

CWP No. 27152 of 2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 27152 of 2015
Date of Decision : 23.12.2015**

Prem Kumar

...Petitioner

Versus

Krishan Kumar Sharma and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment?*
- 2) To be referred to the Reporters or not?*
- 3) Whether the judgment should be reported in the Digest?*

**Present: Mr. S.K. Sharma, Budhladawale, Advocate
for the petitioner.**

Paramjeet Singh, J.(Oral)

This is an avoidable and unfortunate litigation between son and father. Challenge in the instant writ petition is to order dated 07.10.2014 (Annexure P-5) passed by respondent No. 3 and order dated 30.04.2015 (Annexure P-9) passed by respondent No. 4.

I had the occasion to deal with almost the identical

dispute in **Ashwinder Singh and another vs. Bhagwant Singh**

and another, 2014(3) R.C.R. (Civil), 906. It would be apposite to reproduce relevant paragraphs:-

“This unfortunate regular second appeal is a poignant reminder of decaying social values and traditions in our country. The case is telltale story of how children have become detached in today's commercialized world and are making attempts to throw out their aged parents from the property which the parents have acquired during their life-time. It is perfect example of children becoming insensate towards parents/senior citizens.

“Maatru Devo Bhava” (revere your mother as God) and “Pitro Devo Bhava” (revere your father as God) is a well-known proverb.

2. On page 1200 of Sri Guru Granth Sahib, Sri Guru Ram Dass has written that “KAAHAY POOT JHAGRAT HA-O SANG BAAP / JIN KAY JANAY BADEERAY TUM HA-O TIN SIO JHAGRAT PAAP//” (O son, why do you argue with your father? It is a sin to argue with the one who fathered you and raised you.).

3. The above words of prudence guide us that we have to treat our parents as God. Modernization, technological advancement and social liability have changed our life-style and values. Sadly, our bent of mind and responsibility towards parents has degenerated. We have forgotten about Sharavan Kumar, who placed his blind parents in two baskets and carried the baskets on his shoulder to various places of pilgrimage. We have also forgotten the duties of a son towards aged parents. We have completely given up our ancient traditions when parents were most revered and respected.”

Over the years the law has become more complicated and more involved in the different areas of

people's lives. Sometimes the law appears to be meddling and intrusive particularly in family disputes and private life. There has to be a balance between people's right to live and the right of the law to intervene on behalf of the society. The balance between the needs of society and people's individual rights applies to families too.

Family has been the dominating institution, both in the life of the individual and in the society. It is a basic, cohesive and integral unit of larger social system. We are seeing rapidly changing family scenario. Our children will always be our children. The parents believe in trial and error principles so far children are concerned. Even though parents do all right things for children specifically children and their families, but many a times, children feel that they are not being treated equally and this results into tearing break ups which is very anguishing for the parents. This happens when tension rises beyond bearable level. At this stage, there is a need for trained therapist practicing in this field. When efforts to effect compromise/settlement fail, can there be any good reason to keep cause of trouble under the same roof? Introspection by one and all can play a pivotal role in brushing aside the differences and bringing back the peace and harmony in the

family. Everyone should analyze what his/her heart says. Parents and children should think calmly and not on the basis of pure emotion before drawing a line in the sand, one should be fully convinced that his/her actions are not based on anger or fear. The idea of fate exists in all human cultures, and was developed as a way of dealing with difficult decisions those make us uncomfortable. We invoke fate to say, it is out of my hand now, there is nothing I can do. When no positive results are in sight only then parents should ask the children politely but firmly to pack things and leave the house.

What expectations are the legitimate in the relationship between adult children and elderly parents?

It is a larger issue and can be examined by the sociologists. Though parents want to maintain their independence and do not expect much from adult children as children expect from them, parents also hope that children will be there for them when called upon particularly in the evening of their life. Often parents lay less emphasis upon physical and financial support, however at least, expect emotional support of children and grand children.

Brief facts of the case are that respondent No. 1-

application under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "Act") before respondent no. 3 for payment of monthly maintenance allowance to the tune of ₹20,000/- from the petitioner and respondent No. 2 and for eviction of the petitioner and respondent No. 2 from House No. 24673, Haji Rattan Link Road, Bhangu Hospital, Bathinda to the effect that he is 70 years of age. He has two sons, namely, Prem Kumar (petitioner herein) and Madan Lal Sharma (respondent No. 2 herein) and one daughter. His wife had died about 10 years ago and House No. 24673 is his self acquired property, which he had to purchased about 45 years ago. The petitioner has occupied this house. Likewise, he is owner of a Chemist shop, which has also been occupied by the petitioner. Now, he has grown old and his body organs do not work properly and he is leading a life of penury and starvation. Vide order dated 07.10.2014 (Annexure P/5), the Sub Divisional Magistrate, Bathinda allowed the application by following observations:-

"The record on the file was considered very well. The petitioner is quite old and now he's not in a position to work for livelihood. Therefore, it is ordered that respondent No. 1 Prem Kumar shall pay maintenance amount to the tune of ₹2000/- per

month and respondent No. 2 Madan Lal Sharma shall pay ₹3000/- every month to the petitioner. It is also ordered that this amount be paid to the petitioner up to 05th day of every month."

Against that order, petitioner preferred an appeal before District Magistrate, Bathinda, who vide order dated 30.04.2015 (Annexure P/9) passed the following order:-

"4. That the respondent was summoned on receiving the application and the file of the case of the lower court was also summoned. Dated 31.03.2015, the appellant Shri Krishan Kumar Sharma and the respondents were heard and the summoned record was perused. The appellant repeated the points raised in the application. The respondents stated that they are ready and willing to maintain their father, however, they can not pay the maintenance amount. Therefore, keeping in view the age, illness and the medical expenses, the amount ordered by the Presiding Officer Maintenance Tribunal (SDM0, Bhatinda under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 is enhanced. The appeal is accepted and the respondent No. 1 Prem Kumar is ordered to pay ₹3000/- per month and likewise the respondent No. 2 shall pay ₹4,500/- per month to the appellant. In case, they do not deposit the amount, the appellant can submit application under Section 11 of the Act before the Maintenance

Tribunal. A copy of this order be sent to the Sub Divisional Magistrate, Bhatinda/District Social Welfare Officer, Bhatinda, the appellant and the respondents for compliance of the order. The file be consigned to the record room Bhatinda after doing the needful."

Hence, instant writ petition.

I have heard learned counsel for the petitioner and perused the record.

Learned counsel for the petitioner vehemently contended that the impugned order passed by the District Magistrate is sketchy and cryptic and is not sustainable in the eyes of law.

Hon'ble Division Bench of this Court in *Justice Shanti Sarup Diwan, Chief Justice (Retired) & another Vs Union Territory, Chandigarh & others, 2014 (5) R.C.R. (Civil) 656* has examined the scheme of the Act and almost identical issue.

"28. SCHEME OF THE ACT -

In order to appreciate and answer the aforesaid questions in the context of the factual matrix, it is necessary to analyze the relevant provisions of the said Act. The Statement of Objects and Reasons set out that the traditional norms and values of the Indian Society which lay stress on providing care for elderly getting diluted due to

the withering of the joint family system, the elders are facing emotional neglect and lack of physical and financial support. Thus, aging has become a major social challenge and despite the provisions of the Code of Criminal Procedure, 1973 for maintenance, it was deemed necessary that there should be simple, inexpensive and speedy provisions to claim maintenance for the parents. The Act is not restricted to only providing maintenance but cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives. One of the major aims was to provide for the institutionalization of a suitable mechanism for the protection of 'life and property of older persons'.

29. Section 2 contains the definitions and clause (f) defines 'property' as under:-

Definitions:- *In this Act, unless the context otherwise requires:-*

a) xx xx xx

b) xx xx xx

c) xx xx xx

d) xx xx xx

e) xx xx xx

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."

The aforesaid would thus show the definition of

property within the meaning of the Act is wide and comprehensive with the object of securing the interest of the elders. This is to be read along with Section 6 which makes the provisions of the said Act to have overriding effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act including any instrument having effect under any other Act.

30. Chapter-II of the said Act deals with the maintenance of parents and senior citizens while Chapter-IV deals with the medical care. However, since the appellants before us are claiming neither, we are not delving these provisions in any detail. The relevant Chapter-V provides for protection of life and property of senior citizens. Section 21 provides for measures of publicity, awareness etc. for welfare of senior citizens, while Section 22 provides for the Authorities who may be specified for implementing the provisions of the said Act. Section 22 reads as under:-

"22. Authorities who may be specified for implementing the provisions of this Act

(1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties,

so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens."

Thus what is envisaged is both protection of life and protection of property through a comprehensive action plan.

31. In order to prevent interference by Civil Courts qua any action taken in furtherance of the provisions of the said Act, Section 27 bars the jurisdiction of the Civil Courts, especially in respect of injunction. Section 27 of the said Act 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."

32. Sub Section (1) of Section 32 of the said Act requires the State Government to make rules for carrying out the purposes of this Act which in turn would imply that the same inter-alia provides for protection of life and property of senior citizens under clause (f) of sub section (2) of section 32 of the said Act.

33. The major grievance made by the

appellants in the context of the aforesaid provisions thus is that there is failure to make statutory rules in terms of Section 32, as envisaged aforesaid, by the Chandigarh Administration which itself compelled the appellants to approach this Court under Articles 226/227 of the Constitution of India.

34. In the context of the aforesaid discussion about the provisions of the Act, now we proceed to analyze two crucial questions referred to aforesaid:-

Question No. (i):-

The stand of respondent No. 7 before the Court is not that there was any contribution given by him for acquisition of the plot at Chandigarh. It is also not his say that the property is an inherited property. The registered document of title is also in favour of only appellant No.1. In fact, out of his own earnings, appellant No.1 gifted the plot to respondent No. 7 as well as two other plots to his daughters. There is just a bald statement that the property at Chandigarh is joint Hindu family property. The failure, which has been attributed to Administration of Union Territory, Chandigarh, is qua the provisions of Section 32 read with Section 22 of the said Act. There are rules required to be made by a notification in the official gazette for carrying out the purposes of the Act under sub section (1) of Section 32 of the said Act. These Rules without prejudice to the generality of the powers, inter-alia are to provide for

implementation of the provisions of the said Act under sub section (1) of Section 22 (clause (e) of sub section (2) of Section 32) and a comprehensive action plan for providing protection of life and property to senior citizens under sub section (2) of Section 22 (Clause (f) of sub section (2) of Section 32). No such Rules have been notified. The grievance thus being made is that in the absence of the Rules there is no effective procedure for the protection of life and property of senior citizens and issuing a notification by the Social Welfare Department dated 20.08.2013 constituting a Special Cell qua the life and property to be protected under section 22 (2) of the Act would not suffice. In fact sub section (1) of Section 22 of the said Act requires the State Government to confer powers and impose duties on a District Magistrate to ensure that the provisions of the Act are properly carried out. There has to be thus an enforcement mechanism set in place especially qua the protection of property as envisaged under the said Act. When we examine it from the context of the problem at hand, this is absent.

35. What is the right of respondent No. 7 and his family members to insist on occupying a portion of the house of appellant No.1 especially when the sale-deed is registered in the name of appellant No.1 in his individual name? Merely stating that it is a joint Hindu family property would not suffice. In order to establish that the property

belongs to joint family, it must be established that a joint family had a sufficient nucleus at the time of its acquisition. (P. S. Sairam and another V. P.S.Rama Rao Pisey and others (2004) 11 SCC 320). Leave aside the corpus, it is not even alleged that the funds other than the individual funds of appellant No.1 were utilized to purchase the plot at Chandigarh. Respondent No. 7 could not have even alleged so as he actually received a self acquired plot at Panchkula from appellant No.1 by way of gift while daughters of appellant No.1 received one plot each in Karnal. Other than the oblique motive to grab the property at Chandigarh and keep possession of the same against the wishes of the owner, there can be no other reason. In fact, it was quite clear during the course of arguments that not only respondent No. 7 wants to deprive the appellant No.1 to deal with his property as per his wishes but wanted to grab the whole property for himself denying the share of his sisters.

36. *In Ganduri Koteshwaramma and another Vs. Chakiri Yanadi and another 2011(9) SCC 788 it has been held by the Supreme Court that in view of the amendment of Section 6 of the Hindu Succession Act, 1956, a daughter is entitled to share in the ancestral property and is a co-parcener as if she had been a son w.e.f. 09.09.2005. Daughter of a co-parcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the*

son. The only exception carved out is that where the disposition or alienation has taken place before 20.12.2004 and where testamentary disposition of property has been made before the said date.

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. In fact, 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 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. In fact, that is the very

objective of respondent No. 7.

38. *Though it is not directly relevant but it is not even as if respondent no. 7 is without a roof over his head as he is a beneficiary of a gift from his father-appellant No.1 of a plot which was sold, smaller plot purchased and constructed upon and the house is lying vacant. What can be a greater travesty of justice in this situation where respondent No. 7 insists that he will not stay in his own house built by him lying vacant, but insists on staying with his parents who do not want him or his family to live with them. We don't have the slightest of hesitation in coming to a conclusion that all necessary directions can thus be made under the said Act to ensure that the appellants live peacefully in their house without being forced to accommodate respondent No. 7."*

Learned counsel for the petitioner has failed to point out any illegality or perversity in the impugned orders.

Dismissed.

December 23, 2015.
kanchan

(PARAMJEET SINGH)
JUDGE