

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 23956 of 2015

Date of decision : September 4, 2017

Balwinder Singh

..... Petitioner

Versus

The District Magistrate and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. A. D. S. Jattana, Advocate
for the petitioner.

Mr. Parminder Singh Kanwar, Advocate
for respondent No.1.

RAKESH KUMAR JAIN, J (oral).

The petitioner is aggrieved against the order dated 24.9.2015 (Annexure P-4) passed by the District Magistrate, Chandigarh by which application filed by respondent No.2 under Sections 21 & 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act') and Chandigarh Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 has been allowed and the petitioner has been directed to vacate H.No.897, Mohalla Tarkhana, Mani Majra, U.T.Chandigarh.

Counsel for the petitioner has submitted that respondent No.2 has claimed title over the property in question on the basis of a sale deed dated 1.5.2007 purported to have been executed in his favour by Ranjit Singh son of Waryam Singh, identified as H.No. 897, Mohalla Tarkhana, Mani Majra, U.T.Chandigarh.

Suit No. 76 of 2001 against the U.T. Administration and the petitioner for seeking permanent injunction restraining defendant Nos. 1 and 2 in that suit not to transfer, mortgage, alienate or sell house (Old No. 897) New No.848/1 situated in Mori Gate, Manimajra, Chandigarh. The said suit was dismissed on 1.12.2006 by the Civil Judge (Jr. Divn.), Chandigarh in which he has observed that though Ranjit Singh has claimed ownership over the suit property but apart from his own statement, no other evidence has been led to prove as to how the said property came to him.

It is further submitted that petitioner filed a Civil Suit No.2304 of 2009 against his father Ranjit Singh and respondent No.2 seeking declaration that the sale dated 1.5.2007 executed by Ranjit Singh in favour of Darshan Singh (respondent No.2) is illegal. In the said suit respondent No.2 had also filed a counter claim seeking declaration that he became the owner of the suit property by virtue of sale deed. The Civil Court held that the property in question is not tallying with the property mentioned in the sale deed and as such the counter claim filed by respondent No.2 was dismissed. It is observed that there is a clear cut confusion regarding the identity of the suit property mentioned in the sale deed Ex. DW-2/A and the plaint. As such, the counter claim has been declined but not on the grounds as averred by the plaintiff. Finally, this suit was dismissed. Issue No.7 was decided with the following observations:-

“On the basis of my detailed findings on the above said issues, since the parties have failed to prove the identity of the suit property being same as that of property mentioned in the sale deed under challenge, the suit of the plaintiff is dismissed.”

It is further submitted that the suit property is identified by

petitioner as H.No.897 Mohalla Tarkhana, Mani Majra, U.T.Chandigarh whereas respondent No.2 has allegedly purchased the suit property bearing H. No. 897 in old abadi.

Be that as it may, respondent No.2 had filed an application in terms of provisions of the Act of 2007 and the Rules of 2009 referred to above, for seeking eviction of the petitioner from the house allegedly owned by him in terms of the sale deed. In the said application, the petitioner denied the title of the suit property on the basis of the decision rendered in the earlier two suits, referred to above. However, the District Magistrate, sought information from the Municipal Corporation, Chandigarh about the property in question and after receiving the information from the office of the Superintendent, Municipal Corporation, Chandigarh about the property in question it was found that the property in question was the same which was purchased by respondent No.2 and then passed the order of eviction.

Counsel for the petitioner has raised three issues in this case:

i) As to whether the District Magistrate can return the finding while deciding the matter in summary proceedings, over and above the finding recorded by the civil court, passed on the basis of evidence lead by the parties?

ii) Whether the District Magistrate has passed the order of eviction of the petitioner while following the provisions of Rule 20 of the Rules, 2009?

iii) Whether the application filed by respondent No.2 for protection of life and property was maintainable

against a stranger?

Insofar as the first question is concerned, respondent No.2 has claimed title over the property in question on the basis of sale deed dated 1.5.2007. The said sale deed was executed by father of the petitioner who had filed a suit for permanent injunction against the U.T. Administration and his son (petitioner) in respect of the property in question to restrain them from interfering in the same. The said suit for injunction was dismissed with a specific observation/finding that the father of the petitioner, though claiming himself to be owner of the said property led no evidence except his statement to prove the ownership. The second suit was filed by the petitioner in which he impleaded his father and Darshan Singh-respondent No.2 because he was aggrieved against the title being claimed by Darshan Singh over the property on the basis of a sale deed, purported to have been executed by his father on 1.5.2007. Respondent No.2 had also denied the counter claim to seek similar declaration that he had become owner of the suit property by virtue of sale deed. The civil court after allowing the parties to lead evidence was confused about the identity of the property because neither the petitioner could prove the exact identity of the property nor respondent No.2. The counter claim set up was thus, dismissed on this ground and ultimately the suit was also not decreed in confusion. The fact remains that the civil court failed to come to the conclusion that as to whether both the parties are referring to the same property which is allegedly purchased by respondent No.2 from respondent No.1. Thus, in my considered opinion, as far as the first question is concerned, there is no evidence on record to prove the title in a summary manner.

So far as the second question, as to whether the District

Magistrate has followed Rule 20 of the Rules of 2009 for the purpose of deciding the application is concerned, it would be relevant to refer to Rule 20(3) (1) & (2) of the Rules of 2009.

ACTION PLAN FOR THE PROTECTION OF LIFE AND PROPERTY OF SENIOR CITIZENS (1) The Senior Superintendent of Police shall take all necessary steps, subject to such guidelines as the State Government may issue from time to time, for the protection of life and property of senior citizens.

2. Without prejudice to the generality of sub-rule (I),-

(i) each Police Station shall maintain an up-to-date list of senior citizens living within its jurisdiction, especially those who are living by themselves (i.e. without there being any member in their household who is not a senior citizen).

(ii) a representative of the police station together, as far as possible with a social worker or volunteer, shall visit such senior citizens at regular intervals of at least once a month, and shall in addition, visit them as quickly as possible on receipt of a request of assistance from them.

(iii) complaints/problems of senior citizens shall be promptly attended to, by the local police.

(iv) one or more Volunteers Committee(s) shall be formed for each Police Station which shall ensure regular contact between the senior citizens especially those living by themselves on the one hand and the police and the district administration on the other.

(v) the Senior Superintendent of Police shall

cause to be publicized widely in the media and through the Police Stations, at regular intervals, the steps being taken for the protection of life and property of senior citizens.

(vi) each Police Station shall maintain a separate register containing all important particulars relating to offences committed against senior citizens in such form as the State Government may, by order, specify.

(vii) the register referred to in clause (vi) shall be kept available for public inspection, and every officer inspecting a Police Station shall invariably review the status as reflected in the register.

(viii) the Police Station shall send a monthly report of such crimes to the Senior Superintendent of Police by the 10th of every month.

(ix) list of Do's and Don'ts to be followed by senior citizens in the interest of their safety will be widely publicized.

(x) antecedents of domestic servants and others working for senior citizens shall be promptly verified, on the request of such citizens.

(xi) Community policing for the security of senior citizens will be undertaken in conjunction with citizens living in the neighborhood, Residents Welfare Associations, Youth Volunteers, Non-Government Organizations. etc.

(xii) the Senior Superintendent of Police shall submit to the Inspector General of Police and to the District Magistrate, a monthly report by the 20th day of every month,

about the status of crime against senior citizens during the previous month, including progress of investigation and prosecution of registered offences, and preventive steps taken during the month.

(xiii) the District Magistrate shall cause the report to be placed before the State Level Coordination-cum-Monitoring Committee constituted under rule 22.

(xiv) The Inspector General of Police shall cause the reports submitted under clause (xii) to be compiled once a quarter, and shall submit them to the State Government every quarter as well as every year for, inter alia, being place before the State Council of Senior Citizens constituted under rule 21.

3 (1) Procedure for eviction from the property/residential building belonging of Senior Citizen/Parents._

(i) Complaints received (as per provisions of the Maintenance of Parents and Senior Citizen Act. 2007) regarding life and property of Senior Citizens by different Depanment i.e. Social Welfare, Sub Divisional Magistrates, Police Department, NGOs,/Social Workers. Helpline for Senior Citizens and District Magistrate himself, shall be forwarded to the District Magistrate, Union Territory, Chandigarh for further action.

(ii) The District Magistrate shall immediately forward such complaints, application to the concerned sub Divisional Magistrates for verification of the title of the property and facts of the cases through Revenue Department, concerned Tehsildars within 15 days from the date of receipt of

such complaints/application.

(iii) The Sub Divisional Magistrates shall immediately submit his/her report to the concerned District Magistrate for final orders within 21 days from the date of receipt of the complaint/application.

(iv) If the District Magistrate is of the opinion that any son or daughter or legal heir of a senior citizen/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-cum-Estate Officer 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 notice Shall

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be in occupation of, or claim interest in, the property/premises, to show cause, if any against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issued thereof.

(c) The District Magistrate shall cause the notice to be served by having it affixed on the outer door or at some other conspicuous part of the public premises and in such other

manner as may be prescribed. whereupon the notice shall be deemed to have been duly given to all persons concerned

3 (2) Eviction Order from property/residential building of Senior Citizen/parents.

(i) if after, considering the cause, if any, shown by any person in pursuance to the notice and any evidence he/she may produce in support of the same and after giving him/her a reasonable opportunity of being heard, the District Magistrate is satisfied that the property/premises are in unauthorized occupation, the District Magistrate or other officer duly authorized may make an order of eviction, for reasons to be recorded therein directing that the property residential building shall be vacated, on such date as may be specified in the order by all persons who may be in occupation of any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part to the public premises;

(ii) District Magistrate may also associate NGOs/Voluntary organizations,/social workers working for the welfare of senior citizens for the enforcement of orders.

3(3) Enforcement of Orders:-

(i) If any person refuses or fails to comply with the order of eviction within thirty days from the date of its issue, the District Magistrate or any other officer duly authorized by the District Magistrate in this behalf may evict that person from the premises in question and take possession;

(ii) The District Magistrate, U.T. Chandigarh shall have powers to enforce the eviction orders through Police Department.

(iii) The District Magistrate, U.T., Chandigarh further handover the property/premises in question to the concerned Senior Citizens/Parents.

(iv) The District Magistrate, U.T. Chandigarh shall forward monthly report of such cases to the Social Welfare Department by 7th of the following month for review of such cases in the State Council for Senior Citizens constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rules of 2009 framed under the said Act under the Chairmanship of the Secretary Social Welfare Chandigarh Administration.”

Insofar as, Section 20 (2) of the Act is concerned, it prescribes for an action plan for providing protection of life and property of Senior Citizens. Though, the States of Punjab and Haryana have provided separate action plans besides the Rules but the U.T. Administration has only provided the rules under which the action plan has also been made a part of it. Chapter 6 of the Rules deals with the Action Plan for protection of life and property of senior citizens. The procedure of eviction from the property/residential house belonging/occupied of a Senior citizen is provided therein and power has been given solely to the District Magistrate for this purpose. It is also provided therein that the District Magistrate, as soon as he receives the complaint/application, would forward the same to

the Sub Divisional Magistrate for verification of the facts and after receiving the report, if his/her son/daughter or legal heirs are in unauthorized occupation of the property then he would call upon them to show cause and thereafter pass an order of eviction accordingly.

In the present case, it is alleged that the District Magistrate received an application through H. S. Ranga (retd.) of Senior Citizens Organization which was duly signed by respondent No.2.

Rule 3(1) (ii) provides, that after receiving the said complaint, the Magistrate shall immediately forward such complaints/applications to the concerned Sub Divisional Magistrate for verification of the title of the property and facts of the case within 15 days from the date of receipt of such complaint/application. The Sub Divisional Magistrate shall immediately submit its report to the District Magistrate for final orders within 21 days from the date of receipt of the complaint/application. The time prescribed under Rule 3 (1) (ii) is 15 days for the District Magistrate to forward the application to the Sub Divisional Magistrate and 21 days in Rule 3 (1) (iii) by the Sub Divisional Magistrate to submit the report to the District Magistrate to avoid any unwanted hardship to the senior citizens. Thereafter Rule (3) (iv) further provides that if the District Magistrate is of the opinion that any son or daughter or legal heir of a senior citizen/parents are in unauthorized occupation of any property then he would issue a notice in writing calling upon all persons to show cause as to why an order of eviction should not be passed against them/him/her. Rule 3 (1) (v) further provides as to what the notice shall contain. Insofar as clause (a) is concerned it provides the grounds on which the order of eviction is proposed to be made. Clause (b) further provides

that it require all persons concerned who are, or may be in occupation of, or claim interest, in the property/premises to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof. Meaning thereby that atleast ten days time be given to the person to whom the show cause notice is issued. Clause (c) provides that the District Magistrate shall cause the notice to be served by having it affixed on the outer door or at some other conspicuous part of the public premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

After this procedure is followed then the District Magistrate would consider the evidence given by the person to whom the show cause notice has been given and after giving reasonable opportunity of being heard, if the District Magistrate is satisfied that the property is in unauthorized occupation, can pass the order directing that the building be vacated on such date as may be specified in the order.

In the present case, the aforesaid procedure has not been followed because the title in this case is in dispute, much less the identity of the property in question and the District Magistrate has simply asked the Municipal Corporation to bring the record, though it is a matter of enquiry which is to be held by the Sub Divisional Magistrate concerned. Therefore, the second issue is also decided in favour of the petitioner holding that the procedure prescribed in Rule 20(3) (1) & (2) has not been followed by the District Magistrate.

Insofar as the third question is concerned as to whether the impugned order could have been passed against a stranger, as per the

scheme of the Act and the rules, the order of eviction can only be passed against the son/daughter or legal heir of the senior citizen. There is no requirement to define as to who would be the son/daughter but insofar as the legal heir is concerned it is defined in Section 2(J) of the CPC in which it is provided that the legal heir means any person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased. In the present case, respondent No.2 is not the son of Ranjit Singh rather he claims that he became owner because he has obtained title after paying due consideration. Inasmuch as the application filed at his instance is concerned the same is not maintainable in terms of Rule 21 & 22 read with Rule 20(3) (1) & (2). The third question is thus, answered in favour of the petitioner.

Now, there would be another question as to whether in such circumstances, where a person who purchases the property and is a senior citizen and is not in a position to proceed against the un-authorized occupant of the property because he is neither a son/daughter or legal heir, has a remedy. In my considered opinion, the only way out for such a person is to file a suit for possession on the strength of title in the property. Respondent No.2, if so advised, may resort to such remedy, however, insofar as the present petition is concerned the same is hereby allowed and the impugned order is set aside.

(RAKESH KUMAR JAIN)
JUDGE

September 4, 2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No