

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

CWP No.17860 of 2016
Date of decision : 31.01.2017

Rakesh Kumar Sood

...Petitioner

Versus

The District Magistrate-Cum-Deputy Commissioner, Ludhiana and ors.

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. M.S. Atwal, Advocate for the petitioner.

Mr. Namit Gautam, Advocate for the respondent No.2.

Mr. H.S. Dhindsa, Advocate for respondent No.10.

AMIT RAWAL, J.

The petitioner-Rakesh Kumar Sood has invoked the extraordinary writ jurisdiction of this Court under Article 226/227 of the Constitution of India challenging the order dated 02.08.2016 (Annexure P-9) passed by the District Magistrate-Cum-Deputy Commissioner, Ludhiana in a proceedings initiated under Maintenance and Welfare of Parents and Senior Citizen Act, 2007.

Mr. Sunil Chadha, learned Sr. Counsel assisted by Mr. M.S. Atwal, appearing on behalf of petitioner submitted that petitioner who is aged 68 years alongwith his wife are owner of house No.B-534/19 situated at Government College Road, Ludhiana. The marriage

of their only son namely Amit Sood with respondent No.2-Seema was performed on 26.01.2015 and on 09.11.2015, one girl child was born out of the wedlock. According to the averments made in the writ petition, husband and wife were having a discord and every day bickering resulted into disinheritance of the son and daughter-in-law on 22.01.2016. After that the behaviour of respondent No.2 became more violent. On 27.01.2016, 11.02.2016, 22.02.2016 to 26.02.2016, respondent No.2 with the help of respondent Nos.3 to 9 and their henchmen committed series of acts so as to cause mental and physical harassment to petitioner and his wife. The matter was also reported to the police on 17.02.2016 vide Annexure P-11. Though there are other representations. The respondent No.2-daughter-in-law had also submitted complaint to the police for alleged dowry harassment. The matter was enquired out by the Assistant Commissioner of Police, Crime against Women and Children Cell, Ludhiana, whereby in its report dated 23.05.2016, it noticed the factum of filing of the complaint under 2007 Act and further found that there was no truth in the allegation of dowry or physical/mental harassment as no medical record of the alleged cruelty or injury was presented and resultantly made recommendation for cancellation particularly when dispute, between the parties, before Deputy Commissioner, was already pending. I deem it appropriate to extract the aforementioned, conclusion report, which reads thus:-

*“9. **Conclusion Report**:- On perusal of above said complaint, statements and documents, it has been revealed that marriage of complainant was solemnized on 26.01.2015 with Amit Sood s/o Rakesh Kumar Sood r/o 534/19, Government College Road, Civil Lines, Ludhiana*

and out of this wedlock one female child was born. After marriage there arose a dispute between the complainant with her husband and in-laws family due to which father-in-law Rakesh Kumar disinherited his son Amit Sood and daughter-in-law Seema Sood on 22.01.2016. Complainant Seema Sood and her parental family also held many protests in front of her in-law's house. Thereafter on 01.03.2016 complainant Seema Sood and her husband Amit Sood with their mutual consent, taken on rent house of Sh. Mukesh Bagga at House No.3, R.S. Puram, New Kitchlu Nagar, Ludhiana and they used to reside as husband and wife. Rakesh Kumar Sood father-in-law of complainant also filed case against them in the court. In this case, the Hon'ble Court of Ms. Shilpa Singh, Civil Judge Junior Division, Ludhiana issued a notice to husband and wife for presence in court on 21.03.2016 which was received by Amit Sood and Seema Sood on 16.03.2016. Thereafter, on 20.03.2016 at about 8:30 the complainant Seema Sood along with her parental family members and relatives came to her in-law's house at College Road, Civil Lines, Ludhiana. As the gate was lying locked, Seema Sood entered the house after climbing the gate with the help of her relatives and is still residing in her in-law's house. In this regard, CCTV Footage, CD and photographs were also presented by the in-laws family of the complainant. Complainant Seema Sood has filed three cases against her in-laws in different courts. Whereas father-in-law of the complainant has also filed a case u/s 22 of Maintenance and Welfare of Parents and Senior Citizens Act 2007 filed before Deputy Commissioner, Ludhiana for getting vacated the above said house against the complainant Seema Sood and inquiry report of the said case was forwarded to Hon'ble Deputy Commissioner Ludhiana by Sh. Paramjit

Singh, PCS, Presiding Officer, Tribunal Maintenance-cum-SDM (East) Ludhiana on 07.04.2016 which is still pending. There is no truth found in the allegations of dowry and physical and mental harassment made by complainant Seema Sood against her in-laws family nor any medical record or proof has been presented.

10. Recommendation: *The allegations made by the complainant against her in-laws family regarding demand of dowry and physical and mental harassment and maltreatment are found to be false. The dispute between the parties is already pending in the courts and with Deputy Commissioner Ludhiana, so no action is required to be taken. The complaint is recommended to be dismissed.*

*SD/-
Asst. Commissioner of Police
C.A.W. & C. Cell,
Ludhiana, Dt. 23.5.2016”*

The aforementioned report has not been rebutted in the written statement. It is also not been brought to the notice of this Court whether any private complaint under Section 406/498-A has been filed or not. On the contrary, it has been submitted by Mr. Sunil Chadha, Sr. Advocate that husband and the wife, vide rent note dated 03.03.2016 (Annexure P-1) had taken accommodation on rent and the factum of the same is being proved as it bears the signatures of Seema Sood. The factum of taking of the possession on rented accommodation has also been verified by the District Magistrate in proceedings held under the aforementioned Act by recording the statement of landlord Mukesh Bagga through Naib Tehsildar. Report in this regard is annexed as Annexure P-10, which reads thus:-

“To

The Deputy Commissioner,

Ludhiana.

No.379/O/M dated 13.05.2016

Sub:- For getting vacated the land mentioned in application titled as Rakesh Sood versus Seema Sood filed under Maintenance & Welfare of Parents & Senior Citizens Act, 2007.

In reference to your letter No.3754/P.B. dated 05.05.2016 on the subject cited above.

You are requested that Halka Patwari after visiting the spot has given his report that in the House No.3, R.S. Puram, Near New Kitchlu Nagar, Ludhiana Sh. Amit Sood s/o Sh. Rakesh Sood was present and owner of the house Mukesh Bagga s/o R.L. Bagga was also present. He disclosed that in the first floor of his house, Amit Sood and his wife Seema Sood started residing as tenant w.e.f. 01.03.2016. He further disclosed that on the rent agreement, signatures of Amit Sood and his wife Seema Sood are present. Mr. Mukesh Bagga they both signed in his present. Mukesh Bagga told that both the husband and wife were residing in his house together but now from few days, Sh. Amit Sood is residing alone. Copy of agreement of rent and statement of Mukesh Bagga are enclosed.

2. House No.534/19, Government College Road, Ludhiana village Taraf Gehlewal comprised in Khasra No.1422/436-437, 1423/436-437, Khata No.37/38, is not owned by Amit Sood s/o Rakesh Sood. Report dated 20.04.2016 regarding ownership of the said khasra number of Taraf Gehlewal was already submitted with you. Rakesh Kumar s/o Chiranji Lal is residing there. Rakesh Kumar is running a flower shop. His son Amit Sood son of Rakesh Kumar is also running flower business. Rakesh Kumar s/o Chiranji Lal has disinherited Amit Sood and Seema Sood through affidavit and newspaper publication. The property in the

name of Amit Sood s/o Rakesh Kumar was situated at Village Karabara, Hadbast No.161, in Khasra No.61//16/9 measuring 170.37 square yards which came under his ownership on the basis of Gift Deed dated 20.07.2012 executed by Ramesh Kumar s/o Chiranji Lal on dated 20.07.2012. This property has been transferred by Amit Sood s/o Rakesh Kumar in the name of his mother Renu Sood through transfer deed dated 18.01.2016. Copy enclosed. Submitted for necessary action please.

Encl. Original File

Sd/- Naib Tehsildar

Ludhiana (East)”

The petitioner on 08.03.2016 were constrained to file civil suit (Annexure P-2) seeking permanent injunction against respondents. Though Mr. Chadha, Sr. Advocate, according to the instructions, submitted that there was no injunction but the same has been rebutted by Mr. Namit Gautam representing the respondent No.2 that vide order dated 21.03.2016 Annexure R-2/10, ad interim injunction had been granted.

Mr. Chadha, further, submitted, that aforementioned suit, by suffering a statement (Annexure R-2/11) was withdrawn on 06.04.2016. The statement reads thus:-

“Statement of Rakesh Kumar Sood son of Sh. Charanji Lal Sood, aged about 68 years, R/o 534/19, Govt. College Road, Ludhiana.

On S.A. With counsel Sh. Aditya Jain, Adv.

Stated that since after the filing of the present suit, the defendant No.2 has obtained an illegal entry in the suit property, I have already applied for her eviction under the Maintenance and Welfare of Parents and Senior Citizens Act 2007 before the District Magistrate, Ludhiana and on

account of said proceedings, I am not to continue with the present suit. The proceedings before the District Magistrate being special and summary proceedings, I am not to pursue with the present suit for the time being and withdrawn the same. However, I strongly deny the plea taken by defendant No.2 in her written statement. As such the present suit may kindly be dismissed as withdrawn and the order of status quo be discharged.

*Sd/- Shilpa Singh,
CJJD, Ldh, 06.04.2016”*

In order to buttress his arguments, he submitted that the necessity to withdraw the suit was owing to the fact that the respondent No.2 had already obtained illegal entry in the suit property, and, thus wanted to pursue the matter under the 2007 Act. He pointed that following proceedings were initiated at the instance of respondent No.2:-

1. Petition under Section 125 of Code of Criminal Procedure (Annexure P-16) dated 08.04.2016.
2. Petition under Section 12 of the Protection of Women from Domestic Violence Act of 2005.
3. Civil Suit (Annexure P-18) dated 27.05.2016 claiming the arrears of maintenance by creating a charge on gift deed dated 18.01.2016.

This Court in CRM-M No.32707 of 2016, vide order dated 16.09.2016, stayed the proceedings under the Domestic Violence Act against the petitioner and her wife. As per the provision of Section 27, the jurisdiction of the Civil Court for availing the remedy under 2007 Act is barred. In support of his contention, he has referred to the ratio decidendi

culled out by Division Bench of this Court *rendered in CWP No.24508 of 2015 in Gurpreet Singh Vs. State of Punjab and others, decided on 01.12.2015* and as well as Single Bench Judgment of this Court in *Balbir Kaur Vs. Presiding Officer-Cum-SDM, 2016(1) RCR (Civil) 653* to contend that in case it is found that daughter-in-law forcibly entered the house, in-laws are entitled to evict her by filing an application under Section 22 of Maintenance and Welfare of Parents and Senior Citizen Act, 2007.

Mr. Chadha, submitted that in case the husband and wife are living in a house owned by mother or parents of husband and where husband has shifted to some other place, wife is not entitled to live in the house. In this regard, reference to the judgment rendered in *S.R. Batra and another Vs. Smt. Taruna Batra, 2007(1) RCR (Civil) 378*, has also been made.

Judgment rendered by this Court in *Hamina Kang Vs. District Magistrate (UT) Chandigarh and others, 2016(1) RCR (Civil) 976*, was also referred, wherein this Court, while interpreting the provisions of 2005 Act i.e. Protection of Women From Domestic Violence Act and the present one i.e. Maintenance and Welfare of Parents and Senior Citizen Act, 2007, held that wife cannot claim, any right to live, in a house exclusively owned by mother-in-law or father-in-law. Share in the house does not include the share where aggrieved parties have lived in drastic relationship. Reference has also been made to ratio decidendi culled out by this Court in *Suman Vs. Tulsi Ram, 2015(1) RCR (Civil) 304* to submit that where house is exclusively belonging to father-in-law and husband of the daughter-in-law living separately, then daughter-in-law has no right to live in the house of the father-in-law.

In the last, he submitted that in a petition filed under Section 22, respondent No.2 did not file any detailed reply except taken objection qua maintainability of the petition. Impugned order of the District Magistrate is not sustainable in the eyes of law as it has been passed in most mechanical and erroneous manner, for, genesis of the findings is based upon the pendency of the Civil suit, which had, much earlier, been withdrawn and factum of the same is evident from the order extracted above, therefore, order is liable to be set aside on this ground only. He has also referred to the photographs (Annexure P-3) i.e. Video CCTV Footage whereby respondent No.2 trespassed into the house in question by scaling over gate, witnessed by Police Officer,, in essence, submitted that local Municipal Councilor and other police officials under the influence of the brothers of respondent No.2 are creating havoc into the life of the petitioner and his wife. It has become miserable to live in the house peacefully, in essence, respondent No.2 barged into the house without their consent as she has no right to live particularly when the son is living in the rented accommodation.

Per Contra, Mr. Namit Gautam, learned counsel appearing on behalf of respondent No.2 submits that petition is nothing but a gross abuse of the process of the Court. In fact, the whole controversy arose on birth of the girl child as parents wanted the boy to be born. Disinheritance allegedly was stated to be done on 20.03.2016 but prior thereto on 18.01.2016, husband executed gift deed of property situated at Pakhowal in favour of his mother. There is an apparent collusion between the husband and his parents. The husband and the petitioner do not peacefully reside with a minor daughter who is aged about one year old. In fact on 20.03.2016, there was

no forcible entry in the house, for, respondent No.2 had taken the minor child for getting treatment from the Doctor and when she was not allowed to enter the house, was compelled to scale over the gate of the house, that would not tantamount to forcible entry or trespass. He has also referred to news items (Annexure R-2/4), whereby the neighbourers staged the Dharna outside the house of the petitioner and the statement of Amit Sood dated 27.02.2016, qua decretal of the suit, wherein he had undertaken that he will never interfere into the peaceful possession of his father and mother over the house on the premise that he had taken residence on rent at House No.3, R.S. Puram, New Kitchlu Nagar, Ludhiana.

Had the incident of 2016, actually been taken place, there would have been reference to in the statement, much less, in the order dated 21.03.2016 (Annexure R-2/10), wherein, argument was that the respondent No.2 herein, was attempting to forcibly entering into the house. All these factors lead to a apparent collusion between the husband and the parents. Status of the respondent No.2, at this stage, is of destitute women. She has been left in lurch having no shelter or room to live in. Rent note is also manufactured document. No sane person get signatures of his wife, it was with an oblique motive to create evidence and thus urges this Court for dismissal of the writ petition with exemplary costs.

In support of his contention, he has relied upon ratio decidendi culled out by Division Bench of Delhi High Court in *Smt. Preeti Satija Vs. Smt. Raj Kumari and another*, 2014(2) RCR (Civil) 8, to contend that daughter-in-law has right of residence in sharehold house under Protection of Women from Domestic Violence Act of 2005, even if the house is owned

by her mother-in-law or father-in-law.

Mr. Dhindsa, learned counsel appearing on behalf of the husband has drawn the attention of this Court to Annexure R-10/1 filed alongwith written statement of respondent No.10 to contend that petition under Section 9 of the Hindu Marriage Act has been filed and matter is slated for filing written statement at the instance of respondent No.2. He also adopts the arguments made by Mr. Chadha, to lend support to the stand taken in the written statement.

Mr. Namit Gautam, Advocate has also drawn the attention of this Court regarding the affidavit of neighbour of respondent No.2 to support the submissions that respondent No.2 is residing in the house of the matrimonial home. Copy of which has been annexed herewith as Annexure R-2/7 (Colly).

I have heard learned counsel for the parties and appraised the paper book.

I find force and merit in the submission of Mr. Chadha, Advocate.

The judgment referred to by Mr. Chadha, are fully applicable to the facts and circumstances of the case.

In S.R. Batra's case (Supra), the Hon'ble Court had an occasion by taking into consideration the status of the wife for the purpose of sharing the household under the Protection of Women from Domestic Violence Act 2005, in a situation, where husband had been staying on a rented accommodation and as well as house belonging to the parents of the husband by holding that the wife would not be entitled to claim the right or

residence. Similarly ratio in the judgment referred in *Sangeeta Vs. Om Parkash Balyan and another*, 2015(3) RCR (Civil) 495, the factum of filing of the cases noticed above has not been rebutted or disputed. Even the complaint submitted to the police of the alleged harassment, much less, cruelty purported to be under Section 498-A has been found to be ingenuine not supported by any evidence. The factum of the husband having taken the rented accommodation has also been proved in the proceedings held by Deputy Commissioner, whereby Naib Tehsildar was deputed to record the statement of the various witnesses including landlord.

In my view, the order of the Deputy Commissioner lacks application of mind as civil suit had already been withdrawn on 06.04.2016 as owing to sufferance of statement, that since respondent No.2 had forcibly occupied the premises and as he did not want to continue with the suit instead to pursue the remedy available under Maintenance and Welfare of Parents and Senior Citizen Act, 2007. The footage in the shape of the photograph Annexure P-3 also reveals that respondent No.2 had made an attempt to scale over the gate of the house belonging to the petitioner and his wife which was done in the presence of one Head Constable and some other persons. Police is the custodian of the law and order, much less, the protector of the citizens, so that they can live and sleep in peace but in case the police indulges into such activities, involvement of the might cannot be ruled out. Conclusion report of the Assistant Commissioner of Police is the testimony that the respondent No.2 was not residing in the house. The petitioner has already availed the remedy and the proceedings qua petitioner have been stayed by this Court. In my view, the matter with

regard to the property is not pending in any of the Court, therefore, findings of the District Magistrate in declining the relief sought for eviction of the respondent No.2 from the property owned by the petitioner and his wife by holding the civil suit pending is totally misplaced and misconceived. The affidavit relied upon by the respondent No.2 regarding the status of the respondent No.2 being residing in the house is inconsequential as the questions raised before this Court is whether married daughter-in-law in the absence of the husband staying in the house of the parents can live in the house, much less, be evicted vis-a-vis the forcibly entry or having put up in rented accommodation. The news items qua holding of the Dharna outside the house has no relevancy for the adjudication of the lis in proceedings initiated under 2007 Act. As with regard to the submissions of Mr. Namit Gautam, Advocate qua apparent collusion of the husband with the parents vis-a-vis gift deed, civil suit is already pending which has nothing to do with the controversy in the present case, thus, would not be relevant for the adjudication of the present case. In Hamina Kang's case (Supra), this Court also dealt with the provisions of Protection of Women from Domestic Violence Act of 2005 and as well as Maintenance and Welfare of Parents and Senior Citizen Act, 2007 and held that wife cannot claim any right to live in a house exclusively owned by mother-in-law or father-in-law. Share in the house does not include the share where aggrieved party have live in a drastic relationship, so is the finding in Suman's case (Supra).

All these factors have not been taken care of.

Resultantly, order of District Magistrate is set aside.

Application of the petitioner seeking eviction of the respondent No.2 is

allowed. Respondent No.2 is granted one months time to vacate the premises i.e. House No.B-534/19 situated at Government College Road, Ludhiana, failing which the petitioner shall be at liberty to seek the execution of this order in accordance with law.

Accordingly, present writ petition is allowed.

31.01.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No