the house to the writ respondent no.6.

11. The writ petitioners moved this Court against the order dated 22.1.2022 by filing CWJC no.3753 of 2022. By order dated 10.3.2022, this Court was pleased to stay the operation of the impugned order. By order dated 31.7.2023, observing that several vital aspects had not been taken into consideration by the Collector-cum-District Magistrate, Patna while passing the order dated 22.1.2022, this Court set aside the said order and remanded the matter back for fresh adjudication after hearing the parties.

12. It is on remand that the order dated 25.8.2023 was passed in Tribunal Appeal no. 3/2020-21 declaring the property in question to be a self-acquired property of the husband of the writ respondent no.6. The writ petitioners moved this Court against the order dated 25.8.2023 by filing CWJC no. 17149 of



2023 which was allowed by the learned Single Judge by his order dated 28.3.2024 and the order dated 25.8.2023 of the Collector-cum-District Magistrate, Patna in Appeal Case no. 3/2020-21 was set aside. It is against this judgment dated 28.3.2024 that the instant appeal has been preferred.

13. It is submitted by learned counsel for the appellant that the learned Single Judge committed an error in setting aside the order dated 25.8.2023 directing the writ petitioners to handover possession to the writ respondent no.6. Referring to the judgment in the case of S. Vanitha vs. Deputy Commissioner, Bengaluru Urban District & Ors. [(2021) 15 SCC 730] it was submitted that the Hon'ble Supreme Court has also held that eviction order can be given in section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ('the Senior Citizens Act' in short). It was submitted that the learned Single Judge did not consider the objective of the Senior Citizens Act and thus the judgment dated 28.3.2024 was fit to be set aside. It was further submitted that the learned Single Judge failed to appreciate the continuous criminal record and the atrocities against the writ respondent no.6-appellant and passing of the judgment dated 28.3.2024 has legalised the act of trespass. The writ respondent no.6 is an old widow aged about



82 years. In the facts of the case, the order of the learned Single Judge be set aside and the order impugned in the writ application dated 25.8.2023 of the Collector-cum-District Magistrate, Patna in Appeal Case no. 3/2020-21 directing the writ petitioners to handover possession to the writ respondent no.6 be restored.

14. Heard learned counsel for the appellant and perused the material on record.

15. As stated above, the property which is the subject matter of dispute in the instant case is a four storey house situated at Patna Montessori School Lane in the town of Patna. The parties to the case are members of the family of one Lalit Lal. While the writ respondent no.6 happens to be his widow, the writ petitioner no.1 and 4 are his two sons. The other three children of Late Lalit Lal namely Smt. Arti Prakash, Amar Prakash and Smt. Jyoti Prakash are not parties to the case.

16. It transpires that Anil Prakash and Arun Prakash filed Title Partition Suit no. 179/2019 on 16.7.2019 in the Court of learned Sub Judge-I, Patna praying for partition of the scheduled properties to the extent of their 2/6 share and for other reliefs. The scheduled properties contained in Schedule nos. 1 to 5 included the house in question fully described in



Schedule-3 of the plaint. As a result of dispute in the family, the writ respondent no.6 filed Case no. 72/2019 under the Senior Citizens Act stating therein that two of her sons who are writ petitioners herein along with their wives are always fighting over money. As such, she has filed the application that order should be passed by the authority to evict them from the house in question which has been constructed from the self earned money of her husband so that the applicant (writ respondent no.6) can live peacefully therein with her husband. By order dated 14.3.2020, the Case no. 72/2019 was disposed of by the Chairman, Tribunal Committee-cum-S.D.O., Patna Sadar observing that supply of water cannot be stopped over family dispute. The writ respondent no.6 was directed to continue uninterrupted supply of water and it was further observed that so far as eviction of the writ petitioners are concerned, the party can approach the competent Court for the said relief. An appeal was filed by the writ respondent no.6 which was registered as Tribunal Appeal Case no. 3/2020-21. The learned Collector-cum-District Magistrate, Patna was pleased to set aside the appeal by his order dated 22.1.2022 directing the writ petitioners to vacate the house in question and to handover possession of the same to the writ respondent no.6. On the said



order being challenged by the writ petitioners in CWJC no.3753 of 2022, the writ application was allowed, the order dated 22.1.2022 was set aside and the matter was remanded back to the Collector-cum-District Magistrate, Patna for fresh adjudication after hearing the parties. On the matter being remanded back, after hearing the parties, the Collector-cum-District Magistrate, Patna was pleased to pass order dated 25.8.2023 in Appeal Case no.3/2020-21 declaring the house to be a self-acquired property of the husband of the writ respondent no.6, which he had bequeathed by a Will in favour of the writ respondent no.6. It was further ordered that the writ petitioners vacate the house and handover possession to the writ respondent no.6.

17. The order dated 25.8.2023 of the Collector-cum-District Magistrate, Patna passed on remand was challenged by the writ petitioners in CWJC no. 17149 of 2023.

18. The learned Single Judge taking into consideration the pendency of the title suit as also the judgment of this Court in the case of **Ravi Shankar & Ors. vs. The State of Bihar & Ors. [2024 (1) PLJR 502 (DB)]** was pleased to set aside the order of the Collector-cum-District Magistrate, Patna dated 25.8.2023.



19. It may be noted here that proceedings under the Senior Citizens Act giving rise to the instant appeal started on an application having been filed by the writ respondent no.6 on 9.12.2019 praying therein that notice be issued to the opposite parties (writ petitioners herein), they be evicted from the self-acquired land and house of the husband of the writ respondent no.6 so that the writ respondent no.6 and her husband can live peacefully.

20. On perusal of the prayer made by the writ respondent no.6 in her application filed under the Senior Citizens Act it would clearly be evident that the same was not for maintenance, but only for eviction of the writ petitioners from the house in question which she claimed to be the self-acquired property of her husband. It would be important to remember here that the said house is the subject matter of the partition suit filed by the writ petitioner nos. 1 and 4, wherein, the husband of the writ respondent no.6 along his other son and daughters are defendants.

21. This Court in the case of **Ravi Shankar** (*supra*) while considering the question as to whether eviction could be ordered under the Senior Citizens Act, considering the judgment of the Hon'ble Supreme Court in the case of the **S. Vanitha**



(*supra*) held as follows:-

“13. In considering the issue as to whether the Tribunal constituted under the Senior Citizens Act would be empowered to evict the daughter-in-law from the house in which she was residing, the Hon’ble Supreme Court considered the provisions of the Senior Citizens Act and the provisions of the Domestic Violence Act so as to harmonize the same, with a view to avoid any conflict insofar as the separate proceedings initiated by the senior citizens and that initiated by their daughters-in-law. It was found that sub-section (1) of Section 23 deals with a situation where the transfer of property with the specific condition to provide for amenities and needs of senior citizen Sub-section (2) envisages a situation where the senior citizen has a right to receive maintenance from an estate; which right to receive maintenance, he/she is deprived of by reason of a transfer; with notice of such right or if the transfer is gratuitous. It was held that sub-section (2); the right to maintenance from an estate cannot be enforced as against a transferee for consideration, who does not have a notice of such right. The transfer spoken of in sub-section (1) was held distinguishable from that spoken of in sub-



section (2) to the extent of the former referring to a transfer by the senior citizen while the latter takes within its ambit not only a transfer by the senior citizen, but also a transfer by third party.

14. Looking at sub-section (1), it was held that when a transfer is made by a senior citizen subject to the condition that he/she will be looked after and provided with basic amenities and physical needs which the transferor has failed to deliver, then two consequences follow:-(i) by a fiction the transfer would be deemed vitiated on grounds of fraud, coercion or undue influence, and (ii) at the option of the transferor the transfer can be declared void by the Tribunal. Such a deeming fiction is not incorporated in sub-section (2) and what would arise from sub-section (2) is the right to receive maintenance from the transferred estate, which can be enforced against the transferee, who is put to notice of such right or when the transfer was gratuitous. It was also held that transfer would include not only the absolute transfer of property but also the transfer of right or interest in the property.

15. The Hon'ble Supreme Court in S. Vanitha (supra) while observing that the Tribunal under the Senior Citizens Act, may have the authority to order eviction if it is



necessary and expedient to ensure the maintenance and protection of senior citizens; held that such eviction can only be an incidence of the enforcement of right to maintenance & protection which remedy can be only after adverting to the competing claims in the dispute. It was in this context that the fact situation in that case was recapitulated; of the daughter-in-law being sought to be evicted from a house originally purchased by her husband in which they had been residing as a family, which was subsequently transferred in the name of the husband's father and later gifted to his mother. The woman's right of residence and the safeguard against domestic violence as provided in the Domestic Violence Act were emphasized, in which circumstance there was a requirement that the claim of the subject property constituting a 'shared household' having to be adjudicated under the Domestic Violence Act. We have to immediately notice and emphasize that the dictum in S. Vanitha (supra) does not support the remedy or relief of an eviction, in the case of a claim of maintenance from a transferred estate, in which contingency the remedy is only to enforce the right of maintenance as against the transferee.

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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.

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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 disentitle 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.”

22. So far as the facts of the instant case are concerned, as in the case of **Ravi Shankar** (*supra*), here also



neither there was a claim under section 23(1) of the Senior Citizens Act nor a claim of maintenance. In such circumstance, as held in the case of **Ravi Shankar** (*supra*) there could be no eviction ordered under the Senior Citizens Act.

23. In the facts and circumstances of the case, the learned Single Judge rightly allowed the writ application and set aside the order dated 25.8.2023 passed in Appeal Case no. 3/2020-21 directing eviction of the writ petitioners.

24. The Court finds no merit in the instant appeal and the same is dismissed.

(Partha Sarthy, J)

K. Vinod Chandran, CJ: I agree.

(K. Vinod Chandran, CJ)

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AFR/NAFR	
CAV DATE	18.11.2024
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Transmission Date	

