



2025:DHC:556-DB



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

% Judgment reserved on: 17.01.2025
Judgment delivered on: 30.01.2025

+ LPA 845/2024 & CM APPL. Nos. 49486-90/2024

RAJE SINGH RAWAT & ANRAppellants

versus

GNCT OF DELHI & ORSRespondents

Advocates who appeared in this case:

For the Appellants : Mr. R.L. Sinha & Mr. Mohd. Sameen, Advocates.

For the Respondents : Ms. Akanksha Kaul, Mr. Aman Sahani, Ms. Rhea Borkotoky, Ms. Ahima Chopra & Mr. Akash Saxena, Advocates for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present appeal has been filed under Clause X of Letters Patent Act, 1866 assailing the impugned order dated 19.02.2024 passed by the learned Single Judge in W.P.(C) 11401/2021 captioned *Maheshwari Devi vs. Government of NCT of Delhi & Ors.*, whereby the writ petition filed by respondent no.2 challenging the order dated 28.06.2021 of the Appellate Authority/Divisional Commissioner, was allowed alongwith application of respondent no.2 under Rule 22 of the Delhi Maintenance and Welfare of

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Parents and Senior Citizens Rules, 2009.

2. The facts, shorn of unnecessary details and germane to the issue at hand and as collated from the appeal as well as the impugned order are as under:-

- (a) It is the case of the appellants that the appellant no.1's father i.e. Mr. Mohan Singh, who is an ex-army personnel, purchased one residential plot being B-78, Hari Nagar-II, Jaitpur, Delhi-110044, in the name of respondent no.2 (appellant no.1's mother), by way of a Power of Attorney and other documents on 04.08.2003.
- (b) It is further the case of the appellants that in 2008, the appellant no.1 and Mr. Mohan Singh, out of their earnings and savings, got constructed three floors on the subject property. It is stated that currently, the appellants are staying on the second floor of the property in question and Mr. Mohan Singh is occupying the first floor. The respondent no.2 lives on the ground floor of the property in question.
- (c) It is stated that respondent no.3 (sister of appellant no.1) got married once again in May, 2012 with Mr. Surender Tomar who is in Delhi Police and shifted to her marital home. However, it is alleged that soon after the marriage, respondent no.3 along with her husband started troubling the father i.e. Mr. Mohan Singh as well as the appellants, to compel them to vacate the property on several occasions with the sole intention to usurp the subject property. It is stated that respondent no.2 was brainwashed by respondent no.3 and



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her husband.

- (d) Aggrieved by continuous harassment, Mr. Mohan Singh alongwith appellant no.1 filed a suit being CS No. 1330/2017 for declaration that Mr. Mohan Singh is the owner of the property and the documents executed in favour of respondent no.2 are null and void. It is stated that *vide* order dated 01.08.2018, learned Additional District Judge, Saket restrained both the parties from creating any third party interest and also restrained respondents from disturbing the possession of the first and second floor of the property till final disposal of the case on merits. Subsequently, the said suit was dismissed for non-prosecution and an application for restoration of the suit was filed which is stated to be pending.
- (e) It is further alleged that respondent no.2 filed a frivolous complaint before learned District Magistrate under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereafter referred as '*the Act*') with an application under Rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, against the appellants seeking eviction from the subject property on the premise that she is being ill treated by the appellants. However, learned District Magistrate *vide* order dated 04.04.2019 declined to pass an eviction order against the appellants holding that the ownership of the subject property is not clear and further noting that the abject animosity prevailing in the household is causing mental harassment to respondent no.2 as well as the appellants.

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(f) Respondent no.2 challenged the order dated 04.04.2019 before the Appellate Authority/Divisional Commissioner, which concurred with the order passed by the District Magistrate and rejected the appeal filed by the respondent no.2, *vide* order dated 28.06.2021.

(g) Aggrieved by the order passed by the Appellate Authority, the respondent no.2 filed the underlying writ petition which was allowed by the learned Single Judge *vide* impugned order dated 19.02.2024, directing eviction of the appellants as well as payment of maintenance of Rs.10,000/- per month to respondent no.2. Hence, the present appeal has been preferred by the appellants.

CONTENTIONS OF THE APPELLANTS:-

3. Learned counsel appearing for the appellant at the outset submitted that the edifice of the original complaint filed by respondent no.2 is without any basis. He contended that a plain reading of the original complaint would disclose that there are no specific instances cited by respondent no.2 and the same is general, vague and bald. He stated that such complaint was rightly not entertained, both by the District Magistrate as well as the Appellate Authority, the Divisional Commissioner. Learned counsel forcefully submitted that the learned Single Judge did not appreciate the aforesaid argument and even directed maintenance to be paid to respondent no.2.

4. While referring to various documents placed on record, learned counsel submitted that a civil suit seeking declaration of title to the subject property has already been filed and is pending adjudication in the civil



court. Additionally, learned counsel also pointed out that the purported documents whereon respondent no.2 is attempting to establish title or ownership are unregistered and according to the settled law, the same are void and *non est*. He stated that while the said suit is pending, learned Single Judge ought to have taken note of the same and refrained from overturning the findings of fact by the two lower authorities. It was submitted that neither respondent no.2 nor respondent no.3 had made any monetary contribution either in the consideration of Rs.1,84,000/- towards the purchase of the subject property or in the construction of the property, which took place between the years 2003-2008. He stoutly contended that respondent no.2 is a homemaker and did not have the necessary funds to purchase the subject property and thus, the right of the appellants to reside in the same cannot be interfered with or interdicted. That too, in view of the concurrent findings on facts of the lower authorities.

5. Learned counsel for the appellants referred to the incident dated 30.09.2017 when, on the complaint of respondent no.2, police authorities had visited the subject property and candidly admitted that the appellant no.1 had locked respondent no.2 in a room, however, only to restrain her from creating ruckus and nuisance. Learned counsel staunchly defended the appellants by submitting that respondent no.2 was neither assaulted nor ill treated at all and that the allegations are false and frivolous.

6. He submitted that not only are the allegations against appellants false, rather the same have been alleged at the tutoring, instigation and behest of appellant no.1's sister/respondent no.3 and brother-in-law. With great



vehemence, learned counsel for the appellants stated that the brother-in-law of the appellant is employed with the Delhi Police and has taken advantage of such employment. According to the learned counsel, Mr. Tomar, the brother-in-law has exercised undue pressure and influence on respondent no.2 and has exerted coercion to file false complaint against the appellants.

7. Learned counsel also pointed out to the fact that the appellant no.1 is currently unemployed, having no source of income and would be unable to pay respondent no.2, as directed by the learned Single Judge *vide* the impugned order. He prayed that the present appeal be allowed.

CONTENTIONS OF THE RESPONDENTS:-

8. Ms. Akanksha Kaul, learned counsel for respondent nos.2 and 3 at the outset submitted that the appellants have not placed on record any document in support of the contention that either appellant no.1 or his father, Mr. Mohan Singh had made any contribution towards the purchase of the subject property. She contended that admittedly, the documents establishing ownership/title are in the name of respondent no.2.

9. Ms. Kaul admitted that there is indeed a suit seeking declaration of title pending in the Civil Court, where an interim order was passed however, the suit was dismissed for non-prosecution. Learned counsel informed that an application seeking revival of the suit though was filed by the appellant, however, is still pending consideration.

10. She forcefully contended that it is trite that under the Act, a senior citizen is entitled as a matter of right, the right to residence. She stated that in the present case, not only is respondent no.2 a senior citizen enuring



benefit of such right, but is also the *de facto* and *de jure* owner of the subject property. Learned counsel vehemently projected that being the actual owner in possession, under the provisions of the Act, respondent no.2 was only to, *prima facie*, demonstrate that she is being ill-treated, harassed and physically assaulted by the appellants. She stoutly argued that despite observing that parties are in an acrimonious relationship and also observing that respondent no.2 may have been ill-treated, harassed and physically assaulted by the appellants, not passing an order of eviction of appellants by both the lower authorities is perverse, which have rightly been set aside and appropriate directions passed by the learned Single Judge.

11. By referring to the complaints dated 25.09.2017 and 01.10.2017 as well as the MLC dated 30.09.2017, learned counsel took strong objection to the submission of the learned counsel for the appellants that respondent no.2 has never been assaulted but only locked up once to restrain her from creating nuisance. With great force and vehemence, learned counsel contended that infact, the said submission is an admission of the atrocities that respondent no.2 faced at the hands of the appellants. She also submitted that no explanation has been put forth in respect of how respondent no.2 had received injuries on her head which is established in the MLC.

12. Dilating further on the above instances, learned counsel submitted that the present case clearly establishes the ill-treatment and physical assault upon respondent no.2 at the hands of the appellants, which was conveniently overlooked by the lower authorities. She stated that the manifest error committed by the lower authorities has rightly been corrected



in the impugned judgement.

13. She further submitted that so far as the direction of maintenance is concerned, the appellant no.1 is even otherwise obligated under the provisions of the Act to provide sufficient care and maintenance to respondent no.2. As such, the said direction is in consonance with the provisions of the Act and in furtherance of its aims and objects. Thus, the learned counsel for the respondents prayed that the appeal be dismissed with exemplary costs.

ANALYSIS AND CONCLUSION:-

14. The aims and objects of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 are very clear and provide a mechanism to secure maintenance and ensure welfare of senior citizens who may have been neglected or left without any support, both financial or otherwise. It is trite that the Act is a piece of social welfare legislation which ought to be construed liberally and implemented to further the aims and objects contained therein. We do not consider dilating further on this subject or examine the provision inasmuch as the learned Single Judge has examined the appropriate provisions with exactitude.

15. This Court has perused the material on record, particularly the original complaint dated 25.09.2017 filed before the District Magistrate, the MLC dated 30.09.2017, the complaint dated 01.10.2017 lodged with SHO, PS Jaitpur and the orders passed by the lower authorities. No doubt that the procedure prescribed under the Act is summary in nature, yet the authorities like District Magistrate, at the first instance and the District/Divisional



Commissioner as the Appellate authority, are fact finding authorities who need to appreciate the facts obtaining in a particular case and pass effective orders with a view to implement and further the aims, objects and rationale of the Act.

16. The complaint dated 01.10.2017 discloses a physical assault, and in support thereof, the MLC registered on the date of incident i.e., 30.09.2017 does record “*tenderness and swelling present in the occipital region, back and scarth marks on both forearms*” and indicates that respondent no.2 received some injuries on the head too. This coupled with the fact that fairly, learned counsel for the appellants had admitted that appellant no.1 had restrained respondent no.2 by locking her in a room would, *prima facie*, at this stage, appear to us to lend credence to the allegation that respondent no.2 was assaulted/ill-treated. Though we are not expressing our opinion one way or the other, yet for the purposes of the Act, the incident may tantamount to ill treatment/harassment. Thus, in that view of the matter, we are of the considered opinion that the learned Single Judge has rightly set aside the orders passed by the lower authorities impugned before him, and passed necessary directions in that regard.

17. So far as the contention of the parties regarding title documents and its veracity is concerned, admittedly, since a suit challenging the said documents in favour of respondent no.2 had been filed by the appellant no.1 and the father, in which an application seeking revival of the said dismissed suit is pending consideration, this Court need not traverse the same as a Civil Court of competent jurisdiction is *in seisin* of the same.



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18. Having considered the rival submissions in the present case, we find from a closer scrutiny of the original complaint dated 25.09.2017 filed before the District Magistrate, that respondent no.2 did not seek any maintenance at all from the appellant no.1. In fact, the contents of the complaint indicate that respondent no.2 had been receiving rent from one of the floors of the subject property. We also note that the learned Single Judge on 21.04.2023 passed interim orders directing appellants to pay Rs.10,000/- per month as maintenance to respondent no.2. However, upon an application filed by the appellants, the said interim order was withdrawn *vide* the impugned judgement, due to non-service on the appellants, and a fresh direction was issued for payment of maintenance of Rs. 10,000/- per month from 01.03.2024. It is also noted that this Court had, *vide* order dated 30.08.2024, stayed the operation of the impugned order on a statement tendered by the appellant that he shall pay Rs.8000/- per month w.e.f. 01.08.2024 to respondent no.2. We also note that the learned Single Judge in para 6 of the impugned judgement has noted that in the petition under Section 125 of Code of Criminal Procedure, 1973 (erstwhile), *vide* order dated 28.01.2023, the learned Family Court at Saket has directed the husband of respondent no.2 to pay a sum of Rs. 10,000/- per month to respondent no.2. In the peculiar circumstances of this case, while upholding the direction of eviction, we direct that the appellant need not pay any further except for the period already paid, which may not be recovered from respondent no.2.

19. We reiterate the directions of the Single Judge in para 31 of the

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impugned judgement that *“Though this Court is inclined to set aside the order and direct Respondents No.2 and 3 to vacate the premises, at the same time, this Court while exercising its jurisdiction under Article 226 of the Constitution of India directs the Petitioner and Respondent No.4 not to dispose off the property till the restoration of the suit.”*

20. As a result of the aforesaid, we direct eviction of appellants from the subject property bearing number B-78, New No.B-145, Hari Nagar-II, Jaitpur Extension, Delhi-110044, within 30 days from date.

21. In view of the above, the present appeal is dismissed with no order as to costs. Pending applications, if any, also stand disposed of.

22. We make it clear that observations, if any, made herein are only for the purposes of deciding the present appeal and shall not tantamount to expression on merits of the issues/controversy involved in any pending case(s) between the parties.

TUSHAR RAO GEDELA, J

VIBHU BAKHRU, J

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