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Rajeev Behl vs.state & Ors

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Court : Delhi

Decided On : Nov-20-2018

Appellant : Rajeev Behl

Respondent : State & Ors

Advocate for Def. : Mr. Rishikesh Kumar

Advocate for Pet/Ap. : Mr. Jayant Tripathi, Mr. Sarfaraz Ahmad

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

20. h November, 2018 % + LPA6412018, CM Nos. 48156-48158/2018 RAJEEV BEHL ..... Appellant Through: Mr. Jayant Tripathi, Adv. with Mr. Sarfaraz Ahmad, Adv. versus STATE & ORS .....

... RESPONDENTS
Through: Mr. Rishikesh Kumar, ASC for R-1 & R-2 CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE V. KAMESWAR RAO V. KAMESWAR RAO, J.

(ORAL) CM Nos. 48157-48158/2018 Exemption allowed subject to all just exceptions. Applications stand disposed of. LPA6412018 1. The present appeal has been filed by the appellant challenging the order dated November 16, 2018 passed by the learned Single Judge in W.P.(C) No.12294/2018. Even though, the

impugned order has not been annexed with the writ petition, we before dictating the order in the chamber, have called for the same and perused it. Vide the impugned order, the learned Single Judge has dismissed the petition with cost of Rs.15,000/-. LPA6412018 Page 1 of 13 2. It is the contention of Mr. Jayant Tripathi, learned counsel for the appellant, that the learned Single Judge has erred in upholding the order passed by the learned Divisional Commissioner dated October 17, 2018 whereby the learned Commissioner has directed the eviction of the appellant herein from property bearing No.19, State Bank Colony, G.T. Karnal Road, Delhi-110009, as no eviction could have been directed by the him. That apart, it is his submission that the learned Commissioner has failed to consider the material on record including the SDMs report, which indicated that the dispute is essentially a family dispute over the property, which belongs to Hindu Undivided Family of which the appellant is a co- parcener. That apart, as the respondent No.3 has filed a suit before this Court being CS(OS) 2423/2015, which is pending adjudication before this Court, the issue could not have been decided by the learned Commissioner.

3. Having noted the submissions made by Mr. Tripathi, we are not convinced with the same, inasmuch as there is no dispute that the property is in the name of the respondent No.3 having acquired the same as a Member of SBI Co-operative Society and it was the case of the respondent No.3 before the learned Commissioner that LPA6412018 Page 2 of 13 he has been threatened by the appellant and his brother in law on numerous instances and fears for his life. In other words, it was his case that he was harassed by the appellant and sought to protect his property by seeking his eviction. The learned Commissioner has allowed the appeal filed by the respondent No.3 in the following manner:-

"CONCLUSION: Keeping in view all the facts in mind as disclosed by the appellant and circumstances of the case vis--vis the documents available on records, I am of the firm opinion that harassment is being caused to the owner of the house, Sh. S.K. Behl, the appellant. A reference was also taken of the provisions under the Act. It is clear that the intention behind the enactment of this Act is to allow the Sr. Citizen to live a peaceful life and protection of his / her self acquired property and to save the Sr. Citizen from undergoing ill-treatment and harassment by their legal

heirs or any other relative. After detailed perusal and consideration of the facts and circumstances of the case, I am of the opinion that the ends of justice would be met, if the appeal is allowed and the order of the Ld. District Magistrate is set aside. Further, it is also ordered that Sh. Rajiv Behl (the respondent) be evicted from the property bearing No.19, State Bank Colony, G.T. Karnal Road, Delhi-110009, within 30 days from the date of issue of this order so as to enable the applicant to live peacefully in his self acquired property as is the mandate of the Act. Ordered accordingly. File be consigned to Record Room. LPA6412018 Page 3 of 13 4. The reasons and the conclusion of the learned Single Judge read as under:-

"7. This Court is not persuaded to accept any of the contentions advanced on behalf of the petitioner. The record clearly indicates that respondent no.3 had been consistently making complaints to the police authorities and, therefore, it is incorrect to contend that respondent no.3 had made only one police complaint and the other letters were just reminders. It is seen that on 11.08.2010, respondent no.3 filed a complaint with the DCP, P.S. Model Town alleging that the petitioner and his wife had threatened him with dire consequences, and further threatened that they would commit suicide and blame him for the same. He also expressed fear for his daughters. The said complaint was followed by another complaint dated 20.05.2014. Respondent no.3 once again alleged that he was being threatened by the petitioner, who was also interfering in daily matters. A perusal of the said complaint indicates that respondent no.3 had sought action from the police so that he could live peacefully with his wife. On 20.05.2014, the respondent no.3 once again sent a reminder stating that he and his wife were living in panic due to the violent behaviour of the petitioner and his wife. On 13.05.2014, respondent no.3 filed yet another complaint with the SHO stating LPA6412018 Page 4 of 13 that he was depressed by the acts of his son and his wife, and further requesting that an early action be taken so that he and his wife could leave peacefully. On 16.06.2014, respondent no.3 once again appealed for help from the SHO. He complained that they all together want to finish me and usurp my property. They can harm me anytime. On 16.07.2014, respondent no.3 filed another complaint stating that the petitioner had placed a refrigerator which exudes heat and also blocks the passage, making it impossible for respondent

no.3 to sit in his room. He further stated that the petitioner and his wife were blackmailing him and he was depressed by the acts of the petitioner and his wife.

8. There are several other complaints which have been placed on record. However, it is not necessary to refer to them. Suffice it to state that a plain reading of the complaints indicate that respondent no.3 was distressed by the behaviour of his son and his daughter-in-law (the petitioner and his wife).

9. It is in this context that the respondent no.3 made an application to the Deputy Commissioner under Rule 22 (3)(1)(i) of the said Rules seeking eviction of the petitioner from the premises in question on account of cruelty and ill treatment. The said application was rejected by an order dated 30.01.2018. This led LPA6412018 Page 5 of 13 respondent no.3 to file an appeal before the Divisional Commissioner under Rule 22(3)(4) of the said Rules.

10. In the impugned order, the Divisional Commissioner has concluded that respondent no.3 is being harassed and ill treated and the ends of justice would be met if the petitioner is directed to be evicted from the premises in question, in order for respondent no.3 to live peacefully in his self-acquired property. This Court finds no infirmity with the aforesaid view.

11. The contention that it was not open for the Divisional Commissioner to take a view contrary to the view taken by the Maintenance Tribunal in its order dated 21.07.2014 is, plainly, unmerited. The record indicates that respondent no.3 had continued to complain regarding his ill treatment. The Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (the said Rules) were amended by the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016 and provisions were introduced enabling a Senior Citizen to make an application before the Deputy Commissioner/District Magistrate for eviction of a son, daughter or legal heirs from his self-acquired property. Thus, the application filed by respondent no.3 was clearly maintainable, and the contention to the contrary is bereft of any merit. LPA6412018 Page 6 of 13 12. It is also contended on behalf of the petitioner that since the respondent no.3 had not sought any maintenance from him, an application under Rule 22(3)(1)(i) of the said Rules was not maintainable. This contention is also unmerited. Rule 22 (3)(i) of the

said Rules enables a senior citizen to make an application for eviction of a son, daughter or legal heir on account of non-maintenance and ill treatment.

13. Rule 22(3)(1) of the said Rules, as amended by the Delhi Maintenance Welfare of Parents and Senior Citizens (Amendment) Rules, 2017, is set out below:

22.

3) (1) Procedure for eviction from property/residential building of Senior Citizen/Parents- (i) A senior citizen/parents may make an application before the Deputy Commissioner/District Magistrate of his district for eviction of his son and daughter or legal heir from his property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such 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 LPA6412018 Page 7 of 13 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/District Magistrate during summary proceedings for the protection of senior citizen/parents shall consider all the relevant provisions of the said Act. If the Deputy Commissioner/District Magistrate 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 property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such property of the senior citizen, and that they should be evicted. The Deputy Commissioner/ District Magistrate 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 LPA6412018 Page 8 of 13 (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 issued thereof.

14. In sub clause (i) of Rule 22(3)(1) of the Rules as referred above, the word and is used between the expressions non-maintenance and ill-treatment. However, the same cannot be construed to mean that a senior citizen can file an application only when he has a grievance regarding non-maintenance as well as ill- treatment. Read in the correct perspective, the word and is used to denote that both the grounds of non- maintenance as well as ill-treatment - are available to a senior citizen for evicting his son, daughter or heirs. The contention that a senior citizen can maintain an application under Rule 22(3)(1)(i) of the said Rules only when he cumulatively establishes his allegation of non-maintenance and ill-treatment, cannot be accepted. This is so because accepting such contention would mean that so long as the son, daughter or heirs continue to pay maintenance, he or she can continue to ill-treat the senior citizen without fear of being evicted under Rule 22(3) of the said Rules. Such a construction of Rule 22(3) of the said Rules would militate against very object and purpose of enacting the said Rules. LPA6412018 Page 9 of 13 15. The next question to be examined is whether the decision of the Divisional Commissioner, to direct eviction of the petitioner, can be faulted on the ground of disputes raised by the petitioner with respect to the title of the property in question.

16. This Court is, prima facie, of the view that the case set up by the petitioner that the property in question is an HUF property is a ruse and is not sustainable. Respondent no.3 had become a member of the said society (SBI Cooperative Society) much prior to the birth of the petitioner. The lease deed of the property in question was registered in favour of respondent no.3 way back in 1967. The Division Commission found that there was no material which would establish the petitioners case that the property in question is an HUF property. Merely claiming that the property in question had been purchased by sale of ancestral property can be of little assistance to the petitioner.

17. In Sunny (Minor) v. Raj Singh (2015) 225 DLT211 a Coordinate Bench of this Court had referred to the decision of the Supreme Court in Yudhishter v. Ashok Kumar, (1987) 1 SCC204and had explained the circumstances where a person could claim a property to be an HUF property. The Court further held that if a person claims that the property is an HUF property, he or she is required to make positive LPA6412018 Page 10 of 13 statements in the plaint as to how and when the HUF was created and as to when the property stated to be the HUF property was thrown into the common Hotchpot. Prima facie, a plain reading of the averments made in the petition as well as in the written statement, filed by the petitioner in CS(OS) 2423 of 2015, fails to provide the particulars necessary for establishing a case of HUF property.

18. It is not necessary to further dwell into the controversy whether the property in question is an HUF property as claimed by the petitioner. This is so because notwithstanding such claim, the petitioner cannot resist ejection from the property in question.

19. It is relevant to note that Clause (i) of Rule 22(3)(1) as introduced by the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016 read as under:-

"(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 illtreatment.

20. The said Clause was thereafter substituted by virtue of the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2017 and the reference to the self acquired property was LPA6412018 Page 11 of 13 now deleted. The Clause as it stands today expressly permits a citizen/parent to make an application for eviction of his son, daughter and legal heir from the property of any kind whether movable and immovable, ancestral or self-acquired and tangible or intangible. Thus, the defence raised by the petitioner in regard to the nature of the property in question is of little relevance.

21. The contention that the Divisional Commissioner has ignored the report of the SDM that the dispute is a property dispute is also unpersuasive. It is apparent from the plain reading of the impugned order that the Divisional Commissioner has examined the complaint of respondent no.3 and the material on record. There is ample material on record to indicate that respondent no.3 was distressed by the conduct of the petitioner and his wife. Respondent no.3 has a right to live peacefully and this Court finds no infirmity with the impugned order passed by the Divisional Commissioner. 5. The reasons (as underlined) given by the learned Single Judge on all the issues / submissions made are sound and justified. Suffice it to state that the parties are already before the Civil Court in CS(OS) No.2423/2015 and we may state here that in para 17, on a prima facie conclusion, the learned Single Judge has held that, on a plain reading of the averments made in the written statement in LPA6412018 Page 12 of 13 CS(OS) No.2423/2015 filed by the respondent No.3, therein the same fails to provide the necessary particulars for establishing a case of HUF. In any case, it is for the parties to work out their rights in the said suit with regard to the property in question. The order of the learned Commissioner is by following a summary procedure as contemplated under the Act to give relief to a Senior Citizen / parent to protect his property. As stated above, the conclusion of the learned Single Judge being justified, we dismiss the present appeal. CM No.48156/2018 (for stay) Dismissed as infructuous. V. KAMESWAR RAO, J NOVEMBER20 2018/ak CHIEF JUSTICE LPA6412018 Page 13 of 13

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