

CWP No.20683 of 2016

[1]

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

**CWP No.20683 of 2016
Date of decision:17.10.2016**

Smt. Malvi

...Petitioner

Versus

The District Magistrate, Union Territory, Chandigarh & Ors. ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sunil K. Chaudhary, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

This petition is filed by the mother of respondent No.2 and mother-in-law of respondent No.3 against the order dated 28.07.2016 passed by the Deputy Commissioner-cum-District Magistrate, Union Territory Chandigarh, rejecting the application filed by the petitioner filed under Sections 21 & 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the “Act”).

In brief, the petitioner has sought protection of her life, liberty and also eviction of respondents No.2 and 3 from House No.2556, Dadumajra, Sector 38 (West), Chandigarh, alleging that the said house was earlier owned by her husband Kesho Ram, who had died on 10.01.2011. The petitioner has five children, out of whom three are married and living separately, whereas one unmarried daughter Sunita is residing with the

petitioner and other son-respondent No.2 and his wife-respondent No.3 along with their three minor children are also residing in the house in question. The petitioner has alleged that she had disowned his son and daughter-in-law (respondents No.2 and 3 herein) on 19.12.2015 by way of publication in the newspaper as they have been harassing her, therefore, they should be evicted from the house in question.

On the other hand, respondents No.2 and 3 have stated that the house in question was owned by Kesho Ram, who died intestate, and after his death, all his legal heirs have inherited his moveable and immovable property to the extent of their share. It is also alleged that his married sisters Anita and Nirmala and unmarried sister Sunita are instigating the petitioner, as a result thereof, the present application has been filed. It has been further stated that they have also filed a civil suit for permanent injunction against the petitioner in order to restrain her from dispossessing them forcibly from the house in question.

The Deputy Commissioner considered the application and observed that the petitioner is entitled to protection to her life and liberty but she cannot seek eviction of the private respondents from the house in question because she is not its exclusive owner as it was admittedly owned by her husband Kesho Ram, who died intestate on 10.01.2011 and after his death the said property has devolved upon all his Class-I legal heirs in equal shares. Accordingly, the petitioner is the owner of 1/6th share only and respondents No.2 and 3 are in occupation of the property in question as heirs and not as unauthorized occupants.

Counsel for the petitioner, while referring to the definitions of “property”, “parents” and Section 3 of the Act, has submitted that the petitioner is entitled to seek eviction of respondents No.2 and 3 from the house in question and has relied upon a Division Bench judgment of this Court rendered in the case of **Gurpreet Singh vs. State of Punjab and others**, 2016(1) R.C.R. (Civil) 324 to contend that the District Magistrate is the competent authority to take steps for the protection of life and property of the parents/senior citizens and the Civil Court jurisdiction is barred in respect of all matters falling within the jurisdiction of the Act in terms of Section 27 of the Act.

I have heard learned counsel for the petitioner and examined the available record.

Counsel for the petitioner has not denied that the house in question is not exclusively owned by the petitioner rather it was owned by her husband Kesho Ram, who admittedly died intestate on 10.01.2011. It is well settled law that as soon as the owner dies intestate, the right of succession opens and the property devolves upon the heirs as per their share in terms of the provisions of law, for which no separate order is required to be obtained.

Accordingly, the petitioner has become owner of 1/6th share only after the death of her husband, whereas respondent No.2 has also become owner of 1/6th share, who cannot be evicted from the house in question being a co-owner. At the most, the petitioner can ask for partition of the house in question by metes and bounds by filing a civil suit in order

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to get her share separated but insofar as the impugned order is concerned,
there is no error in it.

Consequently, I do not find any merit in the present petition
and hence, the same is hereby dismissed.

October 17, 2016

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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No