



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(Arising out of S.L.P. (C) No. 26651 of 2023)

SAMTOLA DEVI

...APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH & ORS.

...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. Leave granted.
2. In India we believe in “*Vasudhaiva Kutumbakam*” i.e. the earth, as a whole, is one family. However, today we are not even able to retain the unity in the immediate family, what to say of building one family for the world. The very concept of ‘family’ is being eroded and we are on the brink of one person one family.

- 3.** This is an unfortunate case where parents are in litigation with their children (sons) and the children (sons) are in litigation with their parents.
- 4.** One Kallu Mal (dead) aged about 75 years and his wife Samtola Devi aged about 68 years had three sons and two daughters namely Krishna Kumar, Janardan Kumar, Rajender Kumar, Sushila Gupta and Anjali Kumari respectively. Out of the two daughters, Sushila Gupta is married to Suresh Narottam Das Gupta whereas Anjali Kumari is unmarried. The said Kallu Mal has a house bearing No. 778 in Khairabad, Sultanpur and various shops therein, precisely three shops in the lower part of the house. One of the shops is occupied by the elder son Krishna Kumar who is presently carrying on the utensil business from the said shop which he had taken over from his father. The other son Janardan is doing electrical business from the other shop. The third son Rajender Kumar is dead and his wife has remarried whereas his son is living with the eldest son Krishna Kumar. The third shop has been gifted by Kallu Mal to the younger daughter Anjali Kumari, who has rented it out at the rate of

Rs. 26,500/- per month. Apart from the above house and three shops, late Kallu Mal had certain other properties as well.

5. It appears that the relations of Kallu Mal and his wife Samtola Devi were not cordial with their sons. Consequently, on 04.08.2014, Kallu Mal made an application to the SDM, Sadar of District Sultanpur alleging that his eldest son Krishna Kumar often beats him and tortures him mentally and physically. He has friendship with people having criminal antecedents. He often abuses him. His behaviour resultantly deteriorated his position in the society. Therefore, requesting the SDM to take appropriate action against him in accordance with law.
6. In 2017, Kallu Mal along with his wife Samtola Devi initiated proceedings for grant of maintenance against their two sons which came to be registered as Criminal Case No.828 of 2017 before the Principal Judge, Family Court, Sultanpur. The Family Court *vide* order dated 04.12.2018 awarded maintenance of Rs 4,000/- to Kallu Mal and his wife Samtola Devi each, total Rs.8,000/- per

month payable equally by two sons Krishna Kumar and Janardan Kumar by the 7th day of each calendar month. Aforesaid order is final and conclusive as it has not been challenged till date by any party in any higher forum.

- 7.** It appears that the two daughters of Kallu Mal started interfering in the family matters concerning him, his wife Samtola Devi and his two sons. The eldest daughter Sushila Gupta got a gift deed of the lower part of northern portion of the aforesaid House No.778 in her favour. She even got the sale deed executed of the southern part of the house in a favour of her husband Suresh Narottam Das Gupta.
- 8.** Apart from the above, the two daughters managed for the transfer of a residential plot by their father Kallu Mal in favour of one Amrita Singh *vide* sale deed dated 14.12.2017. Another plot of 121 sq. meter was transferred *vide* sale deed dated 20.03.2019 in favour of Suresh Narottam Das Gupta, the husband of the eldest daughter.
- 9.** It also appears that the eldest son Krishna Kumar married in 2018 to a girl from another caste/clan, as such Kallu Mal and his wife got annoyed with him.

- 10.** In the light of the aforesaid background, Kallu Mal and his wife Samtola Devi initiated proceedings under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007¹ on 29.04.2019 before the Maintenance Tribunal, Sub-Division Tehsil Sadar District Sultanpur. The Tribunal registered it as Case No.2527 of 2019². The Tribunal referred the matter to the Conciliation Officer but the conciliation was unsuccessful.
- 11.** Kallu Mal in the said case alleged that House No.778 Khairabad, Sultanpur is his self-acquired property which has shops in the lower part. In one of the shops, he was operating his utensil business since 1971 till 2010. Taking advantage of his illness, the business of the said shop was taken over by his eldest son Krishna Kumar who later started pressurizing him to sell out the house. He further alleged that Krishna Kumar was not looking after his daily needs, not even his medical expenditure, rather was torturing him mentally and physically. Therefore, he requested the Tribunal to evict him from the house so that he could make his own arrangements for peaceful living.

¹ Hereinafter referred to as 'the Senior Citizens Act'

² Kallumal etc vs. Krishna Kumar

12. The Tribunal, upon consideration of the entire evidence on record and noting the submission of the parties *vide* order dated 08.07.2019, directed Krishna Kumar not to encroach upon any part of the house without the permission of his parents except the shop in which he is carrying utensil business and the room with a bathroom occupied by him in which he resides with his wife and children. It was also provided that if he humiliates his parents then eviction proceedings would be initiated against him. The two sons Krishna Kumar and Janardan Kumar were directed to continue to pay maintenance to the parents, as directed by the Family Court. The Incharge of Police Station Kotwali Nagar was directed to visit the house of Kallu Mal either himself or through regional Sub-Inspector every 10 days so as to enquire if they are living peacefully and that no humiliation or harassment is caused to the parents by Krishna Kumar.

13. Kallu Mal and his wife Samtola Devi were not satisfied by the above decision and as such they preferred appeal before the Appellate Tribunal, District Magistrate Sultanpur. The Appellate Tribunal set aside the order

passed by the SDM and directed for the eviction of Krishna Kumar.

- 14.** Aggrieved by the aforesaid decision, Krishna Kumar invoked Writ Jurisdiction of High Court by filing Writ-C No.35884 of 2009³. The High Court partly allowed the said writ petition by setting aside the order of eviction passed against Krishna Kumar but maintained the other directions given by the Tribunal.
- 15.** During the pendency of the above proceedings, Kallu Mal died and the litigation is being pursued by his wife Samtola Devi since then. Thus, Samtola Devi has filed this appeal seeking eviction of her son Krishna Kumar from the house in question after setting aside the order of the High Court.
- 16.** We have heard Shri Pallav Shisodiya, learned senior counsel for the appellant and Shri SK Saxena, learned senior counsel for the respondents.
- 17.** Shri Pallav Shisodiya, learned senior counsel on behalf of the appellant-Samtola Devi contended that since the house-in-dispute/property is the self-acquired property of her husband late Kallu Mal, the respondent No.4 Krishna

³ *Krishna Kumar vs. State of UP and Ors*

Kumar, the eldest son of the appellant, had no authority of law to stay and reside in the said house against the wishes of his parents, more particularly, when he had been mentally and physically torturing them and was not caring to the day-to-day needs and the maintenance of the parents. He relied upon the recent decision of this Court in ***Urmila Dixit vs. Sunil Sharan Dixit & Ors.***⁴ to contend that in proceedings under the Senior Citizens Act, the Tribunal is empowered, if necessary, to order the eviction of the son/relative if found expedient to ensure the protection of the senior citizens.

- 18.** Shri SK Saxena, learned senior counsel appearing for the respondent No.4-Krishna Kumar submitted that the entire story, as alleged by the appellant/parents, is concocted and is not true. Krishna Kumar is living only in a one room portion with attached bathroom and is not occupying any other place in the house except one shop on the ground floor wherein he is continuing with the utensil business of his father who was unable to carry on the same on account of his infirm and ill-health. He had been maintaining the

⁴ (2025) 2 SCC 787

parents and is even paying the maintenance as awarded by the Family Court. The said Krishna Kumar has a share in the said house and it does not exclusively belong to his father. He has not only filed a Suit No.944/2019 for the cancellation of the gift deed executed by his father in favour of the unmarried daughter but has also filed another Suit No.140/2019 to declare him to be the co-owner of the said property to the extent of 1/6th share in it. Therefore, it is not correct to allege that the property exclusively belongs to Kallu Mal and that he has no legal right to reside therein.

- 19.** Kallu Mal has brought on record the copy of the sale deed dated 16.07.1971 by which he had purchased the property/house-in-dispute. Krishna Kumar, on the other hand, had brought on record the copy of the gift deed executed by Kallu Mal in favour of her younger daughter Anjali in respect of one of the shops as also the rent agreement executed by Anjali letting out the shop in favour of Mohd. Ijhar and Mohd. Shadab on 03.11.2017. A copy of the sale deed executed by Kallu Mal in favour of his son-in-law in respect of Plot No.179 was also placed on record.

The copy of the order of the Family Court fixing maintenance under Section 125 was also adduced in evidence as also the copy of the Suit No.140/2019.

- 20.** It is also part of the record that Kallu Mal had transferred a plot of land in favour of one Amrita Singh, wife of Manoj Kumar *vide* sale deed dated 14.12.2017. Another plot measuring about 121 sq. mt. was sold by him in favour of his son-in-law Suresh Narottam Das Gupta on 20.03.2019.
- 21.** It has come in the evidence on record as admitted by the younger daughter Anjali that one shop has been given by Kallu Mal to her which she has let out and that the house has also been gifted partly to her and partly to her elder sister Sushila. She also admitted that her father had sold a plot of land to Amrita Singh and to his son-in-law Suresh Narottam Das Gupta.
- 22.** Janardan Kumar, the other son of Kallu Mal, in his statement before the Tribunal admits that his father had filed a suit for maintenance against both the sons and that they are paying maintenance according to the order passed by the Family Court. He even stated that he would not

claim any right or share in the property in future. He admits that since Krishna Kumar abuses the parents, the entire dispute would be resolved if he vacates the property.

23. A similar statement was made by Anupriya, the wife of Janardan Kumar.

24. The aforesaid documents *prima facie* indicate that the property was purchased by Kallu Mal in 1971. He had transferred the same partly in favour of his elder daughter and partly in favour of his son-in-law whereas one shop in the ground floor has been gifted to the younger daughter. That apart, institution of the two suits by Krishna Kumar for cancellation of the gift deed/sale deed and the suit for declaration of his 1/6th share in the property indicates that there is a contest between the parents and Krishna Kumar as to whether the father could have executed a gift and sale deed as alleged or if the son had 1/6th share therein. So, unless the aforesaid dispute culminates, it cannot be said that the father was the exclusive owner of the property and that the son had no right/share in it.

25. Additionally, if the contention of the parents is accepted that the house-in-dispute/property is the self-acquired

property of Kallu Mal and belongs exclusively to him, since he has transferred the property in favour of his daughters and the son-in-law Suresh Narottam Das Gupta, he has ceased to be the owner of the property. Therefore, in such a situation neither Kallu Mal nor his wife retains any right to seek eviction of any person occupying any part of it.

26. In view of the facts as revealed from the pleadings and the evidence adduced by the parties, it is apparent that Kallu Mal had transferred the house in favour of his two daughters and the two plots, one in favour of his son-in-law and the other to stranger Amrita Singh. He had gifted one shop to the younger daughter Anjali. Therefore, *ex-facie* he ceases to be the owner of the property and it is up to the purchasers to initiate eviction proceedings, if any, against the occupants of any part of it.

27. It is in this background coupled with the fact that under the Senior Citizens Act, senior citizens are simply entitled to maintenance rather than eviction of their son/relatives that the Tribunal disposed of the matter with the categorical direction that Krishna Kumar would continue to occupy and carry on business from the shop in question

and at the same time would reside only in a one room portion with attached bathroom without encroaching upon any other part of the house.

28. It was only in the contingency of Krishna Kumar not behaving properly or continuing to humiliate or torture the parents that the eviction proceedings would be necessary against him.

29. There is no complaint or any material on record to indicate that after the aforesaid order Krishna Kumar has in any way humiliated his parents especially the appellant or has interfered with her living. It is not in dispute that he has been paying maintenance as directed by the Family Court. Therefore, in the facts and circumstances, if he has been living in a small portion of the house, may be of his father, in which he has no share and is continuing with the family business from the shop on the ground floor without interfering with the life of others, it does not appear to be prudent to order for his eviction as after all being a son he also has an implied license to live therein. Therefore, the Tribunal appears to be justified in permitting him to continue living therein with the rider of drawing eviction

proceedings if he indulges in any untoward behavior or interferes with the life of others.

30. The Senior Citizens Act vide Chapter-II provides for maintenance of parents and senior citizens. It *inter alia* provides a senior citizen or a parent who is unable to maintain himself from his own earning or the property owned by him shall be entitled to make an application against his parent or grand parent or against one or more of his children (not a minor) or where the senior citizen is issueless against specified relatives to fulfil his needs to enable him to lead a normal life. The Tribunal constituted under the Act on such an application may provide for the monthly allowance for the maintenance and expenses and in the event they fail to comply with the order, the Tribunal may for breach of the order issue a warrant for levying fines and may sentence such person to imprisonment for a term which may extend to one month or until payment is made whichever is earlier.

31. The provisions of the Senior Citizens Act, nowhere specifically provides for drawing proceedings for eviction of persons from any premises owned or belonging to such a

senior person. It is only on account of the observations made by this Court in **S. Vanitha vs. Commissioner, Bengaluru Urban District & Ors**⁵ that the Tribunal under the Senior Citizens Act may also order eviction if it is necessary and expedient to ensure the protection of the senior citizens. The Tribunal thus had acquired jurisdiction to pass orders of eviction while exercising jurisdiction under Section 23 of the Senior Citizen Act which otherwise provide for treating the sale of the property to be void if it is against the interest of the senior citizen.

- 32.** The aforesaid decision was followed by this Court in **Urmila Dixit (supra)**. However, even in the aforesaid case the court has only held that in a given case, the Tribunal “may order” eviction but it is not necessary and mandatory to pass an order of eviction in every case. The Appellate Tribunal has not recorded any reason necessitating the eviction of Krishna Kumar or that in the facts and circumstances of the case, it is expedient to order eviction so as to ensure the protection of the senior citizen.

⁵ (2021) 15 SCC 730

- 33.** In our opinion, the Appellate Tribunal was, therefore, not justified in ordering for his eviction merely for the reason that the property belongs to Kallu Mal, completely ignoring the fact that the claim of Krishna Kumar regarding 1/6th share and the cancellation of gifts and sale deeds is pending adjudication before the civil court.
- 34.** In our opinion, in the facts and circumstances of the case, there was no necessity for the extreme step for ordering the eviction of Krishna Kumar from a portion of the house rather the purpose could have been served by ordering maintenance as provided under Section 4/5 of the Senior Citizens Act and by restraining him from harassing the parents and interfering in their day-to-day life.
- 35.** In the light of the above situation, the High Court appears to be well within its jurisdiction to set aside the eviction order passed by the Tribunal and to maintain the other conditions imposed by the Tribunal.
- 36.** The judgment and order of the High Court dated 18.08.2023 is well considered, equitable and justified. It

has rightly set aside the appellate order passed by the Tribunal.

37. The civil appeal is accordingly dismissed.

..... J.
(PANKAJ MITHAL)

..... J.
(S.V.N. BHATTI)

**NEW DELHI;
MARCH 27, 2025**