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WA-1705-2023

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 27th OF JANUARY, 2025

WRIT APPEAL No. 1705 of 2023

DILIP MARMAT

Versus

COLLECTOR AND OTHERS

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Appearance:

Shri Prateek Jain - Advocate for the appellant.

Shri S.S. Chouhan - Govt. Advocate for the respondents / State.

Shri N.S. Ruprah - Sr. Advocate with Shri Sachin Shukla - Advocate
for respondent No.3.

Appellant-Dilip Marmat is present in person.

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JUDGMENT

Per. Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice

The present writ appeal has been filed seeking following reliefs:-

*(i) Allow the appeal by setting side the order dated 02.09.2023
passed by the Hon'ble Single Judge in. WP 22876/2022 and (Annexure
A/1)*

*(ii) Allow the appeal by setting aside the Order dated 02.05.2022
passed by Respondent No. 2, Sub-Divisional Officer and Order dated
01.08.2022 passed by RespondentNo.1; and*



(iii) Any other relief, order or direction, as this Hon'ble Court deems fit and proper looking to the facts and circumstance of the case deemed fit and proper, in the interest of justice may please be awarded along with the cost of the proceedings.

2. The appellant-petitioner is the son-in-law of respondent No.3. He was married to his deceased daughter. However, in an accident the wife of appellant died in the year 2018. The appellant is living in the said house as a permissive occupant and as submitted by learned counsel for the appellant that he cannot be evicted from the said premises.

3. It is further submitted that in terms of the definition of 'Children' given in Section 2-A of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter referred as 'the Act of 2007'). The appellant being son-in-law will not fall in the definition of 'Children'. The learned Tribunal, however, failed to follow the procedure of conciliation before passing an award. Even 'relative' defined in Section 2(g) of the Act of 2007 will not include the appellant, therefore, appellant being not covered under the Provisions of the Act of 2007 could not have been subject matter of any order under the provisions of the Act of 2007.

4. The learned counsel for the appellant further submitted that appellant has adverse possession over the property. He had contributed towards the construction of the house and in support of this he has enclosed copy of bank-statement as Annexure P/3 to demonstrate that a sum of Rs.1,00,000/- was given in the account of respondent No.3.

5. On the contrary, the case of the respondent No.3 is that firstly the order



is under Section 23 of the Act of 2007 which deals with transfer of property to be void in certain circumstances. It is not an order under any other provision. The children will include son-in-law because the definition is not comprehensive. In fact when property was given to the daughter of the respondent No.3 then, in a package, the appellant was inducted. The appellant is not taking care of the senior citizen and on the contrary is causing nuisance for them as has been mentioned in the application which was filed by the respondent No.3 before the SDM, M.P. Nagar Circle Bhopal and on account of that directions for eviction has been given.

6. It is not in dispute that the house was purchased by the respondent No.3 in the year 2007, though appellant's contention is that since he was a labourer and facility of loan was not available to him, therefore, he had purchased the house in the name of his father-in-law but that is not borne out from any of the documents available on record. Moreover, there is no such agreement brought on record to show that house was purchased in the name of respondent No.3 because loan facility was not available to the appellant.

7. It is admitted that the appellant never moved any application before the SDM for initiating conciliation proceedings. On the contrary, when the writ Court had given an offer to the appellant's counsel to seek instructions that how much time is required to vacate the property in question, he in the pass-over round informed the Court that his instructions are that petitioner-appellant wishes to contest this case and does not wish to vacate it. Though today counsel for the appellant submitted that matter be posted before the Mediator, however, the same has been strongly opposed by counsel for the



respondent No.3.

8. Learned Single Judge has observed in the impugned order that provisions contained in Section 2(A) of the Act of 2007 defines 'Children'. That definition according to the Writ Court is not comprehensive. Only talks about broader categories to person namely sons, daughter, grand-son and grand-daughter who are not minor. By implication if the house was given to daughter and the petitioner-appellant being son-in-law after death of daughter, will be included in the definition of children and he has a duty to maintain the senior citizen as defined in Section 2(h) of the Act of 2007. The Writ Court has further observed that as far as 'relative' is concerned that too will also not be of any consequence because it is not a matter of childless senior citizen, therefore, the provisions which are parameteria to decide the controversy is definition of children and that of senior citizen given retrospectively in Section 2(a) and 2(h) of the Act of 2007.

9. Regarding contention of learned counsel for the appellant-petitioner, it is observed that provisions contained in Section 23 of the Act of 2007 will not be applicable because there was no transfer of property, it is to be understood that transfer of property is not to be understood in terms of transfer of immovable property as mentioned in the Transfer of Property Act. The transfer of property includes permissive transfer or gratuitous transfer in favour of a person and if the senior citizen is able to demonstrate his need than that transfer can be declared as null and void in terms of the provisions contained in Section 23 of the Act of 2007.

10. The learned counsel for the appellant has relied on the judgment of the



Supreme Court in the case of **Sudesh Chhikara v. Ramti Devi, 2022 SCC OnLine SC 1684** to submit that in absence of specific condition for providing maintenance to the transferor, no ground for cancellation of transfer deed is made out. Reliance placed on the aforesaid case is utterly misplaced because in the present case, there is no deed of transfer and therefore, there is no question of any condition in the transfer deed being there. The Hon'ble Supreme Court in a recent judgment in case of **Urmila Dixit v. Sunil Sharan Dixit, 2025 SCC OnLine SC 2** has held in para-24 thereof that the Tribunal under the Act of 2007 is competent to order eviction if it is necessary and expedient to ensure the protection of senior citizen. If the Tribunal under the Act of 2007 does not grant order of possession to the senior citizen, this would defeat the purpose and object of the Act which is to provide speedy, simple and inexpensive remedies for the elderly.

11. In view of the above, the Writ Court has rightly observed that when facts of the case are examined in the light of provisions contained in Section 23 of the Act of 2007, it is evident that respondent No.3 is a retired BHEL personnel. There is no provision for any regular pension. Pension is granted through Contributory Provident Fund. The respondent No.3 has categorically averred that he has responsibility to take care of his wife who is suffering from paralysis and also of other children and therefore, he needs that property which was constructed by him, so that he can have a source of additional income.

12. Undisputedly, the relations of the appellant with respondent No.3 are not cordial then, mere facet of income cannot be looked into but a peaceful



income giving satisfaction to the owner of the property who happens to be a senior citizen in another facet which is to be understood and imbibed by implication while interpreting the provisions of Section 23 of the Act, 2007. When the whole facts of the case are examined from said prospective, then there is a senior citizen, he is in need of the property and that need is *bonafide* and for peaceful purposes, therefore, petitioner having failed to establish any of his rights over the property, is not entitled to continue in the property *dehors* the orders of the Sub-Divisional Magistrate and the Collector.

13. In view of the above, the learned Single Judge has rightly dismissed the writ petition filed by the petitioner-appellant. The eviction order is of dated 02nd May, 2022, almost three years have been passed but relations could not be improved, therefore, we hereby direct the appellant-petitioner to evict the premises within 30 days from today, failing which the SHO concerned is directed to remove the articles from the said house make inventory and handover to the respondent No.3. Accordingly, the appeal stands **dismissed**.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE

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