

(2022) 04 RAJ CK 0046

In the Rajasthan High Court

Case No : S.B. Civil Writ Petition No. 6089 Of 2019

Suresh Sharma And Others

APPELLANT

Vs

Dhanwanti Sharma

RESPONDENT

Date of Decision : 07-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 21, 226, 227

Code Of Civil Procedure, 1908 — Order 7 Rule 11

Maintenance And Welfare Of Parents And Senior Citizens Act, 2007 — Section 2(b), 2(k), 3

Citation : (2022) 04 RAJ CK 0046

Hon'ble Judges : Sameer Jain, J

Bench : Single Bench

Advocate : Deepak Sharma, Ashok Mehta, Mudit Singhvi

Final Decision : Dismissed

Judgement

Sameer Jain, J

1. The present writ petition under Article 226 & 227 of the Constitution of India is filed by the petitioners against the order dated 08.03.2019 passed by the Maintenance and Welfare of Parents and Senior Citizen Tribunal (S.D.O.) Jaipur City, Jaipur whereby, petitioners were directed to vacate the premises and the rights of respondent mother were restored.

2. Learned counsel for the petitioners submits that the respondent is mother of petitioner No.1 and mother-in-law of petitioner No.2, whose husband was Army Colonel, who passed away in the year 2003 bequeathing all movable and immovable properties in favour of the respondent by way of will prior to his death. The respondent has three sons and one daughter. In the year 2004, the respondent purchased a house bearing No. 264, Army Welfare Housing Organisation Colony, Ambabari, Jaipur (hereinafter referred to as 'AWHO Colony' which is registered in her name. The said property, referred to as 'disputed property', has two floors consisting of two bedrooms, one dinning room-cum-

drawing room, one kitchen and two washrooms on both ground floor and first floor.

3. The petitioner has averred that in the year 2006, after demise of his father, he married petitioner No.2 against the wish of the respondent, as a result of which, he was directed to leave the disputed property of the respondent. It was only in the year 2010, on insistence of the relatives, that the petitioners were allowed to move back in the disputed property under the belief that they will take care of their ailing, old, senior citizen mother, whose elder son had died, whose family is living separately, and younger son is not well to do. He submits that the allegations of ill-treatment qua abusive language, neglect, mental and physical torture against him and his wife are only cooked story. The fact of not providing food, not taking appropriate care of relatives or visitors of the respondent and not providing medical facilities to the respondent are also part of the sham story. The petitioners further submit that it is on her own sweet will that the respondent went to Bhiwani, her native town, to her sister-in-law in the year 2010 and thereafter since March, 2018 until today she is residing at her daughter's house and the petitioners had no role to play in forcing her out of the disputed property for the said period. The petitioners have submitted that though in the year 2004, the disputed property was purchased by the respondent and was registered in her name but in the year 2010, the petitioner has invested approximately Rs. 8 lacs out of his own funds. It is further averred that the petitioner had filed a suit before the Civil Court for declaration of said property to the extent of 85% in his name. In the said litigation, the Civil Court rejected the plaint upon Order 7 Rule 11 application by order dated 06.08.2021 against which an appeal was preferred which is sub judice before this Court bearing Civil First Appeal No. 305/2021. He has requested for maintaining status quo and continuation of interim order in the facts and circumstances of the matter. The petitioners have also reiterated the contents of writ petition in support of their claim.

4. Per contra, learned senior counsel appearing on behalf of the respondent-mother, (senior citizen), has submitted that the respondent was expelled out of her house firstly in the year 2010 and therefore, had to go to her sister-in-law's place Bhiwani for mental peace aggrieved by the conduct of petitioners. In the year 2016, on account of chronic ailment, ill health and lack of medical facilities, the respondent returned to Jaipur with her sister-in-law and was meted with severe ill treatment by the petitioners and therefore, the sister-in-law of the respondent rushed back to Haryana and on account of the same, in March 2018, the respondent's daughter came and took the respondent to Ahmedabad. It is only because of pension of her husband that she is able to financially support herself otherwise, she is ousted out of her house by the petitioners and is being harassed by them on day to day basis and she is under pathetic condition suffering mental and social torture as she has to live in her married daughter's house, which is against the customs of hindu joint family.

5. Learned counsel for the respondent has further submitted that on 24.07.2018, a newspaper publication was also issued by the respondent disentitling the petitioners from her property which were bequeathed to her by way of will of her husband. The respondent has further submitted that on 12.11.2018, when the respondent came back with her daughter from Ahmedabad to get her documents, she was not permitted to enter the disputed property, was ill treated in her own house and therefore, she filed a police complaint in Vidhyadhar Nagar Police Station. Due to reasons beyond her control, the respondent was compelled to file a complaint under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Government of Rajasthan Maintenance of Parents and Senior Citizens Rules, 2010 (for short 'the Act of 2007' and 'the Rules of 2010') before the Senior Citizen Tribunal also and after due service upon the petitioners vide order dated 08.03.2019, the petitioners were directed by the Tribunal to vacate the disputed property within a period of one month. As a result, the present petition was filed and ex-parte ad-interim stay order was granted by this Court on 03.04.2019. The respondent's submission is that the order passed by learned Tribunal is just, fair and proper and inspite of passing of the said order in her favour, she is not able to live in her own house.

6. Learned counsel for respondent relied on judgment of this Court rendered in D.B. Special Appeal (Writ) No.920/2019 titled Rakesh Soni & Ors. vs. Premrata Soni & Ors. Reported in AIR 2020 Raj. 27 wherein, it was held that order of vacation of premises against son and daughter-in-law is valid and proper when the parents are being ill treated by them.

7. Reliance was also placed on Sandeep Gulati vs. Divisional Commissioner, Office of the Secretary-Cum-Divisional Commissioner, Department of Revenue, Govt. Of NCT Of Delhi And Ors. rendered by Hon'ble Delhi High Court in Writ Petition (Civil) 2761/2020 and connected matters wherein, eviction of son and daughter-in-law was justified as they were not maintaining, rather harassing and ill treating the parents who were senior citizens.

8. The matter was listed. Petitioners and respondent were called upon in the Court in-person. Attempt to reconciliation, mediation, settlement was made but failed. Parties in-person and Advocates were heard at length. Matter was referred by this court again for mediation which also failed. As agreed by both the parties, the matter was taken up for final disposal.

9. I have considered the respective submissions of the counsels for both the parties, heard the petitioners and respondent in-person on previous dates, analyzed the mediation proceedings, which have failed, and also considered the record of the writ petition and the judgments cited at Bar.

10. The material facts of the case are that the respondent is a widow, who is senior citizen aged about 72 years. At present, she is living in Ahmedabad along with her married daughter for last 5 years. The disputed property was purchased and registered by the respondent in the year 2004. The petitioner and his wife

appeared before this court in-person and have admittedly submitted that they are running business having turnover of approximately Rs. 25 lacs. They are at present living in the house, which belongs to respondent-mother and major portion of the said house are in their possession and remaining portion of the first floor is with second son and his family. In terms of finance, the respondent is quite independent and approximately 40,000/- Rs. per month is received by her as pension of her deceased husband. It is noteworthy to mention that in the year 2006, the petitioner left the house with his newly married wife and again re-entered the house in the year 2010, on advice of relatives, to take care of his respondent mother. He has invested approximately Rs. 8 lacs out of joint account, of his mother and himself, which is disputed by the respondent. In this regard, the petitioner has also filed one Civil Suit No. 249/2019 for declaration, partition and permanent injunction claiming 85% share in the said property. The respondent-mother while appearing in-person before this Court requested that the petitioners be evicted along-with their family from the disputed property as she is being ill-treated by them, there is a threat to her life if she lives with them and physical and mental abuse is being meted out to her by the petitioners. Whereas, the claim of the petitioner is that these are mere allegations and he is ready to live with his mother, and has right over the disputed property as he has spent Rs. 8 lacs from his own funds and therefore, cannot be evicted from the disputed property.

11. The Act of 2007 was enacted by the Legislature in the background that the traditional norms and values of the Indian Society are lost due to withering of the joint family system as a large number of elderly are not being looked after by their family, particularly the widowed women, who are forced to spend their twilight years all alone and are exposed to emotional neglect, lack of financial support and are rather treated as a waste. Even otherwise than the Act of 2007, the land where Vasudhaiva Kutumbakam was scripted, which considers the whole world a single family, the ill- treatment meted out to parents by their own children is both alarming and disturbing.

The Act of 2007 was formulated to redress the said grievance in a simple, inexpensive and speedy manner qua maintenance of the parents and senior citizens.

12. The Act of 2007 defines maintenance, property, Senior Citizen and Welfare, which reads as under:-

"Section 2(b) "maintenance" includes provision for food, clothing, residence and medical attendance and treatment;

2(f) "property" means property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property;

2(h) "senior citizen" means any person being a citizen of India, who has attained the age of sixty years or above;

2(k) "welfare" means provisions for food, health care, recreation centres and other amenities necessary for the senior citizens."

13. Further, Section 3 of the Act of 2007 makes the Act supreme having overriding effect if the same is inconsistent with the provisions of any other Act as in times when social construct of the society is changing and transforming, its important to keep the social fabric and values intact and not let them tumble.

14. In *S. Vanitha Versus Deputy Commissioner, Bengaluru, Urban District and Ors.*, reported in 2020 SCC Online SC 1023, it has been held that when there are family laws and personal laws and there is domestic conflict between in-laws and daughter-in-law, both are protected by respective legislation. The Protection of Women from Domestic Violence Act, 2005 and the Act of 2007, both being special Acts containing non-obstante clauses and therefore, in such event the later law shall typically prevail. However, in the event of conflict between them, the dominant purpose of both the statutes has to be seen in a harmonious way as it is important to strike a balance between family law and personal law and read them in a way so as to glue the family and society.

15. In the case in hand, the question of living in residential premises is involved. For the following reasons, the order passed by the Tribunal is justified:

(i) As per Section 2(b) and 2(k) of the Act of 2007, it was the duty of petitioner-son to maintain his mother and take care of her welfare as she is not only a senior citizen, but his only living parent as well and the petitioner son has to provide her with clothing, food, residence and medical attention/treatment. However, the contrary is happening in this situation. The respondent-mother does not need any maintenance from her petitioner-son, she is financially independent and has the property in her name, still she is being abused physically, mentally and socially by the petitioners, who have deprived her from living peacefully in her own house despite the Tribunal order dated 08.03.2019 passed in the respondent's favor.

(ii) The respondent-mother, despite of being the owner of the disputed property, was ousted out of it by the petitioners and was meted out with severe ill-treatment, including mental, social and physical abuse by the petitioners and had to live with her married daughter against the hindu social norms, especially at such an elderly age, and such act/s of the petitioners are violative of her right to live with dignity under Article 21 of the Constitution of India. Being the owner of disputed property and as per mandate of her husband's will, she has the first right to live in the disputed property in the way she desires.

(iii) In light of judgment *Rakesh Soni & Ors. (supra)* and *Sandeep Gulati (supra)*, it is abundantly clear that it is to the choice of the parents whether they want their son to be living with them or not when ill treatment is being meted out to them. The respondent mother in the instant case, while appearing in-person before this court has categorically submitted that living with the petitioners poses a threat to her life, and if she is directed to live with them, it will jeopardize not

only her mental health but physical well-being as well.

(iv) The contention of the petitioner of having invested Rs. 8 lacs of his own money in the said property is disputed. It is analysed that major portion of the investment in the house is qua the land super structure and is very minimal and the construction/renovation done by the petitioners was for their own use only. The action of the petitioner-son in filing a civil suit for the declaration of disputed property to the extent of 85% in his favor has no bearing in the present matter as the non-action of the petitioner in terms of Section 2(b) and 2(k) of the Act of 2007 of not taking care of their respondent-mother stands on a completely different footing than the suit filed for declaration.

(v) The petitioners are running their own business, having turnover of Rs. 25 lakhs approximately, they are qualified enough to earn their own living. Therefore, the petitioners are capable enough to run their family at some other place.

(vi) The contention of the petitioners that principles of natural justice were not followed while passing the impugned order dated 08.03.2019, that procedural lapses were there while adjudicating the case and that the final relief was granted as an interim measure which was contrary to Hon'ble Apex Court judgment passed in State of U.P. And Ors. vs. Ram Sukhi Devi reported in (2005) 9 SCC 733, cannot be a ground to oust the respondent from her own house. Appropriate notices were issued, the petitioners were heard before the learned Tribunal as well as before this Court, through pleader as well as in-person, wherein, they have admitted that they are having their own business, mother is living with her daughter and that the disputed property was registered and purchased in the name of respondent-mother.

Therefore, the contention of the petitioner does not hold field.

16. In light of the facts that ill-treatment is meted out to the respondent-mother, she is expelled from her own house, allegations of mental, physical and social abuse have been levelled against the petitioners and during the proceedings before this court respondent-mother categorically submitted that living with the petitioners would pose a threat to her life and mental well-being, the prayer of the petition to set aside the eviction order of tribunal passed on 08.03.2019 does not have a leg to stand on.

17. Therefore, the petitioners along with their family are directed to honor the impugned order dated 08.03.2019 and vacate the premises within a period of 30 days from the date of pronouncement of the judgment on their own cost and restore the house in vacant manner and in appropriate condition to the respondent-mother with due respect. The SHO of the concerned Police Station may be provided a copy of this judgment by the Registrar (Judicial) for carrying out the directions, within the stipulated time, giving full security to the respondent. The respondent will be at liberty to permit the petitioner and his family to visit or live in the disputed property in future, if she so chooses.

18. The writ petition does not call for any interference and is therefore, dismissed. All the interim orders and pending applications are also disposed of in the above terms.