



OFFICE OF THE DISTRICT MAGISTRATE CUM APPELLATE TRIBUNAL
FOR MAINTENANCE AND WELFARE OF PARENTS & SENIOR CITIZENS
DISTRICT-SOUTH WEST
OLD TERMINAL TAX BUILDING, KAPASHERA, NEW DELHI-110037

Dated: 23-04-2018

Ref. No. 22439

Case Id:-18242

Case No.-174/2017

Smt. Kunti Devi

Applicant

Vs.

Respondent

Sushil Kumar Singh & Anr.

ORDER

1. An application has been filed by a Senior Citizen, Smt. Kunti Devi W/o Shri Chandra Kishore Singh R/o H. No. - 227E, Gali No.-7A, Mahaveer Enclave, Part-IIA, New Delhi (referred as suit property) under Rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules,2016 for eviction of his son & daughter in law namely Sh. Sushil Kumar Singh & Smt. Saroj Singh from aforesaid property.
2. The applicant has stated the following (In brief):-
 - a) She is the rightful owner of H. No. - 227E, Gali No.-7A, Mahaveer Enclave, Part-IIA, New Delhi having purchased the same in the year 1987 out of money earned by her husband vide GPA dated 11.05.1987.
 - b) She is residing in the above said property along with her husband and all her sons with daughter in laws.
 - c) That her Middle son Sh. Sushil Kumar Singh and his wife Smt. Saroj Singh are deliberately occupying different areas of the property without the consent of the applicant or her husband and now they are ill-treating and misbehaving with the applicant and her husband and they were creating a lot of trouble for the applicant. Such an extent that the appellants intends to leave her own house and go to some other places to live.
 - d) That before seven years, the husband of the appellant got a paralytic attack in which none of her sons helped, neither physically, nor financially.
 - e) That both of the respondents made a fake affidavit and indemnity bond of the applicant to take the water connection for a floor in the house of the applicant without her consent and agreement.
 - f) That due to the continued disrespectful behaviour and unauthorized occupation by her middle son and daughter in law Sh. Sushil Kumar Singh & Smt. Saroj Singh and their family. She doesn't want to allow any one of them to use and consume the property
 - g) In view of the above, She has requested that his middle son Sh. Sushil Kumar Singh & Smt. Saroj Singh (Respondents) may be evicted from the suit property bearing H. No. - 227E, Gali No.-7A, Mahaveer Enclave, Part-IIA, New Delhi, at the earliest.
3. The effective hearings of the case were done on 15.11.2017, 14.12.2017, 17.01.2018, 31.01.2018 & 07.02.2018.
4. The respondent in his reply dated 14.12.2017 has submitted the following in brief:
 - a. That the applicant has filed this complaint to harass the respondent as well his wife & Children on one pretext or another, and also to grab a share in the property of the respondents.
 - b. That the applicant along with the other family members had also filed a Civil Writ Petition before the Hon'ble High Court of Delhi bearing No. 427/2017 under section 226 which was disposed off on 11.08.2017 by the Hon'ble Court in favour of the respondents. The respondent is a well educated and obedient son.
 - c. That the applicant with the collusion of the other family members has also filed a false and frivolous complaint under section 156 (3) Cr. PC and same is pending before the Hon'ble Court of Shri Siddharath Malik, Dwarka Courts.

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- d. That the respondents has also filed a civil suit i.e. suit for declaration of ownership rights in the suit property against the applicant & other family members vide C.S. No. 268/2016 which is pending adjudication before the Hon'ble Court of Shri Mohit Sharma, Ld. Civil Judge, Dwarka Courts, New Delhi.
- e. That the complaint filed by the applicant with the collusion of the other family members is completely false and frivolous and want to grab the share of the property of the respondents.

The respondent has therefore requested that the complaint may be dismissed with heavy costs.

5. The appellant has filed a rejoinder dated 17.01.2018, in which she has denied all the statements made by the respondent in his written statement. She has mentioned that the respondents don't respect their mother and father and always behave badly with them, due to which respondents are not only liable to be evicted from the house but also be punished with strong punishment.
6. That the respondents also filed his rejoinder dated 31.01.2018 mentioning that:-
- a) The suit property was purchased in 1987 with total consideration amount of Rs. 22,275/- after selling of the ancestral property which was situated in the native place (Bihar).
- b) That the suit property was constructed with the cooperation of each other and residing live separately with their respective families as per mutually dividing the building and since no dispute has been raised by any one regarding the title and share of the above said property.
- c) That upon this issue, the sister of the respondent mislead and misguided to the applicant and started to go in a litigation from one court to another.
7. On 31.01.2018 IAS (Probationer) was directed to conduct detailed enquiry into this matter and submit report accordingly, as the initial report of the SDM (Dwarka) was very brief and inconclusive.
8. On 07.02.2018 a detailed enquiry report was received from the IAS (Probationer) mentioning that *"the main cause of dispute is ill-treatment and non maintenance by her son Sh. Sushil Kumar. Smt. Kunti Devi wants her son Sh. Sushil Kumar to vacate the house so that they can sell the house and move to another place or rent it out to earn additional money, to fund the medical expenses for treatment of her husband. But Sh. Sushil Kumar is not agreeing to vacate the house. Also he had carrying out renovations in the house earlier without taking the permissions of Smt. Kunti Devi. She alleges that Sushil Kumar and his wife abuse and fight with the family members and there is an environment of animosity and stress in the house.*

At the time of paralytic attack of the husband of the appellant, the respondent had submitted in the reply to the Hon'ble Court that he incurred expenses of Rs. 1.5 lakhs for the treatment. However on questioning he denied spending any amount on the treatment. He did say that he managed to get a rebate of Rs. 40,000/- due to his family contacts but did not spend any money. None of the sons contributed for the treatment and savings of the husband of the appellant were used for the treatment.

On questioning the family on their respective incomes, Mr. Shailesh Kumar (eldest son) said that he is earning only Rs. 11000/- as income. It was revealed later on probing Mr. Sushil Kumar and neighbours that they have an additional income of Rs. 14000/- in the form of rent from 2 properties owned in the name of his wife Mrs. Kalindi (H. No. 226, Gali No. 7 and H. No. 228, Gali No. 7B). This fact was tried to concealed by Mr. Shailesh.

It was also alleged by Smt. Kunti Devi that Mr. Sushil Kumar and his wife took water connection for the 2nd floor of the house with forged signatures on affidavit and indemnity bond in her name, that she never gave any permissions to get a new water connection for the house. The case regarding the same is undergoing in Dwarka Court.

Also Mr. Sushil Kumar has also filed a civil suit in the Dwarka Court for Declaration of ownership Right and Permanent injunction by the name of his minor son Mr. Bhanu Pratap Singh.

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Mr. Sushil Kumar, in his response to all the allegations, said that he and his wife and children have separate entry to their floor from outside stairs and do not meet/talk to the other family members including the appellant. He believes that the whole family is conspiring to get him out of the property share as they believe that he earns well and is getting his children good education. So out of jealousy they are isolating him. He doesn't deny getting changes in the house done to fulfil the needs of his 5 members family. He although denies any kind of harassment caused to the family or any ill-treatment.

The neighbours also deny hearing any noise of fighting or abusing from the house.

In the enquiry, it was felt that there was no major issue which could be identified as the cause of fighting. There were minor families' issue. Possibility of mediation can be explored as earlier also. Smt. Kunti Devi had filed complaint against all the three sons and now wants only one son to evict.

The enquiry was conducted with impartiality to either of the sides and the above facts are submitted for kind information and consideration of the Hon'ble Tribunal".

9. The applicant (Sr. Citizen) has requested for the eviction of the respondent from the suit property as provided under Rule 22 Sub Rule 3 (1)(4) of the Delhi Maintenance and Welfare of Parents and Senior Citizen (Amendment) Rules 2017, the Procedure for eviction from Property/residential building of senior citizen/parents is as under:-
- (i) A senior citizen may make an application before the Dy. Commissioner/District Magistrate of his district, for eviction of his son and daughter or legal heirs 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 Dy. Commissioner/District Magistrate shall immediately forward such application to the concerned Sub-Divisional Magistrate for verification of the title of 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 Dy. Commissioner for final orders within 21 days from the date of receipt of the Complaint/Application.
 - (iv) The Deputy Commissioner during summary proceedings for the protection of senior citizen/parents shall consider all the relevant provisions of the said Act 2007. If the Dy. Commissioner is of opinion that any son or daughter/ legal heirs 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 Dy. 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. The notice shall:-
 - (a) Specify the grounds on which the order of eviction is proposed to be made; and
 - (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,

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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.

10. I have gone through the provisions of the Act and the Rules along with the documentary evidence submitted by the parties. I have gone through the report of the SDM (Dwarka) dated 17.01.2018 and the report of IAS (P) dated 07.02.2018. Finally, I have also gone through the report of Legal Aid Counsel, DLSA (SW) on the matter dated 21.03.2018.

11. With respect to the ownership of the Suit Property, the respondents have not been able to submit any document establishing their rights over the suit property. They have merely stated that they have filed Civil Suit for declaration of ownership rights and share of their minor children bearing Suit No. 268/2016 which is pending adjudication before the court of Senior Civil Judge, Dwarka. Further, the respondent Sh. Sushil Kumar has claimed that the property was purchased by his father and father-in-law, however he has not submitted any conclusive evidence in support of this claim. With respect to the pendency of Civil Suit for declaration of ownership rights and share of his minor children in the Suit Property, the respondents have not been able to produce any stay against dispossession granted by the Hon'ble Court nor have they submitted any directions/orders/findings of the Hon'ble Court which would support their claim over the Suit Property.

12. On the other hand, the appellant Smt. Kunti Devi (Senior Citizen) has produced GPA dated 11.05.1987 and Agreement dated 11.05.1987 over the suit property. Though, these are not conclusive ownership proofs of title of the appellant over the Suit property, still it is enough to establish a much better title of the appellant over the suit property than the respondents.

13. It is established that the respondents are staying in the 2nd floor of the suit property and are not providing any maintenance to the parents nor are contributing any amount to the Household/Medical expenses of the parents. This is despite the fact that the respondent is relatively financially well off, in comparison to his parents and siblings, being employed in MTNL and earning a salary of Rs. 62000/- Per Month.

14. An attempt was made to bring about a settlement between the parties by directing the parties to present themselves before the Legal Aid Counsel, DLSA (SW). However, as per the report of the Legal Aid Counsel 21.03.2018, both the parties are unwilling to Compromise/Settle the matter.

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15. In view of the above facts and circumstances, the undersigned allows the appeal filed by the appellant Smt. Kunti Devi and directs the respondents to vacate the suit property within 2 weeks from the date of receipt of these orders.

16. The SDM (Dwarka) and SHO (Palam) are directed to execute the above order in case of non-compliance by the respondents within the stipulated period.

17. Given under my hand and seal on this 23rd day of April 2018.

18. The file may be consigned to the record room.



**ABHISHEK DEV, IAS
DISTRICT MAGISTRATE
DISTRICT- SOUTH WEST**

Ref. No. 22439

Dated: 23-04-2018

Copy to:-

1. Both the parties.
2. SDM (Dwarka).
3. SHO (Palam).
4. Assistant Programmer, NIC, Kapashera, New Dew Delhi.
5. Guard File.



**ABHISHEK DEV, IAS
DISTRICT MAGISTRATE
DISTRICT- SOUTH WEST**