

AFR**Neutral Citation No. - 2023:AHC-LKO:54220****RESERVED ON 18-04-2023****DELIVERED ON 18-08-2023****Court No. - 28****Case :-** WRIT - C No. - 35884 of 2019**Petitioner :-** Krishna Kumar**Respondent :-** State Of U.P.Thru Prin.Secy.Home
Deptt. Lko And Ors.**Counsel for Petitioner :-** Amol Kumar,Shivanshu
Mishra**Counsel for Respondent :-** C.S.C.,Piyush
Pathak,R.P.Shukla,Sharad Pathak,Sukhdeo Singh,Vidya
Bhushan Pandey**Hon'ble Shree Prakash Singh,J.**

1. Heard Sri Amol Kumar,Advocate assisted by Sri Shivanshu Mishra, learned counsel for the petitioner, Sri Vidyabhushan Pandey , learned counsel for the opposite party, Sri S.P.Singh, learned Standing Counsel for the State.

2. By means of the instant writ petition, the petitioner has prayed for quashing of the impugned order dated 22-11-2019 passed by the learned District Magistrate, Sultanpur, vide appeal No. 1333 of 2019 and Computer Case No. D 2019046800133, titled as 'Kallumal and another Vs. Krishna Kumar', while exercising powers under section 16 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007.

3. The factual matrix of the case is that on 16-07-1971, the grandfather of the petitioner namely late Ramdhani purchased a part of land of Gata No. 179 having area, 2 Biswa vide sale deed, from Ram Dulare and Shiv Dulare, both sons of Jagrup, in favour of the opposite party no. 4 and thereafter, the rest part of the same Gata admeasuring 2 Biswa was purchased by the father of the petitioner on 17-07-1971, out of the income of the Hindu Undivided Family(HUF), in favour of his younger son, who was minor at that period of time and thus, the same was purchased under the guardianship of his father. After purchase of aforesaid land, the grandfather of the petitioner constructed a house over the said land with the earning of HUF and was living in the same house. In between, the younger brother of opposite party no. 4 expired and thus, the property owned by late Om Prakash was divulged to opposite party no. 4 and the children of opposite party no. 4, in equal shares. The private opposite parties have three sons and two daughters namely Rajendra Prasad, Krishna Kumar, Janardan, Sushila and Anjali. The widow of Rajendra Prasad re-married after the death of Rajendra Prasad and is living with her husband, whereas the minor son born out of the wedlock of Rajendra Prasad and Savita Devi is residing with the petitioner.

4. On 16-08-2018, the petitioner married with Rajpati in a Arya Samaj Mandir who belongs to Scheduled Caste Community and thus the father of the petitioner was annoyed and never accepted the marriage

aforesaid. Due to annoyance, an F.I.R. was lodged against the petitioner so as to dissolve the marriage, whereafter, the petitioner filed a case namely Writ Petition no. 25345 (M/B) of 2018, (Smt. Rajapati and another Vs. State of U.P. and Others), wherein, an interim relief was granted in their favour, though later on, the same was disposed of.

5. The private-opposite parties filed an application before the learned Principal Judge, Family Court, Sultanpur under section 125 of Cr.P.C., for grant of maintenance against the petitioner and his brother and the interim maintenance was fixed @ Rs. 8,000/-p.m. and half of the amount was to be given by the present petitioner.

6. In the house in question, there was a shop which was let out by the father of the petitioner to Sadab & Izhar, on a monthly rent of Rs. 26,500/-, but, the same was concealed while instituting an application under section 125 of Cr.P.C. Thereafter, the private opposite parties have also filed an application for maintenance under section 7(1) of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 (hereinafter referred as Act 2007), wherein the Sub. Divisional Magistrate passed an order in favour of the private opposite parties though, the same was not challenged by the petitioner and the petitioner is paying the amount of maintenance to his parents on each and every month.

7. Thereafter, an appeal has been filed before the District Magistrate on 14-12-2017, whereby the petitioner has been directed to evict the house. The private opposite parties vide sale deed dated 14-12-2017, sold out a part of the property of Gata No. 179 and being aggrieved, the petitioner filed a civil suit to declare him to be co-sharer of 1/6 share in the land in question, which is registered as Regular Suit No. 140 of 2019, (Krishna Kumar and Another Vs Kallu Mal and Others).

8. On 13-03-2019, the father of the petitioner, executed gift deed of the property to Sushila and Anjali, who are the daughters of the executor and sisters of the petitioner and the rest of the property was sold out in favour of one Suresh Narotam Das and being aggrieved, another suit was filed by the petitioner alongwith minor son, for setting aside the gift deed dated 08-02-2019 and the sale deed dated 13-03-2019, vide Regular Suit No. 944 of 2019. The present petitioner is still residing in one portion of the house, but, the Sub. Divisional Magistrate and the Appellate Authority without application of judicial mind and without considering the evidences in a right perspective, passed the impugned order, thereby directing the petitioner to evict the house in question. Thus, the petitioner being aggrieved, has filed the instant petition.

9. Contention of learned counsel for the petitioner is that admittedly, the present petitioner is son of the

private opposite parties and even assuming that the property in question is the property of private opposite parties, the present petitioner being son is entitled for 1/6 part of the property and therefore, without considering all these facts, the order for eviction has been passed while exercising power under Act 2007.

10. He argued that learned District Magistrate has exceeded his jurisdiction, while deciding the appeal, thereby passing an order of eviction and dispossession. He emphasized that Section 2(b) of the Act, 2007, which includes provision for food, clothing, residence and medical attendance and treatment, has never been denied by the petitioner to his parents, at any point of time. He next added that the appellate court has also failed to appreciate that the property which is owned by the father of the petitioner is an ancestral property.

11. Further contention is that under the proceedings of Section 125 of Cr.P.C., the maintenance has already been fixed by the court, as an amount of Rs. 8,000/- per month out of which, Rs. 4,000/- per month is to be paid by the petitioner and there is also income of Rs. 26,500/- per month to opposite parties from a shop, which was let out by the father of the petitioner.

12. Submission is that in fact the story is otherwise as the father of the petitioner was annoyed with the marriage of the petitioner and his wife, as wife belongs to Scheduled Caste Community, which is infact root

cause of initiating legal proceedings against the petitioner for evicting him from the house in question and to dislodge the marriage in between the petitioner and his wife. He submits that the petitioner is taking all care of his parents, on each and every occasion prior to the marriage and due to annoyance of his father, several cases have been lodged against him and he is running pillar to post for doing pairavi.

13. In support of his contentions, he has placed reliance on a case reported in ***Manu/UP/1742/2019, Randhir Singh Vs. District Magistrate, Faizabad and Others*** and has referred paragraphs nos. 24,28 & 29 of the aforesaid Judgment, which are extracted hereinunder :-

"24.*The question is whether the respondent no. 3, who is daughter-in-law of the petitioner, has a right to reside in the house, which is self-acquired property of the petitioner against the wishes of the petitioner, in view of the provisions of the aforesaid 2017 Act read with Uttar Pradesh Maintenance and Welfare of Parents and Senior Citizens Rules, 2014(hereinafter referred to as the "Rules of 2014")*

28.*While passing the impugned order, the District Magistrate has gone through the enquiry report submitted by the Sub-Divisional Magistrate and on finding that the petitioner inspite of having five rooms in the house, is living with his elder daughter-in-law on his own sweet will; the matrimonial dispute between petitioner's son and respondent no. 3 is pending; and the petitioner has not produced any evidence which could establish that the respondent No. 3 has restrained the petitioner from living in other five rooms of the house in question. In the backdrop of the aforesaid fact, the District Magistrate has recorded specific findings of fact on the basis of cogent material on record and the judgment relied by the learned Counsel for the petitioner is not applicable under the facts and circumstances of the case.*

29.*From the perusal of the impugned order, it reflects that the District Magistrate, on the basis of enquiry report submitted by the Sub.Divisional Magistrate, has recorded specific finding that there is no evidence on record, which establishes that the*

respondent No. 3 is trying to restrain the petitioner from living in other five rooms of the house in question. In fact the petitioner is residing with his elder daughter-in-law on his own sweet will at Faizabad. In order to protect the interest of the petitioner being a senior citizen, the District Magistrate in its order has specifically directed the concerned police station to see both the parties from time-to-time and it is also expected from the parties that they live in congenial atmosphere without interfering in the peaceful life of each other."

14. Referring the aforesaid, he submits that the Division Bench of this court has held that since the senior citizen, leaving their house, were residing somewhere else whereas there was space to live and none had restrained them to live in the house, thus, no interference is warranted. He submits that the case of the petitioner is also covered with the ratio of the above said judgment as he is residing in one room of the house and he has never restrained his parents to live over there.

15. Concluding his arguments, he submits that this is a peculiar case where the parents are not infact aggrieved but the son is being harassed for his no fault. He submits that the father of the petitioner namely Kallu Mal died and now the greedy sisters and their husbands are trying to sell out the property and that's why, they are doing pairavi in the matter, yet the petitioner and his wife is residing in one portion of the house, which is on the first floor and one of the shops, beneath his room, which is under his possession and the rest of the house is in the possession of the private opposite parties. He added that it is not the intent of the act to dislodge or to harass the son but it is for protection of the interest of the old age parents, which

infact, in the present case is not applicable. He thus, submits that the private opposite parties did not come with clean hands before the appellate authority as well as before the Sub. Divisional Magistrate and thus, the impugned orders assail illegality and infirmity.

16. Per contra, learned counsel appearing for the opposite parties has opposed the contentions aforesaid and submits that no substantial or legal ground has been divulged by the learned counsel for the petitioner and only factual dispute has been raised. He added that the father of the petitioner namely, Kallu Mall was aged about 75 years and his mother namely, Samtula Devi, was about 68 years of age at the time of the alleged incident and now, Kallu Mall is no more. Further submitted that the petitioner and his wife beat his parents brutally and abused them and because of the unbearable harassment perpetrated by the petitioner and his wife, the father and mother, who were of old age and sick and infirm, felt helplessness and pain. He added that facing the trouble at every point of time, the father of the petitioner and the mother moved an application before the Sub. Divisional Magistrate, which was decided vide order dated 08-07-2019 and thereafter, an appeal was instituted wherein an order was passed on 22-11-2019. The operative portion of the order dated 22-11-2019 is quoted hereinunder :-

आदेश

*"उपरोक्त विवेचना के आधार पर प्रस्तुत अपील स्वीकार की जाती है।
न्यायालय माता पिता एवं वरिष्ठ नागरिक भरण पोषण एवं कल्याण
अधिकरण/उपजिलाधिकारी सदर सुलतानपुर द्वारा पारित आदेश दिनांक*

08.07.2019 खण्डित किया जाता है तथा विपक्षी कृष्ण कुमार को उपरोक्त सम्पत्ति (मकान व दूकान) से निष्कासित किया जाता है। विपक्षी आदेश प्राप्ति से 45 दिवस के भीतर उक्त सम्पत्ति से अपना कब्जा हटा लें यदि उनके द्वारा निर्धारित समयावधि के भीतर अपना कब्जा नहीं हटाया जाता है तो स्थानीय पुलिस बल की सहायता से उन्हें उक्त सम्पत्ति से निष्कासित करने की कार्यवाही की जाय। आदेश की एक प्रति पुलिस अधीक्षक सुलतानपुर, उप जिला मजिस्ट्रेट सदर सुलतानपुर व संबंधित पक्षों को आवश्यक कार्यवाही हेतु प्रेषित की जाय। प्रभारी निरीक्षक कोतवाली नगर, सुलतानपुर उभयपक्षों पर आदेश का तामीला कराकर एक प्रति तामीला रिपोर्ट के साथ वापस करें। आदेश की प्रति के साथ अवर न्यायालय की पत्रावली वापस भेजी जाय। बाद आवश्यक कार्यवाही पत्रावली संचित अभिलेखागार हो।

दिनांक-22.11.19”

17. Referring the aforesaid, he submits that there is no errorneousness in the order passed by the appellate authority and considering the facts and circumstances of the case and the law prevailing thereof, the order with respect to eviction of the petitioner has rightly been passed.

18. He further submits that so far as the claim of the petitioner is that he is a co-sharer of the House No. 778, from which eviction has been ordered by the learned District Magistrate, is infact not correct as the petitioner does not come in the category of co-sharer as per section 6 of the Hindu Succession Act. With the intention to claim his right as co-sharer, the petitioner made several kind of forgery and once he could not succeed, then he prepared a forged will deed executed by late Om Prakash in the year 1992. He added that the petitioner committed all kind of forgery so as to remain continue in the house of his father, but, he could not substantiate the same. It is also added that

the petitioner is a person of criminal character and has got no respect to his parents and more so, he misbehaved with them in course of grabbing the property and once, it became impossible to live with the petitioner namely, Krishna Kumar and his wife, the proceedings under Act,2007 were invoked by the opposite parties, whereupon the opposite parties have rightly passed the orders. He also added that the petitioner has beaten several times to his father and mother and they have received injuries, which is also evident from the CCTV Camera installed.

19. Further submission is that learned trial courts have passed the orders impugned after thoroughly considering the facts and circumstances of the case and after coming to the conclusion that the opposite parties no. 4 & 5, are being ill treated by his son i.e. the petitioner and his wife and it has become impossible for the parents to live, in the same house, alongwith them. He added that there is no unlawfulness and erroneusness in the order passed by the Sub.Divisional Magistrate or the appellate court. Therefore, he submits that there is no merit in the instant petition and the writ petition is liable to be dismissed.

20. Considering the submissions of learned counsel for the parties and after perusal of material placed on record, it emerges that the present petitioner and his wife are living in the house of his parents. From the

application, which was instituted by the opposite parties no.4 & 5, it is evident that the present petitioner used to beat his father and mother, who were of old age and he was also not properly maintaining them. Further this incident is said to happen usually with opposite parties no. 4 & 5 and therefore, being aggrieved, they moved an application under section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act,2007(hereinafter referred as the 'Act,2007'). After the aforesaid application moved, the Sub. Divisional Magistrate concerned passed the order on 08-07-2019 with the following directions :-

आदेश

"आदेश किया जाता है कि:-

- (1) प्रतिवादी कृष्ण कुमार सुत कल्लूमल को निम्न शर्तों के साथ प्रतिबंधित किया जाता है कि कृष्ण कुमार सुत कल्लूमल जिस दुकान में बर्तन का कारोबार करते हैं एवं जिस कमरे में रहते हैं एवं कमरे से लगे बाथरूम के अतिरिक्त घर के दूसरे हिस्से में बिना माता पिता की अनुमति के प्रवेश नहीं करेंगे। यह प्रतिबन्ध इनकी पत्नी एवं बच्चों पर भी प्रभावी होगा।
- (2) प्रभारी निरीक्षक कोतवाली नगर को आदेशित किया जाता है कि प्रत्येक 15 दिन में स्वयं अथवा क्षेत्रीय उपनिरीक्षक इनके घर पर जाकर सी०सी०टी०वी० में लगी हार्ड डिस्क/डी०वी०आर० का परीक्षण करेंगे एवं पड़ोसियों से पूछ तॉछ करेंगे कि इनके पुत्र कृष्ण कुमार के द्वारा अपने माता पिता को प्रताड़ित तो नहीं किया जा रहा है। यदि कोई ऐसा साक्ष्य प्राप्त होता है तो न्यायालय के संज्ञान में लाते हुए आवश्यक कार्यवाही करेंगे।
- (3) कृष्ण कुमार द्वारा अपने माता पिता को प्रताड़ित किया गया तो इन्हें घर से बेदखल करने की कार्यवाही की जायेगी। जैसा कि विपक्षी कृष्ण कुमार ने अपने बयान में स्वयं अंकित कराया है।
- (4) माननीय प्रधान न्यायाधीश कुटुम्ब न्यायालय सुल्तानपुर के आदेश का अनुपालन करते हुए कृष्ण कुमार व जनार्दन कुमार सुतगण कल्लूमल प्रत्येक माह अपने माता पिता को भरण पोषण हेतु माननीय न्यायालय द्वारा निर्धारित भरण पोषण की धनराशि देते रहेंगे।

(5) कृष्ण कुमार एवं इनकी पत्नी एवं बच्चों के द्वारा माता पिता का पूर्णरूपेण आदर एवं सम्मान किया जायेगा।

(6) प्रभारी निरीक्षक कोतवाली नगर सुलतानपुर को इस निर्देश के साथ कि श्री कृष्ण कुमार सुत कल्लूमल पर सतर्क दृष्टि बनाये रखेंगे कि वह अपने माता पिता को प्रताडित न करें। आदेश की एक प्रति प्रभारी निरीक्षक कोतवाली नगर सुलतानपुर को अनुपालनार्थ भेजी जाय।
बाद आवश्यक कार्यवाही पत्रावली दाखिल दफ्तर हो।"

21. Being aggrieved with the order dated 08-07-2019, an appeal was instituted by the opposite parties no. 4 & 5, wherein the appellate court admitted the appeal and set aside the order passed by the Sub. Divisional Magistrate directing the petitioner to evict the house of opposite parties no. 4 & 5 within a period of 45 days from the date of the order received and in case of non eviction, it was also directed that the same shall get evicted forcibly with the help of the local police.

22. It has been stated in so many words by the petitioner that he is living in a room and there is one shop in his possession and the rest of the part of the house is in the possession of his mother and sister. It was also submitted that since the petitioner performed marriage with a lady of Scheduled Caste and being annoyed, the parents started the proceedings for getting evicted the house of the opposite parties no. 4 & 5 and no cruelty or injury has ever been caused by the petitioner or his wife.

23. Before any discussions or coming to the conclusion in this matter, it is essential to look into the object of promulgating the Act, 2007. The Act, 2007, namely the

Maintenance and Welfare of Parents and Senior Citizens Bill, 2007 was introduced in Lok Sabha on 20-03-2007 and the objective of Bill was to provide for more effective provisions for the maintenance and welfare of parents and the senior citizens guaranteed and recognized under the Constitution of India and for the matters connected therewith or the incidental thereto. It is for the maintenance of the parents, and to provide appropriate mechanism, which is need based maintenance to the parents and senior citizens including the medical facilities to the senior citizens and institutionalizing a suitable mechanism for the protection of life and property of the older persons and old age homes in every district. Now-a-days, because of steady rise in the population, the older persons in India are used to see suffering with the malnutrition and unavailability of medicines and treatment which expected to decrease the life expectancy. The traditional norms and values of the Indian society lays stress on showing respect and providing care for the aged members of the family, were normally cared for by the family itself, but, in the recent time, the society is witnessing a gradual definite withering of joint family system and therefore, a large number of parents are not being maintained by their children.

24. It is an established fact that the family is the most desired environment for senior citizens/parents to lead a life of security, care and dignity and keeping in view of this fact and to ensure that the children should

perform their moral obligation towards their parents, the Act, 2007 aims to create an enabling mechanism for the older persons 'To Claim Need Based Maintenance From Their Children'.

25. So far as the definition of maintenance is concerned, that has been envisaged under section 2(b) of the Act, 2007. This says that the maintenance includes the provisions for food, clothing, residence and medical attendant and treatment. If it is seen in context with the present case, it is evident that opposite parties no. 4 & 5 are the house owners, wherein their son and daughter-in-law are residing in a room and one shop is also in their possession, which is source of their livelihood. Though, it has been alleged as a factual matter that the house in question has been sold out, on the instigation of the sisters and brother-in-laws of the petitioner, but, without going into this factual dispute, it remains undisputed that the present petitioner is residing in a room. It is also a fact that at this stage, the opposite party no. 4 i.e. the father of the present petitioner died and only the opposite party no. 5 i.e. the mother of the petitioner is alive. While bare reading of Section 4(3) of the Act, 2007, it is evident that the obligation of the children to maintain his/her parents extends to the needs of such parents either father or mother or both, so that they may lead a normal life. Section 4(3) of the Act, 2007 is quoted hereinunder :-

"4.(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life."

26. The explanation and meaning of Section 4(3) of the Act, 2007, can more particularly be derived from the heading that says 'maintenance of parents and senior citizens', meaning thereby that the maintenance of parents and senior citizens so far as they can lead a normal life by extending to the needs well fulfilled. Such maintenance of parents is objective of this Act. The present petitioner is residing in a room and one more shop is in his possession and the rest of the house is in possession of his late father now the mother, then this could not be said that there is any further need regarding residence/house to the parents of the present petitioner and more particularly, when the father is no more and being the son, he is residing in one of the room and the mother is residing with her daughters.

27. Taking note of the fact that as per the social structure of the society, sometimes, a son may not be in a position to maintain the parents, as particularly, in the present matter, the petitioner is residing in one room and there are other rooms, where the other can live, therefore, it is needed to revisit the whole scenario that as to whether the present petitioner, is actually avoiding to maintain the parents.

28. This court has also noticed the fact as was contended during course of the arguments that the sister of the petitioner is colluded with the mother and she is trying to sell out the property in question as that is the valuable property and therefore, they tried to oust the present petitioner and the hurdle is that once he remains in one room of the said house, no one will purchase the same.

29. Further, this court is of considered opinion that a Tribunal, under Chapter-II of Act, 2007 cannot direct eviction simplicitor from the property at the instance of senior citizens, though the Tribunal can direct the children and relatives to make available a residence to such senior citizens in pursuance of an application, filed under the abovesaid chapter. It further emerges that the District Magistrate as an appellate authority under the Act, 2007, can ensure that no one should make any hindrance to a senior citizen to enjoy the property as per his 'need' and the right to eviction is the last step, where such authority finds that the need of a senior citizen is not being fulfilled. The case in hands is that the present petitioner is living in one room with his wife and he is not making any hindrance in the peaceful living of the parents, in other part of the house and therefore, so far as the objective of the Act, 2007 is concerned, is no way hampered by the petitioner.

30. Further the procedure of eviction is not at par to the procedure as prescribed in the Civil Procedure

Code, where the rights and titles are determined, as the provisions of Act,2007 is for ensuring the needs of the senior citizens and that is to be handled, carefully, so that the structure of the family may not be abrupted.

31. In view of the aforesaid submissions and discussions, the order passed by the appellate authority, so far as the eviction of the present petitioner is concerned, is not sustainable, in the eyes of law.

32. Consequently, the impugned order dated 22-11-2019 passed in Appeal No. 1333 of 2019, is hereby quashed.

33. Liberty is given to opposite party no. 5, (mother of the petitioner), to move an appropriate application, if any sort of hindrance is been made, in furtherance to the need of her residence.

34. The petitioner is also directed, not to make any inconvenience in the needful living of the opposite party no. 5, in the house in question.

35. With the aforesaid observations, the instant petition is hereby ***disposed of.***

36. No order as to costs.

Order Date :- 18-08-2023/AKS

