

S. Vanitha vs The Deputy Commissioner on 15 December, 2020

Equivalent citations: AIRONLINE 2020 SC 897

Author: D.Y. Chandrachud

Bench: Indira Banerjee, Indu Malhotra, Dhananjaya Y Chandrachud

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 3822 of 2020
(Arising out of SLP (C) No. 29760 of 2019)

Smt. S Vanitha

....Appellant

Versus

The Deputy Commissioner,

.... Respondents

Bengaluru Urban District & Ors.

□

JUDGMENT

Dr Dhananjaya Y Chandrachud, J

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A Background

1 The present dispute arises out of an application filed by the Second and Third

respondents against the appellant, who is their daughter-in-law. The Second and Third respondents are the parents of the Fourth respondent, who is the estranged spouse of the appellant. The Second and Third respondents filed an application under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act 2007¹, and inter alia, sought the appellant and her daughter's eviction from a residential house in North Bengaluru².

² The Assistant Commissioner, and the Deputy Commissioner in appeal, allowed the application under the Senior Citizens Act 2007 and directed the appellant to vacate the suit premises. Aggrieved by this order, the appellant unsuccessfully pursued a writ proceeding under Article 226 of the Constitution before a Single Judge, and in appeal before a Division Bench of the High Court of Karnataka. The Division Bench by its judgment dated 17 September 2019 held that the suit premises belonged to the mother-in-law (the Second respondent) of the appellant and the remedy of the appellant for maintenance and shelter lies only against her estranged husband (the Fourth respondent). The Division Bench upheld the Order of the Deputy Commissioner, and directed the appellant to vacate the suit premises before 31 December 2019. Challenging the jurisdiction of the

authorities³ “Senior Citizens Act 2007” “suit premises” The Assistant Commissioner, Bengaluru North Sub-Division at Bengaluru and the Deputy Commissioner, Bengaluru District PART A to decree her eviction under the Senior Citizens Act 2007, the appellant has moved this Court under Article 136 of the Constitution.

3 The appellant and the Fourth respondent were married on 30 May 2002. Soon thereafter, a matrimonial dispute arose between the parties. The appellant alleges that she was harassed for dowry and even compelled to institute a suit for partition against her father in 2003⁴ which she later withdrew, after her spouse allegedly deserted her to be in a relationship with another woman. The subject matter of the controversy is a residential house situated at Gangondonahalli, Dasanapura, Hobli, Bengaluru North Taluk. The land was purchased by the Fourth respondent on 2 May 2002, a few months before the appellant married him. The appellant alleges that her father had financed a portion of this purchase. ⁴ On 5 October 2006, the Fourth respondent sold the land to his father - the Third respondent. The transaction of sale between the father and the son was for the same consideration of Rs.1.19 lacs, as was paid by the Fourth respondent for the original purchase of the property in 2002. By then, the appellant and the Fourth respondent had a daughter. In 2009, the Fourth respondent instituted a petition for divorce ⁵ under Section 13(1)(ia) and (ib) of Hindu Marriage Act 1955 before the Senior Civil Judge and Judicial Magistrate, First Class, Nelamangala⁶. The Third respondent, following the purchase of the property and after constructing a house, gifted it to his spouse - the Second respondent, on 19 July 2010. Soon thereafter, on OS 211 of 2003 MC 22 of 2009 “Trial Judge” PART A 17 August 2010, the Second respondent instituted a suit against the appellant ⁷ before the JMFC, Nelamangala seeking a permanent injunction restraining the appellant from interfering with the possession of the suit property. The suit is pending. On 5 December 2013, the petition for divorce was allowed by the Trial Judge and the marriage between the appellant and the Fourth respondent was dissolved. On 19 March 2014, the appellant instituted a proceeding for maintenance. She also filed an appeal before the High Court of Karnataka⁹ against the dissolution of her marriage by the Trial Judge. The proceedings for divorce and maintenance are also pending.

5 In 2015, the Third and Fourth respondents invoked the provisions of the Senior Citizens Act 2007 by instituting an application before the Assistant Commissioner, Bengaluru North Sub Division. Their son (the Fourth respondent) and the appellant were impleaded as respondents to the petition ¹⁰ . The reliefs sought were:

- (i) Eviction of the appellant from the suit premises where she was residing;
- (ii) A direction to the Fourth respondent to pay an amount of Rs.15,000 to the parents by way of monthly maintenance; and
- (iii) A direction to the appellant and fourth respondent to pay an amount quantified at Rs. 25,000 towards legal expenses.

OS 312 of 2010 Criminal Miscellaneous 114 of 2014 before the Civil Judge (Jr. Dn.), JMFC Nelamangala MFA 3968 of 2014 Petition 31 of 2015 PART A The appellant filed an objection to the petition filed under the Senior Citizens Act 2007, alleging it to be a malicious proceeding that was

instituted with the sole intent to evict her from the suit premises. The appellant also claimed that the proceedings were collusive in nature and an attempt by the Second and Third respondents and her estranged spouse (the Fourth respondent) to evict her from her matrimonial home. The appellant specifically raised an objection to the jurisdiction of the authorities to entertain the proceedings seeking her eviction from the premises. She submitted that while the Senior Citizens Act 2007 provides for the maintenance of a senior citizen or a parent, there is no provision envisaging an order of eviction, and that the authorities had no jurisdiction to direct her removal from the premises. 6 The Assistant Commissioner by an Order dated 25 June 2015, held that the residential house was the self-acquired property of the Third respondent which he subsequently gifted to the Second Respondent. The appellant was residing in the property, but was held to have no right or authority. The appellant's plea for maintenance could (in the view of the Assistant Commissioner) only be raised against the Fourth respondent. Therefore, the Assistant Commissioner allowed the petition by directing (i) the Fourth respondent to pay a monthly maintenance of Rs.10,000 to his parents; and (ii) the appellant to vacate the premises. 7 The appeal filed by the appellant under Section 28 of the Hindu Marriage Act 1955 against the decree for dissolution of marriage, was allowed by a Division Bench of the Karnataka High Court on 14 January 2016. The High Court set aside the order of the Trial Court and remanded the proceedings to the jurisdictional PART A Family Court, for passing fresh orders after hearing the parties. During the pendency of the appeal, the Fourth respondent entered into a marriage with another woman. On remand, the proceedings for divorce and the application for maintenance are pending disposal.

8 On 29 February 2016, the Deputy Commissioner, acting as the appellate authority under the Senior Citizens Act 2007, dismissed the appeal filed by the appellant as well as a companion appeal by the Fourth respondent against the order of the Assistant Commissioner. The order requiring the appellant to vacate the suit premises was thereby confirmed. The appellant challenged the order passed by the Deputy Commissioner in proceedings under Article 226 of the Constitution. The Single Judge of the Karnataka High Court, by a judgement dated 18 June 2019, held that the suit premises have been transferred by the Third respondent to his wife - the Second respondent - by a registered gift deed dated 19 July 2010. The Single Judge noted the contention of the Second and Third respondents that following a matrimonial dispute, their son (the Fourth respondent) had left the house after which the appellant had ousted them on 12 August 2010 and they are currently living in their "native place". In light of the fact that the marriage between the appellant and Fourth respondent had been dissolved by the Trial Judge, the Single Judge held that the appellant had no right over the suit premises and her claim for maintenance could only be asserted against the Fourth respondent. Though, the appellant has specifically questioned the jurisdiction of the authorities under the Senior Citizens Act 2007 to order her eviction, the Single Judge did not address the submission. PART B Aggrieved by the order of the Single Judge, the appellant challenged the order in a writ appeal. Once again, it was urged in the course of the hearing that the proceedings which were instituted under the Senior Citizens Act 2007 were only a device to oust the appellant and that the authorities had no jurisdiction to direct her eviction. The Division Bench reiterated the views of the Single Judge, and held that the appellant had no cause of action against the Second and Third respondents who owned the suit premises. It held that the appellant's claim for maintenance and shelter would lie only against the Fourth respondent. In dealing with the preliminary objection as regards the jurisdiction of the Assistant Commissioner to direct eviction, the Division Bench merely

observed that it was not in agreement with the submission that “the Assistant Commissioner was powerless to pass an order directing dispossession of the appellant”.

B Submissions

9 The appellant, aggrieved by the judgement of the Division Bench of the High

Court, has preferred the present special leave petition. Mr Yatish Mohan, learned Counsel appearing on behalf of the appellant submitted that:

(i) The appellant is residing in her matrimonial home as the lawfully wedded spouse of the Fourth respondent and she cannot be evicted from her shared household, in view of the protection offered by Section 17 of the Protection of Women from Domestic Violence Act 2005¹¹;

“PWDV Act 2005” PART B

(ii) The proceeding under Sections 3 and 4 of the Senior Citizens Act 2007 was filed by her mother-in-law and father-in-law in connivance with her estranged spouse to deprive her of her matrimonial home;

(iii) The finding of the Division Bench on the appellant’s current residential status was based on a fraudulent set up. The alleged postal cover was dispatched on 21 June 2018, during the pendency of the proceedings before the Single Judge, and merely indicated a postal endorsement (“no such person”) as it arrived when nobody was present at home to receive it;

(iv) The decree for the dissolution of marriage which was passed against the appellant by the Trial Judge on 5 December 2013 has been set aside by the High Court on 14 January 2016 and the proceedings have been remanded back to the jurisdictional Family Court for a disposal afresh. Hence, as of date, the appellant continues to be in a lawful relationship of marriage with the Fourth respondent and she has no other place to live except the suit premises, with her minor daughter;

(v) The provisions of the Senior Citizens Act 2007 have been manipulated to defeat the rights of the appellant. The manner in which the premises were transferred by the spouse of the appellant to his father and the gift deed thereafter to mother-in-law of the appellant are indicative of an attempt to misuse the provisions of the Act, to defeat the claims of the appellant; and PART B

(vi) In asserting her right under Section 17 of the PWDV Act 2005, the appellant relies on the decision of this Court in Satish Chander Ahuja vs Sneha Ahuja 12 . In sum and substance, it has been urged that the authorities constituted under the Senior Citizens Act 2007 had no jurisdiction to order the eviction of the appellant. Moreover, the proceedings have been utilised to secure the eviction of the appellant so as to deny her claim of a right to reside in the shared household under the PWDV Act 2005.

10 On the other hand, while seeking to rebut the submissions of the appellant, Mr Rajesh Mahale, learned Counsel appearing on behalf of the Second and Third respondents submits that:

(i) Both the Second respondent (who is 72 years old) and the Third respondent (who is 82 years old) are senior citizens;

(ii) The suit premises was constructed by the Third respondent- the father-in-law of the appellant, on a plot of land admeasuring 1200 square feet situated in Gangondanahalli, Bengaluru North Taluk. This was subsequently gifted to the Second respondent, the mother-in-law of the appellant;

(iii) The appellant has been concurrently found to have ousted the Second and Third respondents from the property belonging to them and to have illegally entered into possession; and

(iv) The Second and Third respondents filed an application under the Senior Citizens Act 2007 before the Assistant Commissioner for evicting the Civil Appeal No. 2483 of 2020, decided on 15 October 2020 PART B appellant and for the restoration of their possession, which has been allowed by the authorities and the High Court concurrently.

11 Dealing with the issue of jurisdiction, Mr Mahale submitted that

(i) The Tribunal constituted under the Senior Citizens Act 2007 has the jurisdiction to pass appropriate orders for protecting the life and property of parents and senior citizens, including orders of eviction;

(ii) The intent and object of the Act is to provide for an inexpensive and speedy relief to parents and senior citizens;

(iii) While Chapter II entitles parents and senior citizens to apply for orders to provide monetary relief for sustenance and maintenance, Chapter V contains provisions for protecting the life and property of parents and senior citizens;

(iv) The Tribunal constituted under the Act has been entrusted to issue orders after a summary enquiry, for effective maintenance of parents and senior citizens including relief against neglect, harassment and protection of the property of senior citizens;

(v) Section 23 confers two separate and distinct rights:

(a) Section 23(1) empowers the Tribunal to declare a transfer of property by a senior citizen void, where the transfer was conditioned upon providing basic amenities and physical needs to a senior citizen, where the transferee fails to provide them;

PART B

(b) Section 23(2) recognises a pre-existing right of a senior citizen to receive maintenance out of an estate and secures the right of making it enforceable against a transferee who had notice of the right;

(vi) The expression “maintenance” in Section 2(b) includes provision for residence and a right to reside can be enforced by a senior citizen, if the property is transferred without making a suitable provision for maintenance; and

(vii) Though the Senior Citizens Act 2007 does not contain an express provision enabling the Tribunal to pass eviction orders, the power has to be read within its jurisdiction by necessary implication. Such an interpretation, it has been urged, would be purposive, in order to effectuate the provisions of the Act. The contrary view would cause hardship to senior citizens who would be powerless, despite being forcibly dispossessed of their means of sustenance. Parliament has empowered the State governments to authorise local authorities to take remedial measures for protecting the life and property of senior citizens and it would be incorrect to limit the relief that can be granted by a Tribunal only to monetary relief. Relegating a senior citizen to a civil court for the recovery of their property would result in defeating the provisions of the Act. Hence, it has been urged that such an interpretation should not be adopted.

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C Legislative scheme: Senior Citizens Act 2007

12 The rival submissions will now be analysed.

13 Our analysis of the rival submissions must begin with explaining and

interpreting the salient feature of the Senior Citizens Act 2007 which have a bearing on the present controversy. „Maintenance€ is defined in an inclusive manner to incorporate, among other things, provisions for food, clothing, residence, medical assistance and treatment¹³. In defining the expression „property€, the legislation uses broad terminology encompassing “property of any kind” and to include “rights or interests in such property” ¹⁴ . Overriding effect is given to the provisions of the enactment by Section 3¹⁵. Besides the definitions which are comprised in Chapter I, Chapter II is titled “Maintenance of Parents and Senior Citizens” while Chapter V is titled “Protection of Life and Property of Senior Citizen”. The Statement of Objects and Reasons indicates the rationale for the enactment of the law:

“Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to 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 now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal 2(b) “maintenance” includes provisions for food, clothing, residence and medical attendance and treatment 2(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;

3. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.

PART C Procedure, 1973, the procedure is both time - consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.” Briefly reviewed, Section 4 recognises an entitlement of maintenance to inhere in parents and senior citizens. Section 5 lays down the procedure by which an application for maintenance can be made. Section 6 elucidates provisions governing jurisdiction and procedure. Section 7 contains stipulations for the constitution of a Maintenance Tribunal. Section 8 envisages a summary procedure for making an inquiry. Section 11 provides for the enforcement of an order of maintenance. 14 A senior citizen, including a parent, who is unable to maintain themselves from their own earning or out of property owned by them, is entitled to make an application under Section 4(i). A parent or grand-parent may make an application against one or more of their children. A childless senior citizen can make an application against a relative specified in Section 2(g). Section 4 recognises a corresponding obligation on the part of the children or relative to maintain a senior citizen, extending to such needs as would enable them to lead a normal life. In the case of a relative, the obligation is if they are in possession of the property of the senior citizen or would inherit property from them. Hence, in the case of the children of a senior citizen, the obligation to maintain a parent is not conditional on being in possession of property of the senior citizen or upon a right of future inheritance¹⁶.

4. Maintenance of parents and senior citizens.—(1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of—

(i) parent or grand-parent, against one or more of his children not being a minor; PART C 15 The procedure to be followed by a Maintenance Tribunal (constituted under Section 7) is of a summary nature as provided in Section 8(1) and with all the powers of a Civil Court, as provided in Section 8(2) 17 . Under Sub-section (1) of Section 9, where a senior citizen is not able to maintain himself or

herself and the children or relatives, as the case may be, neglect or refuse to maintain them, the Tribunal is empowered to order them to make a monthly allowance at such monthly rate for the maintenance of the senior citizen, as the Tribunal may deem fit 18. The amount of the monthly allowance can be altered inter alia upon a change in circumstances, under Section 1019.

(ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2. (2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life. (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. (4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such citizen or he would inherit the property of such senior citizen:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

8. Summary procedure in case of inquiry.— (1) In holding any inquiry under section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.

(2) The Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of

9. Order for maintenance.— (1) If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.

10. Alteration in allowance.— (1) On proof of misrepresentation or mistake of fact or a change in the circumstances of any person, receiving a monthly allowance under section 9, for the maintenance ordered under that section to pay a monthly allowance for the maintenance, the Tribunal may make such alteration, as it thinks fit, in the allowance for the maintenance. (2) Where it appears to the Tribunal that, in consequence of any decision of a competent Civil Court, any order made under section 9 should be cancelled or varied, it shall cancel the order or, as the case may be, vary the same accordingly PART C 16 Of particular relevance to the facts of the case at hand is Chapter V, which enacts provisions for protecting the life and property of a senior citizen. Section 23 proceeds in the following terms:

“23. Transfer of property to be void in certain circumstances.—(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal. (2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right. (3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.” Sub-section (1) of Section 23 covers a situation where property has been transferred after the enactment of the legislation by a senior citizen (by gift or otherwise) subject to the condition that the transferee must provide the basic amenities and physical needs to the transferor. In other words, Sub-section (1) deals with a situation where the transfer of the property is accompanied by a specific condition to provide for the maintenance and needs of a senior citizen. In such an event, if the transferee fails to provide the maintenance and physical needs, the transfer of the property is deemed to have been vitiated by fraud, coercion or under undue influence. Sub-section 1, in PART C other words, creates a deeming fiction of the law where the transfer of the property is subject to a condition and the condition of providing for maintenance and the basic needs of a senior citizen is not fulfilled by the person upon whom the obligation is imposed. Then, at the option of the transferor, the transfer can be declared as void by the Tribunal. On the other hand, Sub-section (2) of Section 23 envisages a situation where a senior citizen has a right to receive maintenance out of an estate.

Where such a right exists, the right of maintenance can be enforced where the estate or a portion of it, is transferred against a transferor who has notice of the right; or if the transfer is gratuitous. The right however cannot be enforced against a transferee for consideration and without notice of the right. Now, Sub-section (1) of Section 23 envisages a situation where the transfer of property is by the senior citizen. This is evident from the language of sub-Section (1) namely “where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property...”. On the other hand, sub-Section (2) of Section 23 does not confine itself to a transfer by a senior citizen, unlike sub-Section (1). Sub-Section (2) uses the expression “such estate or part thereof is transferred”. Where a senior citizen has a right to receive maintenance out of the estate and any part of it is transferred, sub-section 2 permits the enforcement of the right to receive maintenance out of the estate against a transferee with notice or against a gratuitous transferee. Sub-Section (2), in other words, may cover a situation where the transfer of the estate (in which a senior citizen has a right to maintenance) is by a third party, in which event, the provision provides the right to enforce the claim of maintenance against such transferee (other than those transferees for consideration PART C or without notice of the pre-existing right). Arguably, the language of

sub-section (2) is broad enough to also cover a situation where the transfer is by the senior citizen, in which event the transferee with notice of the right; or a gratuitous transferee, can be made subject to the enforcement of the right against the transferred estate. Another distinction between sub-Section (1) and sub-Section (2) of Section 23 must also be noticed. Under sub-Section (1), where a transfer has been made by a senior citizen subject to the condition that the transferee will provided for basic amenities or physical needs of the transferor and if there is a failure of the transferee to fulfil the condition, two consequences follow: (i) the transfer of property shall be deemed to have been made by fraud or coercion or under undue influence; and (ii) the transfer shall, at the option of the transferor, be declared to be void by the Tribunal. The deeming consequence which is provided for in sub-Section (1) is not incorporated in sub-Section (2). Sub-Section (2), in contradistinction, stipulates that the right to receive maintenance can be enforced against a gratuitous transferee or a transferee with notice of the pre-existing right of a citizen to receive maintenance out of an estate notwithstanding who is the transferee of the estate. In keeping with the salutary public purpose underlying the enactment of the legislation, the expression „transfer€ would include not only the absolute transfer of property but also transfer of a right or interest in the property. This would also be in consonance with the provisions of Section 2(f) which defines the expression property to include “rights or interests in such property”. The expression „transfer€ not having been defined specifically by the legislation, it must receive an interpretation which would advance the beneficent object and purpose of its provisions. Sub-section (2) of PART C section 23 speaks of the enforcement of the “right to receive maintenance” which is more comprehensive in its nature, than merely enforcing an order for maintenance passed under Section 9 of the Act.

17 The substance of sub-Section (2) of section 23, as submitted by the Second and Third respondents, is that the Tribunal had the jurisdiction to pass an order directing the eviction of the appellant who is their daughter-in-law. According to the submission, the power to order eviction is implicit in the provision guaranteeing a „right to receive maintenance out of an estate€ and the enforcement of that right. In supporting the submission, they have referred to the view which has been taken by several High Courts, indicating that the Tribunal may order the eviction of a child or a relative from the property of a senior citizen, where there has been a breach of the obligation to maintain the senior citizen. The Tribunal under the Senior Citizens Act 2007 may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent. Eviction, in other words would be an incident of the enforcement of the right to maintenance and protection. However, this remedy can be granted only after advertent to the competing claims in the dispute. It is necessary to recapitulate that the situation in the present case is that the eviction was sought of the daughter-in-law, i.e. the appellant. The land, where the house has been constructed, was originally purchased by the son of the applicants who are seeking eviction of their daughter-in-law. The son had purchased the property a few months before his marriage to the appellant. He had subsequently transferred the property by a registered sale deed to PART D his father and the fact that it was for the same consideration after the lapse of several years is of significance. The father, in turn, executed a gift deed in favor of his spouse. The appellant has asserted that she had been living in the house, as her matrimonial residence, until the application was filed. Her spouse has (according to her) deserted her and their minor daughter and left them in the lurch. The electricity to the premises was disconnected for non-payment of dues. Their daughter has sought admission to an engineering degree course however her father- Fourth respondent has

not provided any financial support. The transfers which took place cannot be viewed in isolation from the context of the on-going matrimonial dispute which has taken place. The issue is whether the appellant as the daughter-in-law and the minor daughter could have been ousted in the above manner. D A woman's right of residence: safeguard against domestic violence 18 In arriving at a decision of this issue it becomes necessary to elucidate the right, which is asserted by the appellant. The appellant has submitted that the premises constitute a "shared household" within the meaning of Section 2(s) of the PWDV Act 2005. Section 2(s) defines the expression "shared household" in the following terms:

"(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the PART D respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;" (emphasis supplied) Section 1920 contemplates the passing of a residence order by the Magistrate on an application under sub-Section (1) of Section 12 of the PWDV Act 2005. The essence of the submission of the appellant is that the order of eviction which has been made in the exercise of the summary powers entrusted by the Senior Citizens Act 2007 would completely displace the appellant from seeking recourse to her remedies under Section 12(1) read with Section 19 of the PWDV Act 2005 in respect of the premises, which she claims to be her shared household. The definition of the expression "shared household" in Section 2(s) uses the familiar legislative formula of a "means and includes" definition. Where the definition of an expression in an enactment adopts a „means and includes“ stipulation, it is intended to be exhaustive. The „means“ part of the definition indicates what would normally fall within the ambit of the expression, while the „includes“ element gives it an extended meaning. Together they indicate that the legislature has provided for an exhaustive

19. Residence orders-

1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order - (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household; (b) directing the respondent to remove himself from the shared household; (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides; (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same; (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person

as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman. PART D enumeration of what falls within the ambit of the definition. Justice G P Singh in his seminal treatise on the Principles of Statutory Interpretation²¹ observes:

“The Legislature has the power to define a word even artificially. So the definition of a word in the definitions section may either be restrictive of its ordinary meaning or it may be extensive of the same. When a word is defined to „mean€ such and such, the definition is prima facie restrictive and exhaustive.” On the other hand, “includes” is titled so as to comprehend an extensive meaning:

“Whereas, where the word defined is declared to „include€ such and such, the definition is prime facie extensive. When by an amending Act, the word „includes€ was substituted for the word „means€ in a definitions section, it was held that the intention was to make it more extensive.....” The use of the expression „means€ is intended to make it exhaustive. On the other hand, the use of the expression „includes€ is intended to make it more extensive. The legislature by using an expression „includes€ evinces, notwithstanding the meaning of the phrase, an intention:

“to enlarge the meaning of the words or phrases occurring in the body of the statute”.

“Includes” is utilized so as to comprehend:

“not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include” Lexis Nexis, 14th Ed. Page 197-199 PART D However, when a statutory definition incorporates the „means and includes€ approach, the intent is to make the definition exhaustive.

“Further, a definition may be in the form of „means and includes€, where again the definition is exhaustive.” [See in this context the decisions in Jagir Singh vs State of Bihar; AIR 1976 SC 997, pp. 999, 1001 :1976 SCC (Tax) 204 : (1976) 2 SCC 942; Kasilngam vs P.S.G. College of Technology, supra, Bharat Coop. Bank (Mumbai) Ltd. vs Coop. Bank Employees Union, (2007) 4 SCC 685 (para 23) : (2007) 4 JT 573 : (2007) 2 LLJ 825 : AIR 2007 SC 2320; Paul Enterprise vs Rajib Chatterjee and Company, (2009) 3 SCC 709 para 28 : (2009) 1 JT 632]”¹⁹ The definition of „shared household€ in Section 2(s) of the PWDV Act 2005 is exhaustive. This has also recently been held to be so, by a judgment of a three judge bench of this Court, delivered by Justice Ashok Bhushan, in Satish Chandra Ahuja vs Sneha Ahuja²² [Satish Chandra].

The definition of the expression „shared household“ in Section 2(s) of the PWDV Act of 2005 is in two parts: in the means part of the definition the expression „shared household“ means

(i) A household where the person aggrieved lives in a domestic relationship either singly or along with the respondent or;

(ii) At any stage has lived in a domestic relationship either singly or along with the respondent.

Civil Appeal No. 2483 of 2020, decided on 15 October 2020 PART D This is followed by an inclusive element, so as to cover such a household (i) whether owned or tenanted either jointly by the aggrieved person and the respondent or (ii) owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title or equity. This has also been given an inclusive or extended meaning, which extends to a household which may belong to the joint family of which a respondent is a member, irrespective of whether the respondent or the aggrieved person have any right, title or interest in the shared household. The last part of the inclusive definition is intended to extend the meaning of a shared household to a situation where the household in fact belongs to a joint family, of which the respondent is a member. The legislature has made it clear that though neither the respondent, nor the aggrieved person in such case may have a right, title or interest in the shared household it would irrespective fall within the ambit of the definition.

The meaning which has been attributed above to the plain language of the definition is in consonance with the judgment of the three judge Bench in Satish Chandra where it has been explained as follows:

“55...the definition can be divided in two parts, first, which follows the word “means” and second which follows the word “includes”. The second part which follows “includes” can be further sub-divided in two parts. The first part reads “shared household means a household where the person aggrieved has lived or at any stage has lived in a domestic relationship either singly or along with the respondent”. Thus, first condition to be fulfilled for a shared household is that person aggrieved lives or at any stage has lived in a domestic relationship. The second part subdivided in two parts is- (a) includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent and PART D owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and (b) includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household. In the above definition, two expressions, namely, “aggrieved person” and “respondent” have occurred. From the above definition, following is clear:-

(i) it is not requirement of law that aggrieved person may either own the premises jointly or singly or by tenancing it jointly or singly; (ii) the household may belong to a

joint family of which the respondent is a member irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household; and (iii) the shared household may either be owned or tenanted by the respondent singly or jointly.” After noticing the ambit of the definition of „shared household“ and the object and purpose of the PWDV Act of 2005, Justice Ashok Bhushan noted:

“Section 2(s) read with Sections 17 and 19 of Act, 2005 grants an entitlement in favour of the woman of the right of residence under the shared household irrespective of her having any legal interest in the same or not.” The expression „respondent“ has been defined in section 2 (q) of the PWDV Act of 2005 in the following terms:

“(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:” Noticing the above definition and the provisions of section 2(s), the Court in Satish Chandra held:

“64...The definition of shared household as noticed in Section 2(s) does not indicate that a shared household shall be one which belongs to or taken on rent by the husband. We have PART E noticed the definition of “respondent” under the Act. The respondent in a proceeding under Domestic Violence Act can be any relative of the husband. In [the] event, the shared household belongs to any relative of the husband with whom in a domestic relationship the woman has lived, the conditions mentioned in Section 2(s) are satisfied and the said house will become a shared household.” The Bench concluded that:

“84...The definition of shared household given in Section 2(s) cannot be read to mean that shared household can only be that household which is household of the joint family of which husband is a member or in which husband of the aggrieved person has a share.” E Harmonising competing reliefs under the PWDV Act 2005 and Senior Citizens Act 2007

20 Section 3623 of the PWDV Act 2005 stipulates that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. This is intended to ensure that the remedies provided under the enactment are in addition to other remedies and do not displace them. The Maintenance and Welfare of Parents and Senior Citizens Act 2007 is undoubtedly a later Act and as we have noticed earlier, Section 3 stipulates that its provisions will have effect, notwithstanding anything inconsistent contained in any other enactment. However, the provisions of Section 3 of the Senior Citizens Act 2007 giving it overriding force and effect, would not by themselves be conclusive of an intent to deprive a woman who claims a right in a shared household, as under the PWDV Act 36-Act not in derogation of any other law. The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force PART E 2005. Principles of statutory interpretation dictate that in

the event of two special acts containing non obstante clauses, the later law shall typically prevail. 24 In the present case, as we have seen, the Senior Citizen's Act 2007 contains a non obstante clause. However, in the event of a conflict between special acts, the dominant purpose of both statutes would have to be analyzed to ascertain which one should prevail over the other. The primary effort of the interpreter must be to harmonize, not excise. A two-judge bench of this Court, in the case of Bank of India v. Ketan Parekh²⁵, in examining a similar factual scenario, observed that:

“28. In the present case, both the two Acts i.e. the Act of 1992 and the Act of 1993 start with the non obstante clause. Section 34 of the Act of 1993 starts with non obstante clause, likewise Section 9-A (sic 13) of the Act of 1992. But incidentally, in this case Section 9-A came subsequently i.e. it came on 25-1-

1994. Therefore, it is a subsequent legislation which will have the overriding effect over the Act of 1993. But cases might arise where both the enactments have the non obstante clause then in that case, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons. However, so far as the present case is concerned, it is more than clear that Section 9-A of the Act of 1992 was amended on 25-1-1994 whereas the Act of 1993 came in 1993. Therefore, the Act of 1992 as amended to include Section 9-A in 1994 being subsequent legislation will prevail and not the provisions of the Act of 1993.” (emphasis supplied) This principle of statutory interpretation was also affirmed by a three-judge bench of this Court in Pioneer Urban Land and Infrastructure Ltd. v. Union of India.²⁶ In the *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd*, (2001) 3 SCC 71 (2008) 8 SCC 148 (2019) 8 SCC 416 PART E present case, Section 36 of the PWDV Act 2005, albeit not in the nature of a non- obstante clause, has to be construed harmoniously with the non obstante clause in Section 3 of the Senior Citizens Act 2007 that operates in a separate field. 21 In this case, both pieces of legislation are intended to deal with salutary aspects of public welfare and interest. The PWDV Act 2005 was intended to deal with the problems of domestic violence which, as the Statements of Objects and Reasons sets out, “is widely prevalent but has remained largely invisible in the public domain”. The Statements of Objects and Reasons indicates that while Section 498A of the Indian Penal Code created a penal offence out of a woman's subjection to cruelty by her husband or relative, the civil law did not address its phenomenon in its entirety. Hence, consistent with the provisions of Articles 14, 15 and 21 of the Constitution, Parliament enacted a legislation which would “provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society”. The ambit of the Bill has been explained thus:

“4. The Bill, inter alia, seeks to provide for the following:-

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint

family are also included.

Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband PART E or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.” The above extract indicates that a significant object of the legislation is to provide for and recognize the rights of women to secure housing and to recognize the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Allowing the Senior Citizens Act 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act 2005, would defeat the object and purpose which the Parliament sought to achieve in enacting the latter legislation. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their PART E children or relatives. Equally, the purpose of the PWDV Act 2005 cannot be ignored by a sleight of statutory interpretation. Both sets of legislations have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act 2007.

22 This Court is cognizant that the Senior Citizens Act 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted under Section 7. These Tribunals have the power to conduct summary procedures for inquiry, with all powers of the Civil Courts, under Section 8. The jurisdiction of the Civil Courts has been explicitly

barred under Section 27 of the Senior Citizens Act 2007. However, the over-riding effect for remedies sought by the applicants under the Senior Citizens Act 2007 under Section 3, cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the PWDV Act 2005. The PWDV Act 2005 is also in the nature of a special legislation, that is enacted with the purpose of correcting gender discrimination that pans out in the form of social and economic inequities in a largely patriarchal society. In deference to the dominant purpose of both the legislations, it would be appropriate for a Tribunal under the Senior Citizens Act, 2007 to grant such remedies of maintenance, as envisaged under S.2(b) of the Senior Citizens Act 2007 that do not result in obviating competing remedies under PART E other special statutes, such as the PWDV Act 2005. Section 2627 of the PWDV Act empowers certain reliefs, including relief for a residence order, to be obtained from any civil court in any legal proceedings. Therefore, in the event that a composite dispute is alleged, such as in the present case where the suit premises are a site of contestation between two groups protected by the law, it would be appropriate for the Tribunal constituted under the Senior Citizens Act 2007 to appropriately mould reliefs, after noticing the competing claims of the parties claiming under the PWDV Act 2005 and Senior Citizens Act 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to over-ride and nullify other protections in law, particularly that of a woman's right to a „shared household“ under Section 17 of the PWDV Act 2005. In the event that the “aggrieved woman” obtains a relief from a Tribunal constituted under the Senior Citizens Act 2007, she shall duty-bound to inform the Magistrate under the PWDV Act 2005, as per Sub-section (3) of Section 26 of the PWDV Act 2005. This course of action would ensure that the common intent of the Senior Citizens Act 2007 and the PWDV Act 2005- of ensuring speedy relief to its protected groups who are both vulnerable members of the society, is effectively realized. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realization.

26. Relief in other suits and legal proceedings. —(1) Any relief available under sections 18, 19,20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court. (3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief. PART E 23 Adverting to the factual situation at hand, on construing the provisions of sub- Section (2) of section 23 of the Senior Citizen Act 2007, it is evident that it applies to a situation where a senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred. On the other hand, the appellant's simple plea is that the suit premises constitute her „shared household“ within the meaning of Section 2(s) of the PWDV Act 2005. We have also seen the series of transactions which took place in respect of the property: the spouse of the appellant purchased it in his own name a few months before the marriage but subsequently sold it, after a few years, under a registered sale deed at the same price to his father (the father-in-law of the appellant), who in turn gifted it to his spouse i.e. the mother- in-law of the appellant after divorce proceedings were instituted by the Fourth respondent. Parallel to this, the appellant had instituted proceedings of dowry harassment against her mother-in-law and her estranged spouse; and her

spouse had instituted divorce proceedings. The appellant had also filed proceedings for maintenance against the Fourth respondent and the divorce proceedings are pending. It is subsequent to these events, that the Second and Third respondents instituted an application under the Senior Citizens Act 2007. The fact that specific proceedings under the PWDV Act 2005 had not been instituted when the application under the Senior Citizens Act, 2007 was filed, should not lead to a situation where the enforcement of an order of eviction deprives her from pursuing her claim of entitlement under the law. The inability of a woman to access judicial remedies may, as this case exemplifies, be a consequence of destitution, ignorance or lack of resources. Even otherwise, we are clearly of the view that recourse to the summary PART F procedure contemplated by the Senior Citizen Act 2007 was not available for the purpose of facilitating strategies that are designed to defeat the claim of the appellant in respect of a shared household. A shared household would have to be interpreted to include the residence where the appellant had been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her in-laws (Second and Third Respondents) or that her estranged spouse (Fourth respondent) is now residing separately, is no ground to deprive the appellant of the protection that was envisaged under the PWDV Act F Summation 24 For the above reasons, we have come to the conclusion that the claim of the appellant that the premises constitute a shared household within the meaning of the PWDV Act 2005 would have to be determined by the appropriate forum. The claim cannot simply be obviated by evicting the appellant in exercise of the summary powers entrusted by the Senior Citizens Act 2007. The Second and Third Respondents are at liberty to make a subsequent application under Section 10 of the Senior Citizens Act 2007 for alteration of the maintenance allowance, before the appropriate forum. For the above reasons, while allowing the appeal, we issue the following directions:

(i) The impugned judgment and order of the Division Bench of the High Court of Karnataka dated 17 September 2019 affirming the order of PART F eviction against the appellant shall stand set aside with the consequence that the order of the Assistant Commissioner ordering and directing the appellant to vacate the suit premises shall stand set aside;

(ii) We leave it open to the appellant to pursue her remedies under the PWDV Act 2005. For that purpose, it would be open to the appellant to seek the help of the District Legal Services Authorities and if the appellant does so, all necessary aid and assistance shall be furnished to her in pursuing her legal remedies and rights;

(iii) IA 111352/2020 for restoration of the electricity connection is allowed by directing the Fourth respondent to take all necessary steps for restoration of the electricity connection to the premises within a period of two weeks from the receipt of a certified copy of this judgment. The Fourth respondent shall also continue to pay the electricity dues in future; and

(iv) In order to enable the appellant to pursue her remedies under the PWDV Act 2005, there shall be an order and direction restraining the respondents from forcibly dispossessing the appellant, disposing of the premises or from creating any right, title

and interest in favor of any third party in any manner whatsoever for a period of one year, to enable the appellant to pursue her remedies in accordance with law.

The appellant is at liberty to move the Court to espouse her remedies PART F under the PWDV Act 2005 for appropriate orders, including interim protections.

The directions contained in (iii) and (iv) above emanate in exercise of the powers of this Court under Article 142 of the Constitution.

25 The Appeal is allowed in the above terms. The appellant is entitled to costs quantified at Rs 25,000 from the private respondents.

26 Pending application(s), if any, stand disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]
.....J. [Indu Malhotra]
.....J. [Indira Banerjee] New Delhi;

December 15, 2020.