

CWP No.16916 of 2017

[1]

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

**CWP No.16916 of 2017
Date of decision:11.08.2017**

Surinder Kumar Aggarwal

...Petitioner

Versus

State of Punjab and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

**Present: Mr. R.S.Randhawa, Advocate,
for the petitioner.**

Rakesh Kumar Jain, J. (Oral)

The question involved in this case is as to whether a father-in-law, being a senior citizen, can maintain an application under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "Act") against his daughter-in-law for seeking her eviction from the property owned by him?

In brief, son of the petitioner, namely, Nitin Aggarwal was married to respondent no.5 Jaffy Garg on 26.07.2016. The petitioner has been unhappy with his son and had already disowned him on 05.12.2016. Thereafter, he filed an application under Section 22 of the Act to the Deputy Commissioner for seeking eviction of respondent no.5-daughter-in-law from House No.1611, Sector 69, SAS Nagar Mohali. The said application has been dismissed by the Deputy Commissioner by his order dated 07.06.2017, which is under challenge.

Counsel for the petitioner has submitted that the Deputy Commissioner has committed an error in dismissing the application though the

petitioner is a senior citizen and respondent no.5 is unauthorizedly occupying the premises.

I have heard learned counsel for the petitioner and perused the available record with his able assistance.

According to the scheme of the Act, application under Section 22 is filed by a senior citizen for the purpose of seeking eviction of an unauthorized occupant from the premises owned by him. It is provided in Section 22(2) of the Act that the State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens. In pursuance thereof, the State of Punjab has framed the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012 (hereinafter referred to as the "Rules"), in which Rule 23 provides that "*an action plan, for protection of life and property of senior citizens shall be notified by the State Government within a period of six months from the date of publication of these rules in the Official Gazette and it may be revised from time to time*".

Accordingly, the State of Punjab has provided an action plan, issued vide notification dated 27.11.2014 by the Department of Social Security (Disability Cell) published in the Punjab Government Gazette, Part 1, on March 13, 2015. This action plan has two parts. First part deals with the procedure for eviction from property/residential building of senior citizens/parents, in which the power has been delegated to the Deputy Commissioner and the second part deals with the duties of the police authorities, for which the power has been delegated to the Senior Superintendent of Police of each district. Insofar as the power of Senior

Superintendent of Police is concerned, it is for the purpose of looking after the well being of the senior citizens but for the purpose of passing an order of eviction, the power has exclusively been given to the District Magistrate. It is provided in Clause 1(iv) of the action plan that *“if the District Magistrate is of opinion that any son or daughter or legal heir of a senior citizens/parents are in unauthorized occupation of any property as defined in the Maintenance and Welfare of parents and Senior Citizens Act 2007, and that they should be evicted, the District Magistrate shall issue in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her”*.

The definition of 'son' and 'daughter' is very well known but the term 'legal heirs' is required to be understood. In the Act, the definition of 'legal heirs' is not provided but it is there in Section 2(11) of the Code of Civil Procedure, 1908 to mean that *“a person who in law represents the estate of a deceased person, and includes any person who intermeddles with representative character the person on whom the estate devolves on the death of the party so suing or sued”*. The legal heir/legal representative is, thus, the person to whom the property of the petitioner would devolve. In this case, since the petitioner is a male Hindu, therefore, if he dies intestate, then as per Section 8 of the Hindu Succession Act, 1956 (hereinafter referred to as the “Act of 1956”), his property will devolve firstly, upon the heirs, being the relatives specified in Class I of the Schedule, secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Schedule; thirdly, if there is no heir of any of the two classes, then upon his agnates and lastly, if there is no agnate, then upon the his cognates. The

Schedule provided in Section 8 of the Act of 1956 described two classes of heirs, i.e. Class I and Class II and daughter-in-law is neither a Class I nor a Class II heir. Similarly, she also does not fall within the definition of agnates and cognates because a person is said to be an agnate of another if the two are related by blood or adoption wholly thorough males and a person is said to be a cognate of another if the two are related by blood or adoption but not wholly through males. The daughter-in-law does not stand anywhere in the hierarchy of heirs either in Class I or Class II or agnates or cognates.

It would have been an altogether different situation if she has been a widow as the widow of a pre-deceased son is definitely a Class I heir as per the Schedule provided in the Act of 1956. In this case, respondent no.5 is a married woman and her husband is alone, therefore, the application filed against her in terms of the action plan, which has to be decided by the Deputy Commissioner, is not maintainable as the said application is maintainable only against a son, daughter or legal heir of a senior citizen.

Consequently, the question posed in the beginning is answered in affirmative by holding that a father-in-law cannot maintain an application for seeking eviction of his daughter-in-law in terms of Section 22 of the Act.

In view of the above, the present petition is hereby dismissed being denuded of any merit, though without any order as to costs.

August 11, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No