

(2004) 09 DEL CK 0067

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 1188 of 2003

Sh. Mohinder Singh Verma

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 341

Citation : (2004) 77 DRJ 199 : (2005) 2 RCR(Criminal) 16

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : R.M. Bagai, for the Appellant; Akshay Bipin and S.K. Sharma, for No. 2 and 3, for the Respondent

Judgement

R.C. Chopra, J.—The petitioner aged about 85 years who retired from Government service as far back as in the year 1977 is unfortunately pitted against his own son and daughter-in-law who are respondents No. 2 and 3. The bone of contention is the ground floor of property No. A-2/163, Safdarjung Enclave, New Delhi of which the petitioner is the owner. It is a 21/2 storeyed property built by the petitioner after purchasing a plot from Delhi Development Authority vide a Lease Deed of the year 1964. In June, 1996, the petitioner executed a Gift Deed in favor of his daughter-in-law, respondent No. 3, in respect of the ground floor portion of this property. However, in terms of Clause 4 A of this Gift Deed, the petitioner reserved his right to reside in the front drawing room along with his wife. The petitioner's grievance is that he has been dispossessed from the said house and is being restrained from entering the house by respondents No. 2 and 3 and the local police is not helping him. He also pleads that the respondent No. 2 in spite of being the owner of a three bedroom flat in Vasant Kunj, New Delhi, which has been let out on rent, is harassing him by throwing him out of his house. The petitioner prays for restoration of the possession of the room of the aforesaid house and also directions to respondent No. 1 to register a criminal case against respondents No. 2 and 3. He has attached with the petition a copy of his complaint to S.H.O. Police Station

Sarojini Nagar, which is dated 27th September, 2003 in which action was prayed against respondents No. 2 and 3 complaining that he was restrained by respondents No. 2 and 3 from entering the aforesaid room.

2. The respondent No. 1/State has filed a status report to say that the petitioner has been residing in the adjoining house No. A-2/162 Safdarjung Enclave, New Delhi which is owned by his another son. It is, however, added that the said son, Sehdev Singh Tomar has been residing on the First Floor of house No. A-2/163, Safdarjung Enclave, New Delhi. It is stated that the dispute is basically of civil nature.

3. The respondents No. 2 and 3 have filed a reply in which the averments made in the petition have been controverted. However, the fact that the petitioner is the owner of the property in question or that he executed a Gift Deed in their favor on 10th June, 1997 in respect of the Ground Floor is not disputed. It is stated that the condition in regard to the right of the petitioner to occupy the front drawing room was introduced subsequently but it was never acted upon as the petitioner continued to stay in the adjoining property bearing No. A-2/162, Safdarjung Enclave, New Delhi. It is denied that these respondents have restrained the petitioner from entering the ground floor portion of the property in question or told him that he could not live in the said room. It is submitted that the entire story is concocted and has been master-minded by his another son Sahdev, who is an Inspector in Delhi Police.

4. I have heard learned counsel for the petitioner and learned counsel for the respondents. I have gone through the records of the case.

5. It is not at all disputed by the parties that the petitioner is the owner of plot No. A-2/163, Safdarjung Enclave, New Delhi, which he had acquired from Delhi Development Authority and then raised constructions thereon. It is also not disputed that a Gift Deed was made by the petitioner in favor of respondent No. 3 by virtue of which the ground floor of the said house was gifted to respondent No. 3. It is also not disputed that Clause 4A reserved petitioner's right to live in the front drawing room of the ground floor portion. In view of this situation, there remains no controversy at all that the petitioner in spite of making a Gift Deed in respect of the ground floor in favor of respondent No. 3 has a right to enter and stay in the front drawing room of the ground floor of the property in question. The respondents No. 2 and 3 who are claiming right in respect of ground floor under the Gift Deed cannot be permitted to take benefit there under but dispute the benefit which flows to the petitioner from that Gift Deed.

6. In this view of the matter, it can be safely said that the allegations of the petitioner that the respondents No. 2 and 3 restrained him from entering the drawing room of the ground floor and thereby committed an offence of unlawful restraint punishable u/s 341 of the Indian Penal Code but the police did not take any action against them in spite of the petitioner's complaint dated 27th September, 2003 are satisfactorily established. The petitioner is well within his

rights to claim police protection also for exercising his right to enter the said drawing room and live their peacefully inasmuch as he cannot be asked to fight physically with respondents No. 2 & 3 who are trying to violate his legal rights. The law and order machinery is meant to protect and safeguard the legal rights of the citizens and any attempt to violate the legal rights of others by use of force has to be thwarted.

7. Section 341 of the Indian Penal Code provides that whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to Rs.500/- or with both. It is a cognizable offence and as such the police ought to have registered an F.I.R. and initiated investigations on the basis of the petitioner's complaint dated 27th September, 2003. It was also the duty of the local police to provide adequate protection and security to the petitioner for exercising his right to enter the aforesaid drawing room of the ground floor of property in question and reside there in terms of Clause 4A of the Gift Deed. The law does not make any distinction if the offence is committed by a stranger or by one's own kith and kin. It must ruthlessly act against all those who try to take the law in their own hands. The plea that dispute between parties is civil in nature and as such, no police intervention is warranted is without any merit. Section 341 of the IPC appears to be made out against respondents No. 2 & 3. They also have no right to forcibly obstruct the petitioner from entering into the ground floor room. Moreover, a civil dispute may have criminal profile also. In *Rajesh Bajaj Vs. State NCT of Delhi and Others*, it was held that a commercial transaction may give rise to a criminal action also.

8. In this case, the local police ought to have been more considerate in view of the facts and circumstances of the case and the old age of the petitioner but unfortunately they were not. Under the circumstances, the writ petition is allowed. The S.H.O., Police Station Sarojini Nagar is directed to register an F.I.R. on the basis of the petitioner's complaint dated 27th September, 2003 and initiate investigations on the basis thereof. The S.H.O. is further directed to ensure that none, including respondents No. 2 and 3, restrains or obstructs the petitioner from entering and residing in the front drawing room of the ground floor portion of property No. A-2/163, Safdarjung Enclave, New Delhi. In view of the old age of the petitioner it is further directed that the local police will give full protection and render all assistance to petitioner for his safe stay in the aforesaid premises and would give him help as and when required.

9. The petition stands disposed of.