

Aditya Gupta Vs Narender Gupta & Ors

Court: Delhi High Court

Date of Decision: Feb. 24, 2023

Acts Referred: Code Of Civil Procedure, 1908 " Section 151, Order 39 Rule 1, Order 39 Rule 2
 Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 " Section 22(3)(1), 22(3)(1)(i)
 Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2017 " Rule 22(3)(1)(i)
 Maintenance and Welfare of Parents and Senior Citizens Act, 2007 " Section 2(f), 3, 23, 27
 Specific Relief Act, 1963 " Section 41(b)

Hon'ble Judges: Mini Pushkarna, J

Bench: Single Bench

Advocate: Rajesh Mahindru, Jai Sahai Endlaw, Ashutosh Rana

Judgement

Mini Pushkarna, J

I.A. 14315/2019 (Application under Order 39 Rule 1 & 2 read with Section 151 CPC for ex-parte Ad " interim injunction on behalf of

plaintiff)

1. The present is an application on behalf of the plaintiff under Order 39 Rule 1 and 2 read with Section 151 CPC for ex-parte ad-interim injunction

with prayer for staying further proceedings of the case as initiated by parents of the plaintiff against the plaintiff under Section 23 of The Maintenance

and Welfare of Parents and Senior Citizens Act, 2007 ("Senior Citizens Act"). The present application prays for the following:-

"(a) Pass ex-parte ad-interim injunction orders against the defendants whereby staying the further proceedings of the case

No.F.No.DM/SE/274/19/747-51 titled as Smt Neena Gupta V Aditya Gupta u/s 23 of the Maintenance and welfare of Parents & Senior

Citizen, Act before the Tribunal during the pendency of the present suit in the interest of justice.

(b) Pass ex-parte ad-interim injunction orders against the defendants whereby restraining the defendants their agents or anyone acting for

and on their behalf from dispossessing the plaintiff and his family from the possession of suit property i.e. property No.C-580, III Floor, New

Friends Colony, New Delhi as shown in red colour of site plan in exclusive possession of the plaintiff and his family and in common

possession of the plaintiff as shown in green colour during the pendency of the present suit in the interest of justice.

(c) Pass such other order granting relief to the Plaintiff which this Hon'ble court thinks fit and proper in the facts of the case;

2. The defendant no. 1 and 2 are the father and mother of the plaintiff herein. The defendants had initiated proceedings under Section 23 of the Senior

Citizens Act against their son by filing a complaint dated 24.07.2019 before the Maintenance Tribunal. The said complaint was filed on the basis of

physical and mental abuse levelled by the plaintiff on his parents i.e. defendant nos. 1 and 2 herein. Thus, defendant nos. 1 and 2 have sought

assistance of the Maintenance Tribunal in removing the plaintiff from the suit property, where the parties are jointly residing.

3. Subsequently, the present suit was filed by the plaintiff against his parents for declaration that the suit property is a Hindu undivided family (HUF)

property and that plaintiff has got coparcenary rights in the same. The plaintiff is further seeking partition of the property. The prayers as made in the

present suit are as follows:-

“(a) Pass a decree of declaration whereby declaring that the suit property i.e. Property No.C-580, III Floor, New Friends Colony, New

Delhi comprising of 4 bed rooms with attached bathrooms, drawing/dining, kitchen, family lounge, one servant quarter in staircase with

toilet at terrace, with entire terrace rights, middle car parking in the stilt parking, common area & lift and proportionate rights in the land

measuring 299.8.sq yds is an HUF property in which the plaintiff, defendant No.1 and defendant No.3 are having coparcenary rights to the

extent of 1/3rd share each in the same.

(b) Pass a preliminary decree of partition of the Property No.C-580, III Floor, New Friends Colony, New Delhi comprising of 4 bedrooms

with attached bathrooms, drawing/dining, kitchen, family lounge, one servant quarter in staircase with toilet at terrace, with entire terrace

rights, middle car parking in the stilt parking, common area & lift and proportionate rights in the land measuring 299.8.sq yds declaring

the shares of the parties;

(c) Pass a final decree of partition of Property No.C-580, III Floor, New Friends Colony, New Delhi comprising of 4 bed rooms with

attached bathrooms, drawing/dining, kitchen, family lounge, one servant quarter in staircase with toilet at terrace, with entire terrace rights,

middle car parking in the stilt parking, common area & lift and proportionate rights in the land measuring 299.8.sq yds.

(d) Pass a decree of recovery in favour of plaintiff and against the defendant No.1 & 2 for a sum of Rs.71,33,333/- towards Rs.33.33 Lakh

as 1/3rd estimative share of plaintiff in Rs. 1 Crore and Rs.38 Lakh as interest on the same @ 12% p.a. from 14.5.2010 till date of filing,

with further pendent-lite and future interest @12% p.a. till actual recovery.

(e) Pass a decree of rendition in favour of plaintiff and against the defendant No.1 & 2 directing them to give complete account of the HUF

fund of Rs. 1 Crore being the balance sale proceeds of the Property No.B-335, New Friends Colony, New Delhi and the income generated

by them by investing the same or keeping in bank account and determine the share of the plaintiff in the same and accordingly pass decree

for recovery of the amount so determined to be the share of the plaintiff if found to be in access of Rs.71,33,333/- alongwith pendent-lite

and future interest @ 12% p.a. w.e.f 14.5.2010 till actual payment.

(f) Pass decree of rendition of account whereby directing the defendant No.1 & 2 to give true account of the HUF properties both movable

properties, jewelry and immovable properties received by them and properties/assets created by them using the HUF funds and rental

income of HUF properties and also by using sale proceeds of the properties belonging to the share of plaintiff sold by defendant no. 1 and

accordingly determine the share of the plaintiff and pass a decree of recovery of the amount falling to the share of the plaintiff in the same

in the interest of justice.

(g)Pass decree of permanent injunction whereby staying the further proceedings of case No.F.No.DM/SE/274/19/747-51 titled as Smt

Neena Gupta V Aditya Gupta u/s 23 of the Maintenance and welfare of Parents & Senior Citizen Tribunal, New Delhi filed by the defendant

No.1 & 2 against the plaintiff and his family members in the interest of justice.

(h)Pass decree of permanent injunction whereby restraining the defendant No.1 & 2 from disposing the plaintiff from the exclusive

possession of portion shown in red colour of site plan of suit property No.C-580, III Floor, New Friends Colony, New Delhi with roof rights

and also of common portion shown in the green colour of the site plan illegally and unlawfully in any manner.

(i) Pass such other order granting relief to the Plaintiff which this Hon'ble court thinks fit and proper in the facts of the case;

(i) Award cost of the proceedings throughout. ₹

4. Along with the present suit, plaintiff also filed the present application for stay of proceedings as initiated by his parents against him before the

Maintenance Tribunal.

5. It is the case on behalf of the plaintiff that he along with his parents was residing in property bearing no. B-335, New Friends Colony, New Delhi

measuring 524 sq. yds. ever since its purchase in the year 1979 till the year 2010. The said property was held by the father of the plaintiff i.e.

defendant no. 1 herein jointly with his two brothers, who were having 1/3rd share each in the said property. On 14.05.2010, a Collaboration

Agreement was executed and defendant no. 1 and 2 agreed to take Rs. 2 crores towards their 1/3rd share in the said property from the builder and

relinquished all their rights in the said property. Simultaneously, the defendant no. 1 and 2, on the same date purchased the suit property i.e. C-580, 3rd

floor, New Friends Colony, New Delhi for a sum of Rs. 1 crore only.

6. It is stated on behalf of the plaintiff that the earlier property i.e. property no. B-335 , New Friends Colony was an HUF in which the plaintiff along

with defendant no. 1 were having coparcenary rights to the extent of 1/3rd share. The suit property which was purchased from the sale proceeds of

property no. B-335 , New Friends Colony, is also an HUF property and the plaintiff being the son and defendant no. 3 being the daughter have

coparcenary rights along with defendant no. 1 to the extent of 1/3rd each of the 1/3rd share of defendant no. 1 in the suit property. The plaintiff and

his wife along with their minor son have been residing in the suit property since its purchase in the year 2010. Till date, the plaintiff and his family are

in possession of the suit property of the portion shown in red colour of the site plan filed along with the plaint and common portion in joint possession

with defendant no. 1 and 2 as shown in green colour of the site plan.

7. It is the case of the plaintiff that the plaintiff and defendants 1 and 3 are descendants of Lala Bhagirath Mal, who was the karta of HUF along with

his three sons. He left behind large number of HUF properties and other assets. Even after his death, the HUF created by late Sh. Bhagirath Mal

continued between his sons and all of them were conducting family business. In the year 1969, a partition suit being Suit No. 376/1969 was filed by the

grandfather of plaintiff, i.e. father of defendant no. 1 before this Court. The same resulted in compromise and various HUF properties were divided by

the sons of late Sh. Bhagirath Mal. It is submitted that the plaint of Suit No. 376/1969 shows that defendant no. 1 herein, who was plaintiff no. 4 in the

said suit, stated in the plaint that Sh. Bhagirath Mal, grandfather of defendant no. 1 formed HUF with his sons and had considerable joint properties.

After his death, his three sons partitioned the bigger Joint Hindu family properties, but there was no partition by metes and bounds.

8. It is the case of the plaintiff that the compromise application in Suit No. 376/1969 and order dated 15.01.1970 in Suit No. 376/1969 prove that there

was HUF in existence in 1953 at the time of death of late Sh. Bhagirath Mal.

9. It is further contended that the defendant no. 1 and 2 admitted in I.A. No. 3426/1983 in Suit No. 1627/1982 that the property no. B-335, New

Friends Colony purchased in the year 1979 was with joint family funds and on the basis of their statement decree dated 30.08.1983 was passed

holding that defendant no.1 along with his three brothers with their wives will have 1/4th share each in the same. The judicial admission made by

defendant no. 1 and defendant no. 2 in I.A. No. 3426/1983 in Suit No. 1627/1982 are conclusive to prove that property no. B-335, New Friends

Colony was purchased using joint family funds, and as such it was an HUF property. The plaintiff who was born in the year 1973 became coparcener

with defendant no. 1 in the said property.

10. Thus, it is the contention of the plaintiff that property no. B-335, New Friends Colony which was purchased using HUF funds, was sold in the year

2010. On the same date, suit property i.e. property bearing no. C-580, 3rd floor, New Friends Colony, Delhi was purchased using the sale

consideration of property no. B-335, New Friends Colony. As such, property no. C-580, 3rd floor, New Friends Colony, New Delhi also became HUF

property. It is submitted that these facts prima facie prove the case of the plaintiff that the suit property is an HUF property and plaintiff being the

coparcener is having share in the same.

11. Therefore, it is submitted that the plaintiff being the co-owner of the suit property along with the defendants, has right to reside in the same till the

time the property is not partitioned and divided and the plaintiff is not given his share. The proceedings filed by defendant no. 1 and 2 before the

Maintenance Tribunal that are akin to suit for recovery of possession or to eject the plaintiff from the suit property, are not maintainable under law as

the plaintiff is a co-owner of the property. Under law, a co-owner cannot file suit for recovery of possession against another co-owner and only

remedy is to file suit for partition of the property.

12. It is submitted that since the plaintiff has already filed the present suit for partition, therefore, the proceedings for recovery of possession or to

eject the plaintiff from suit property is not maintainable. It is further submitted that the Maintenance Tribunal has no jurisdiction to entertain the

counter claim of the plaintiff to adjudicate upon the coparcenary rights of the plaintiff in the suit property. The Maintenance Tribunal also does not

have the jurisdiction to hold trial and declare the suit property to be the HUF property. Therefore, it cannot try the petition of the defendant No.1 to

evict the plaintiff from the suit property.

13. Ld. Counsel for the plaintiffs submits that under Section 41(b) of The Specific Relief Act, 1963 this Court has the jurisdiction to stay the

proceedings before the Maintenance Tribunal as the continuance of the same would cause extreme injustice to the plaintiff. Plaintiff being the co-

owner under law is entitled to occupy the suit property till the time it is not partitioned as per law and the share of the plaintiff is not given to him.

14. In support of his submissions, Id. Counsel for the plaintiff has relied upon the following judgments:

- i. Paramjit Anand Vs. Mohan Lal, CS(OS) 575/2001 decided on 4.8.2018
- ii. Saurabh Sharma Vs. Om Wati, CS(OS) 430/2016 decided on 25.5.2018
- iii. Bhagwant P Sulakhe Vs. Digambar Gopal, 1986(1) SCC 366
- iv. Kripal Kaur Vs. Jitender Pal Singh, JT 2015 (6) SC 314
- v. D S Lakshmaiah Vs. L Balasubramanyam, 2003 (10) SCC 310
- vi. Comm of Wealth Tax Vs. Chandersen, AIR 1986 SC 1753
- vii. Anita Anand Vs. Gargi Kapur, 256 (2019) DLT 84
- viii. State Bank of India Vs. Ghamandi Ram, 1969(2) SCC 33
- ix. Yudhishtir Vs. Ashok Kumar, AIR 1987 SC 558
- x. Vijay Manchanda Vs. Ashok Manchanda, 2010 (114) DRJ 467
- xi. Cotton Corporation Vs. United Industrial Bank, AIR 1983 SC 1272
- xii. Dinesh Singh Thakur Vs. Sonal Thakur, 2018 AIOL 3291
- xiii. Modi Entertainment Network Vs. WSG Cricket, JT 2003 (1) SC 382

15. On the other hand, Id. Counsel appearing for the defendants has submitted that the present suit is a counter blast to the proceedings initiated by

defendant Nos. 1 and 2 before the Maintenance Tribunal against their son, i.e., the plaintiff herein. It is submitted that the defendants have cited

specific examples of the manner in which the plaintiff misbehaves with them and how the plaintiff's actions are contrary to the letter and spirit of

the Senior Citizens Act.

16. The defendants have sought the assistance of the Maintenance Tribunal in removing the plaintiff from the suit property, where the parties are

jointly residing. Therefore, the plaintiff has filed the present suit to delay and frustrate the proceedings before the Tribunal.

17. It is further submitted that defendant No.2 is the sole and absolute owner and in possession of the suit property, having purchased the same vide

registered Sale Deed dated 14.05.2010. The defendants are the victims of ill-treatment, harassment, physical and mental torture suffered at the hands

of the plaintiff, who has been allowed to stay with the defendants. It is submitted that the plaintiff along with his wife has been physically and mentally

harassing, abusing and torturing the defendants who are unable to protect and defend themselves because of their ailments and old age.

18. It is the case on behalf of the defendants that the plaintiff, his wife and son are unauthorised occupants in the suit property. The defendants fear

for their lives with the continued presence of the plaintiff in the said property and will suffer irreparable injury in case the plaintiff is permitted to

continue to live in the suit property.

19. It is submitted on behalf of the defendants that the suit property is a self acquired property and not HUF property. The defendant No.2 has a

registered Sale Deed in her own name, therefore, the question of suit property being HUF does not arise. It is further submitted that the suit filed by

the plaintiff is barred by limitation. The suit property was purchased in the sole name of defendant No.2 vide registered Sale Deed dated 14.05.2010.

The plaintiff was aged about 27 years in the year 2010 and was a major. Hence, the present suit which has been filed in the year 2019 is barred by

limitation.

20. It is further submitted that the property bearing No. B-335, New Friends Colony, New Delhi was never bought from HUF funds. It is further

contended that as per the settled law, once a person receives any share in any property by way of partition decree, the ancestral or coparcenary

nature of the property comes to an end and the person who has received his share by partition decree becomes the absolute and exclusive owner of

the same.

21. In support of his submissions, Id. Counsel for the defendants has relied upon the following judgments:

i. Punithavalli Ammal Vs. Minor Ramalingam, [MANU/SC/0396/1970]

ii. Commissioner of Wealth Tax Vs. Chander Sen, [MANU/SC/0265/1986]

iii. S.P.S Balasubramanyam Vs. Suruttayan & Ors., [MANU/SC/0042/1994]

iv. Darshana Vs. Govt. of NCT Delhi & Ors., [MANU/DE/2816/2018]

22. The issue to be decided in the present application is regards entitlement of the plaintiff to grant of interim protection for stay of the proceeding

pending before the Maintenance Tribunal under Senior Citizens Act that has been initiated for his eviction by his parents, i.e., defendant Nos. 1 and 2

herein. The main premise on which the plaintiff is seeking order in his favour is that the suit property is HUF property and the plaintiff having

coparcenary right in the same, is entitled to continue to live there, pending the present suit for partition of the said property.

23. As regards the Senior Citizens Act, it is to be noted that the said Act was enacted in order to combat the social challenge of elderly parents not

being looked after or provided for by their children. Thus, in order to provide a simple and speedy relief to the suffering parents, the Senior Citizens

Act was enacted to provide for institutionalisation of a suitable mechanism for protection of life and property of older persons.

24. It is important to note that Section 3 of the Senior Citizens Act states that the provisions of this Act shall have overriding effect over all other Acts

inconsistent with this Act. Furthermore, Section 2(f) of the said Act describes property as both Ancestral and Self Acquired. Thus, as per Section 2(f)

of the Senior Citizens Act, property has been defined as follows:

“2. Definitions.

.....

(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;

25. Further, the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (Senior Citizens Rules) was amended by way of

notification dated 28.07.2017, wherein Rule 22(3)(1)(i) incorporates both Ancestral as well as Self Acquired Property from which senior citizens may

seek eviction of their children/ legal heirs. Rule 22(3)(1) of the Senior Citizens Rules provides for the procedure for eviction from property/residential

building of Senior Citizens/parents. Thus, the amended Rule after the Amendment of 2017 reads as under:

“22. Action plan for the protection of life and property of Senior Citizens:

“(3)(1) Procedure for eviction from property/residential building of Senior Citizens/Parents, -

(i) A senior citizen/parents may make an application before the Deputy Commissioner/District Magistrate of his district for eviction of his

son and daughter or legal heir 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.

.....”

26. This Court in the case of Smt. Darshna Vs. Government of NCT of Delhi & Ors. 2018 SCC OnLine Del 10535 has held that the contention that

the property in question is ancestral or HUF is not relevant in view of Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment)

Rules, 2017. Thus, it was held that after the aforesaid amendment, Rule 22(3)(1)(i) was amended to state that the parents can ask for eviction of his

son, daughter, etc. from their property, whether Ancestral or Self Acquired. Thus, it has been held as follows:

“21. The contention that the property in question was not Dhani Ram's self-acquired property and, therefore, his application for eviction

was not maintainable, is also unmerited. Dhani Ram had explained that the property in question was allotted to her mother Smt. Bahuti Devi

on 04.05.1967 and he had acquired the property by virtue of a registered Will dated 28.01.1968. The contention that the property in

question is ancestral or HUF property prima facie does not appear to be sustainable. However, the said issue is not relevant as by virtue of

the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2017. Rule 22(3)(1)(i) was amended to read as

under:—

“(i) A senior citizen/parents may make an application before the Deputy Commissioner/District Magistrate of his district for eviction of

his son and daughter or legal heir 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.”

22. It is apparent from the plain language of Rule 22(3)(1)(i) as quoted above that a senior citizen is also entitled to evict his son, daughter

or legal heir from his property irrespective of whether it is an ancestral or self-acquired property.”

27. Division Bench of this Court in the case of Aarshya Gulati (Through: Next Friend Mrs. Divya Gulati) and Others Vs. Government of NCT of

Delhi and Others² has held that in order to protect the property of Senior Citizens, whether moveable or immovable, Ancestral or Self Acquired,

Tangible or Intangible and includes rights or interests in such property, the District Magistrate under the Senior Citizens Act may direct eviction

therefrom. The Division Bench has not only upheld the legality of the said Act but has also gone to the extent of stating that we must bear in mind the

objective of the Act in that the protection of property must be understood to mean where a senior citizen retains the property in his name and

possession for his welfare and well being. Thus, it has been held as follows:

“62. Now the question is whether the State Government could have formulated a summary procedure for eviction. We must bear in mind

the objective for which the Parliament has enacted the Act, that is because of withering of the joint family system, a large number of elderly

are not being looked after by their family. Consequently, many older persons, particularly widowed women are forced to spend their

twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support which clearly reveals that

ageing has become a major social challenge and there is a need to give more attention to the care and protection of the older persons.

Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time consuming as well as

expensive. Hence, a need was felt to have simple, inexpensive and speedy mechanism for parents/senior citizens to claim maintenance. The

Act also provide for protection of the life and property of the senior citizens/parents. The “protection of property” must be understood

to mean where a senior citizen retains the property in his name and possession for his welfare and well being.

63. So, the objective of the Act being, to provide inexpensive and speedy procedure for the protection of life and property of the senior

citizens from the children/legal heirs, who are expected to maintain parents/senior citizens by providing the basic amenities and physical

needs but refuse or fail to maintain/provide basic amenities which conduct shall amount to ill-treatment and non-maintenance and shall be a

ground for parents/senior citizens to seek eviction of children/legal heir from the property, which is the only way for them to seek protection

of their property so that, they continue to have shelter over their head, and sustain themselves independently without interference from their

children/legal heirs. Further, a senior citizen cannot knock the door of civil Court to fight a legal battle to obtain the possession of the

property as the jurisdiction of the Civil Court is barred under Section 27 of the Act. In this regard, we may refer to the judgment of the

Punjab and Haryana High Court in the case of Justice Shanti Sarup Dewan, Chief Justice (Retd.) (supra) wherein in para 37 it is held as

under:

“37. It cannot be said that in such a situation, where respondent No. 7 was at best living with the permission of his parents, which

permission stands long withdrawn, the appellants and more specifically appellant No. 1 should be compelled to knock the door of the civil

court and fight a legal battle to obtain exclusive possession of the property. This would defeat the very purpose of the said Act which has an

over-riding effect qua any other enactment in view of Section 3 of the said Act. Infact, the Civil Court has been precluded from entertaining

any matter qua which jurisdiction is vested under the said Act and specifically bars granting any injunction. Respondent No. 7 is thus LPA

No. 1007 of 2013 (O&M) required to move out of the premises to permit the appellants to live in peace and civil proceedings can be only

qua a claim thereafter if respondent No. 7 so chooses to make in respect of the property at Chandigarh but without any interim injunction.

It is not the other way round that respondent No. 7 with his family keeps staying in the house and asking the appellants to go to the Civil

Court to establish their rights knowing fully well that the time consuming civil proceedings may not be finished during the life time of

appellant No. 1. Infact, that is the very objective of respondent No. 7. “

28. Holding that words occurring in statutes of liberal import such as Social Welfare Legislation, must be interpreted liberally and in accordance with

the intent of those who make it, in the case of *Sunny Paul Vs. State of NCT of Delhi & Ors.* 2018 SCC OnLine Del 11640, it has been held as

follows:

17. A reading of the Rules framed by the Government of NCT clearly reflect that a senior citizen can file an application seeking eviction of

his son and daughter or legal heir from his self acquired or ancestral property on the ground of ill-treatment or non maintenance. The vires

of these Rules has not been challenged by the appellant. The limited challenge is to the jurisdiction of the Maintenance Tribunal to order an

eviction under the Act of 2007. So noting the limited challenge to the order passed by the Tribunal and keeping in view the fact that the

enactment being a social legislation and the same requires to be given liberal interpretation to achieve the mandate of the Act of 2007 i.e

for the welfare of the parents and senior citizens and for the protection of their life and property, there is no doubt that the Tribunal does

have the jurisdiction to direct vacation by the children of any property in which the senior citizen has a right of residence/possession. In

this regard, we may refer to the judgment of the Supreme Court in *Board of Muslim Wakfs, Rajasthan v. Radha Krishna* (1979) 2 SCC 468

wherein it was held that the construction which tends to make any part of the Statute meaningless or ineffective must always be avoided and

the construction which advances the remedy intended by the Statute should be accepted.

18. In *Hindustan Lever Ltd. v. Ashok Vishnu Kate* (1995) 6 SCC 326, it was held that words occurring in statutes of liberal import such as

social welfare legislation and human rights legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In

construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be

recognized and reduced.

19. On a similar proposition, the Supreme Court in *State of Bihar v. Anil Kumar* (2017) 14 SCC 304 : AIR 2017 SC 2716 has by relying

upon *National Insurance Co. Ltd. v. Laxmi Narain Dhut* (2007) 3 SCC 700 : (2007) 4 SCALE 36 held as under: "A statute is an edict of the Legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to

be construed according to the intent of those who make it and the duty of the court is to act upon the true intention of the Legislature. If a

statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of

the Legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols

having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of

Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even

for the most imaginative Legislature to foresee all situations exhaustively and circumstances that may emerge after enacting a statute where

its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern

State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the

problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general

words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations

arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite

referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The

process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal

meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose

or object which comprehends the mischief and its remedy to which the enactment is directed. (See *District Mining Officer v. Tata Iron &*

Steel Co. (2001) 7 SCC 358 : JT 2001 (6) SC 183). It is also well settled that to arrive at the intention of the legislation depending on the

objects for which the enactment is made, the Court can resort to historical, contextual and purposive interpretation leaving textual

interpretation aside.

(emphasis supplied)

69. It was also opined:

More often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory

provisions, the Courts should keep in mind the objectives or purpose for which statute has been enacted. Justice Frankfurter of U.S.

Supreme Court in an article titled as *Some Reflections on the Reading of Statutes* (47 Columbia Law Reports 527), observed that,

“legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of

Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statutes, as read in the

light of other external manifestations of purpose.

29. Reading of the aforesaid clearly shows that Senior Citizens have every right to protect themselves and in case of ill-treatment and abuse by their

children/ legal heirs, can approach the Maintenance Tribunal for their eviction from their property of any kind, which includes both Ancestral as well

as Self Acquired Property.

30. Therefore, the contention raised on behalf of the plaintiff that the suit property is HUF property, in which the plaintiff has interests as a

coparcener, is totally irrelevant to the proceedings initiated under the Senior Citizens Act.

31. Whether or not the plaintiff has any interest or coparcenary right in the suit property, is subject matter of trial in the present suit. In case the

plaintiff is able to establish his right in the suit property, this Court has every authority to pass a decree of partition as per the entitlement of the

plaintiff. However, pendency of a partition suit by the son against his parents is no deterrent or hindrance to proceeding with the matter before the

Maintenance Tribunal under the Senior Citizens Act. The said proceedings can continue and relevant orders can be passed by the competent authority

under the said Act, irrespective of any litigation for partition of the property in question.

32. It is also pertinent to note here that Section 27 of the Senior Citizens Act stipulates in clear terms that jurisdiction of Civil Courts is barred in

respect of any matter to which provisions of the said Act applies. Section 27 thus reads as under:

"27. Jurisdiction of civil courts barred. "No Civil Court shall have jurisdiction in respect of any matter to which any provision of this

Act applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under

this Act."

33. In view of the aforesaid detailed discussion, the present application is found to be without any merits and is accordingly dismissed.

CS(OS) 528/2019

34. List before the Roster Bench on 06.03.2023.