

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

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*CWP No.10436 of 2015 (O&M)*  
*Date of Decision:-31.08.2016*

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Kulwant Singh and others

..... Petitioners

**Vs.**

Addl. Deputy Commissioner & Another

..... Respondents

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**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN**

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**Present: -** Mr.Sanjeev Sharma, Advocate,  
for the petitioners.

Mr.Puneet Sharma-I, Advocate,  
for respondent No.2.

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**RAKESH KUMAR JAIN, J.**

This petition is filed against the order dated 6.5.2015 passed by respondent No.1 on the application filed by respondent No.2 under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [for short 'the Act'] directing the petitioners to handover the vacant possession of the residential house of respondent No.2 to him.

In short, respondent No.2, aged 83 years, filed an application under the provisions of the Act for seeking eviction of the petitioners from his house, which was allegedly being unauthorizedly occupied. It is alleged by respondent No.2 that he along with his wife have been living with their daughter as the petitioners have thrown them out from their house.

Learned counsel for the petitioners has submitted that respondent No.2 had earlier filed an application for maintenance, which has been allowed by the SDM, Shri Chamkur Sahib and they have been paying maintenance of ₹1000/- per month regularly, therefore, the second application is not maintainable. It is also submitted that the property in dispute is ancestral in nature in which one of the petitioners being the son of respondent No.2 is a coparcener and has a right and cannot be termed as an unauthorized occupant.

In this regard, it is submitted by counsel for respondent No.2 that the petitioners had filed a civil suit for declaration claiming the property in dispute to be ancestral. The said suit was partly decreed on 30.5.2012 but it was held that the property in dispute is not ancestral. It is further submitted that petitioner No.1 challenged the judgment and decree of the trial Court dated 30.5.2012 by way of statutory appeal, which was dismissed on 25.1.2013 and the second appeal bearing RSA No.3673 of 2013 has already been dismissed by this Court on 28.4.2016 and the finding recorded by the Court below that the property in dispute was not ancestral was also upheld. It is further submitted that respondent No.2 had earlier filed an application claiming maintenance which was allowed and now has filed application for seeking eviction of the petitioners from his property, which are two different applications under different provisions of the Act and are maintainable.

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

Although the petitioners have made allegations against the other son of respondent No.2, who has allegedly influenced the mind of respondent No.2 for initiating this litigation but I enquired from respondent

No.2, while he was present in Court, as to whether he would be in a position to forgive his children to which he strongly opposed.

Be that as it may, insofar as the legal issues are concerned, the second application filed by respondent No.2 for seeking eviction of the petitioners after the first application for claiming maintenance is maintainable and has rightly been allowed and the argument raised by the petitioners that the property in dispute is not solely owned by respondent No.2 and is ancestral is of no consequence after the categoric finding recorded by the Civil Court, contrary to it, as it has been held that the property in question is not ancestral in nature. No other point has been raised.

In view of the aforesaid, I do not find any merit in the present petition and the same is hereby dismissed.

31.08.2016  
*Vivek*

(RAKESH KUMAR JAIN)  
JUDGE

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|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether non speaking</i>      | <i>Yes/No</i> |