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

Date of Decision : 13.03.2020

+ **W.P.(C) 2761/2020**

SANDEEP GULATI Petitioner
Through Mr.A.K. Veshishtha and
Mr.Rahul Kumar, Advs.

versus

DIVISIONAL COMMISSIONER, OFFICE OF THE
SECRETARY-CUM-DIVISIONAL COMMISSIONER,
DEPARTMENT OF REVENUE, GOVT. OF NCT OF DELHI
AND ORS. Respondents

Through Ms.Saumya Tandon, Adv. for
R-1.
Mr.V.K. Bali, Sr.Adv. with
Mr.Aditya Soni, Adv. for R-2 &
3.

(41) **W.P.(C) 2795/2020**

AARYAVEER GULATI (MINOR) THROUGH NEXT
FRIEND MRS. DIVYA GULATI Petitioner
Through Mr.Jayant Mehta,
Mr.Divyanshu Goyal and
Mr.Mudit Gupta, Advs.

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents

Through Mr.Ramesh Singh, SC and
Ms.Warisha Farasat, Mr.Ishan
Agarwal and Ms.Hafsa Khan,
Adv. for R-1.

Mr.V.K. Bali, Sr. Adv. with
Mr.Aditya Soni, Adv. for R-2 &
3.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

Cav.227/2020 in WP(C) 2761/2020

Since the learned counsel for the respondent Nos.2 and 3 enters appearance on advance notice, the Caveat stands discharged.

CM No.9648/2020 (Exemption) in WP(C) 2761/2020

CM No.9768/2020 (Exemption) in WP(C) 2795/2020

Allowed, subject to all just exceptions.

CM No.9766/2020 in WP(C) 2795/2020

This is an application for appointment of next friend of petitioner. It is prayed that the mother of the petitioner who has no interest adverse to that of the petitioner be appointed as a next friend guardian ad litem.

The prayer made is not opposed.

The application is accordingly allowed and disposed of.

W.P.(C) 2761/2020 & CM No.9647/2020 (Stay)

W.P.(C) 2795/2020 & CM No.9767/2020 (Stay)

1. WP(C)2761/2020 has been filed by the son of the respondent nos.2 and 3, while WP(C)2795/2020 has been filed by the grandson of

the respondent nos.2 and 3 through the mother, that is, the wife of the petitioner in WP(C) 2761/2020.

2. These petitions challenge the order dated 20.02.2020 passed by the learned Appellate Tribunal under the provisions of the Delhi Maintenance and Welfare of Parents and Senior Citizens, Rules, 2009 as amended from time to time (hereinafter referred to as the 'Rules') in Appeal bearing No. PA/Div. Comm./Appeal No. 30/2018/624-628, ordering eviction of the petitioners from house bearing No.C-117, East of Kailash, New Delhi.

3. The primary contentions of the learned counsels for the petitioner(s) is that the suit property does not belong exclusively to the respondent nos.2 and 3 but is a Hindu Undivided Family (HUF) property, wherein the petitioner also has a share being a *co-parcener*.

4. I find no merit in the said contention. The petitioner in WP(C) 2795/2020 had earlier filed a civil suit, being CS(OS) 2223/2013, before this Court, praying *inter-alia* for a decree of partition, raising same plea. This Court by its judgment and order dated 04.02.2019 was pleased to reject the said plaint under Order VII Rule 11 of Code of Civil Procedure, 1908, *inter-alia* observing as under with respect to the property in question:

“69. As far as C-117, East of Kailash, New Delhi is concerned, this Court finds that not only the Agreement to Sell and Receipt of payment are in favour of the defendant No. 1's wife, namely, defendant No. 5 but the Conveyance Deed executed by the DDA is also in her favour exclusively. In fact, the

said property was purchased by defendant No.5, who is an independent Income Tax Assessee admittedly having rental and business income. On the date of purchase, father of the plaintiffs (defendant No.4) was nine years old

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72. The contention of the plaintiffs that the name of the wife of defendant No.1 was used as benami with regard to C-117, East of Kailash, New Delhi by the defendant Nos.1, 3 and 4 for the benefit of the family and the coparcenary, as envisaged under the exception in Section 4(3) of the Act, 1988, is untenable in law inasmuch as the grandmother of the plaintiffs, i.e. defendant No. 5 being a female could not be a coparcener prior to 2005. In fact, it has been admitted in the plaint that defendant No.5 was not a coparcener in the Hindu Joint family and had no share in it on the date of purchase of the said property. (Para 2(xv) of the plaint).

73. Also, as defendant No. 5 was not a coparcener, the doctrine of blending cannot be invoked with regard to property bearing C-117, East of Kailash, New Delhi.....

74. Accordingly, the exception contained in Section 4(3) of the Act, 1988, as it then stood, is not attracted to the present case.

75. Consequently, in view of the Act, 1988, defendant No. 5 is the lawful absolute owner of C-117, East of Kailash, New Delhi, to the exclusion of plaintiffs and the defendant No. 4.

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88. This Court is of the view that the balance of convenience is entirely in favour of the defendant nos. 1 and 5 as they have been out of possession of their

own house (C-117, East of Kailash, New Delhi) since 2010. It is pertinent to mention that after construction of the said house in 1978, the defendant nos. 1 and 5 had been in occupation of the same for the thirty-two years. This Court is of the view that no sane person would voluntarily walk out of its own property in their 'twilight years' if they were not harassed or subjected to atrocities. In fact, it is the case of defendants No.1, 2 and 5 that they had been subject to a number of atrocities.

89. Since the defendant No. 4 and plaintiffs are in exclusive possession of all cars of family as well as the factory and warehouse (Serial Nos.(x) and (xiii) of Schedule to the plaint) which are yielding rental income, this Court is of the view that even if the plaintiffs have to vacate the aforesaid property, they would not suffer any irreparable harm and injury.

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94. Not only the agreement to sell and receipt of payment of C-117, East of Kailash, New Delhi are admittedly in favour of the defendant no.1's wife, namely, defendant no.5, but the conveyance deed executed by the DDA is also in her favour exclusively. The plaintiffs' contention that the name of the wife of defendant no.1 was used as benami with regard to C-117, East of Kailash is untenable in law inasmuch as the grandmother of the plaintiffs, i.e., defendant no. 5, was admittedly not a coparcener in the Hindu undivided family. The said property was purchased by defendant no.5, who is an independent income tax assessee having rental and business income."

5. Though, the petitioner(s) have filed appeals challenging the said order, being RFA(OS) 39/2019 and 37/2019 respectively, admittedly,

the judgment of the learned Single Judge has not been stayed by the learned Division Bench of this Court. In view of the above, the submissions of the learned counsels for the petitioner(s) that the property belongs to the HUF cannot be accepted.

6. In any case, this Court, in its judgment dated 18.07.2018 passed in WP(C) 6592/2018, titled *Smt. Darshna v. Government of NCT of Delhi & Ors.*, has held that it is apparent from the plain language of Rule 22(3)(1)(i) that a senior citizen is also entitled to evict his son, daughter or legal heir from his property irrespective of whether it is an ancestral or self-acquired property.

7. The learned counsels for the petitioner(s) further submit that there is no proof of any ill-treatment of the respondent nos.2 and 3 by the petitioners. The respondent nos.2 and 3 have taken out various proceedings including filing of civil suit as also filing of the criminal complaint against the petitioner, however, the same remained unsubstantiated and, in fact, Closure Reports have been filed in the complaints filed by the respondent nos.2 and 3.

8. In my opinion, this submission again cannot be accepted. Admittedly, the respondent nos.2 and 3 have taken out various proceedings, including registration of criminal complaint against the petitioner. No parent is expected to initiate such proceedings against their own children only out of vengeance or from some *mala fide* intents.

9. The scope of the proceedings under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 as also the Rules is to grant protection to the parents, including with respect to their property. The scope of this Act is not to punish the children and therefore, once it is established that the children have no right over the property of the parents, the fact that the parents do not wish to have their children staying with them is enough for invoking the Act and the Rules.

10. In *Darshana* (supra), this Court, relying upon Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, has held as under:

“19. It is also relevant to refer to section 22 of the Act which is set out below :-

“(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.”

It is relevant to note that Section 22(2) of the Act expressly provides that State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens. The aforesaid Rules are an aid of the said provision. The Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016, entitling a senior citizen to seek eviction of his son, daughter or his legal heirs on account of ill-treatment were framed in aid of protecting the life and property of senior citizens and not in furtherance of Section 4 of the Act. Thus, the assumption that it is necessary for a senior citizen to claim maintenance for seeking the protection of the Act or the Rules made there under is erroneous.

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24. Rule 22(3)(1)(i) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 as subsequently amended in 2016 is a piece of welfare legislation. It must be read in meaningful and liberal manner so as to aid and further the object of the enactment and not in a manner as to restrict its width.

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28. It is also relevant to note that Darshna has no right, title and interest in the premises and, therefore, cannot insist on residing with Dhani Ram and his wife especially when the relationships between the said parties have deteriorated to the extent as indicated above.”

11. The above judgment was upheld by the Division Bench of this Court vide its judgment dated 03.10.2018 passed in LPA 537/2018, ***Darshna v. Government of NCT of Delhi & Ors.***, observing as under:

“13. Keeping in view the objective of the Act and it is hightime that senior citizens / parents are allowed to live in peace and tranquility, the orders passed by the Maintenance Tribunal and the learned Single Judge cannot be faulted. The Appeal is dismissed.”

12. The Punjab & Haryana High Court, in its judgment dated 01.12.2015 passed in ***Gurpreet Singh v. State of Punjab and Ors.***, has also held as under:

“Section 22 falling in Chapter V of the Act enjoins a duty upon State Government to prescribe a comprehensive action plan for providing protection of life and property of senior citizens. Section 32 (2) (f) also empowers the State Government to frame Rules in respect of comprehensive action plan for providing

protection of life and property of senior citizens. In terms of such provisions, the Rules have been framed which causes a duty on the District Magistrate to ensure that the life and property of senior citizens are protected and they are able to live with a sense of security and dignity. Apart from framing such Rules, the Action Plan for protection of life and property of the senior citizens has been published which inter alia provides for eviction of unauthorized occupants as reproduced above.

The petitioner is a licensee living in the premises on the basis of concession given by his father to live in the property owned by him. As a licensee, the petitioner is only permitted to enjoy the possession of the property licensed but without creating any interest in the property. A licence stands terminated the moment the licensor conveys a notice of termination of a licence. There is no vested right of any kind in the licensee to remain in possession of the property licensed. Admittedly, respondent No.4 is the owner of the property in question. The petitioner is living in part of the property. Such property owned by respondent No.4 is required to be protected as mandated by Section 22 of the Act read with Rule 23 of the Rules and para 1 of the Action Plan. There cannot be any effective protection of property of the senior citizens unless the District Magistrate has the power to put the senior citizen into possession of the property and/or to restrain or eject the person who wishes to interfere in the possession of the property of the senior citizen. Protection of the property of a senior citizen includes all incidences, rights and obligations in respect of property in question. Once a senior citizen makes a complaint to District Magistrate against his son to vacate the premises of which the son is a licensee, such summary procedure will enure for the benefit of the senior citizen. The petitioner would have no right to resist his eviction only on the ground that the Act does

not contemplate eviction of an occupant. Eviction is one part of the right to protect the property of a senior citizen which right could be exercised by a senior citizen in terms of provisions of the statute, Rules framed and the Action Plan notified.”

13. A reading of the above judgments would clearly show that a senior citizen is merely to show that his property needs protection and need not necessarily have to show that he/she needs maintenance or has been ill-treated by the son or other legal heir.

14. In any case, nature of possession of the petitioner(s) being that of a licensee and there admittedly being a series of litigations between them and the respondent nos.2 and 3 herein, the order of eviction cannot be faulted.

15. The learned counsels for the petitioner(s) has further asserted that the property in question could not have been purchased by the respondent no.2 as the respondent no.3 was in government service and for purchase of such property, prior permission of the government is required under CCS Rules, 1964.

16. I again find no merit in the said submission. The property was purchased in the year 1978. In any case, it is not for the petitioners to challenge the title of the respondent no.2 on this ground.

17. I, therefore, find no merit in these petitions and the same are dismissed. There shall no order as to cost.

NAVIN CHAWLA, J

MARCH 13, 2020/Arya