

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

**CWP No.26619 of 2016
Date of Decision.18.01.2017**

Harvinder Singh

.....Petitioner

Vs

District Magistrate, Mini Secretariat, Patiala and another

..... Respondents

Present: Mr. Puran Chand Arora, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner is aggrieved of the impugned order passed by the District Magistrate entertaining the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 whereby the petitioner has been directed to hand over the possession of the house to the widowed mother within 30 days.

The case of the petitioner is that the mother Jaswinder Kaur widow of late Gurdeep Singh out of love and affection transferred the property by way of Vasika No.15973 of 22.01.2013 in his name. However, the aforementioned application was moved on 04.11.2015 before the District Magistrate for cancellation of the mutation on the premise that the conditions of Section 4 of the Act were not fulfilled.

Learned counsel appearing for the petitioner submits that the sale deed (Annexure P-4) does not mention about the factum of any love and affection and therefore, the Magistrate did not have the jurisdiction to entertain the application under 2007 Act as the remedy was elsewhere at the

Civil Court.

He further submits that the civil suit at the instance of other son i.e. the brother of the petitioner (Annexure P-3) is stated to be pending claiming declaration that all the parties are owners including this property and another property and also for partition and rendition of accounts, thus, the order under challenge for handing over possession, in the absence of the challenge to the sale deed, in essence, the petitioner being the owner, is not sustainable/legally maintainable.

I have heard learned counsel for the petitioner and appraised the paper book. No doubt, the sale deed does not mention about the love and affection but it is the duty of the son to provide all the amenities to the widowed mother.

Learned counsel appearing for the petitioner also submits that the property in question, much less, the other property were built up from the compensation received on account of death of the father of the petitioner, hence the mother was not actual owner.

If the aforementioned argument of the petitioner is accepted, all the siblings would have the equal shares including the Jaswinder Kaur, widowed mother. In this regard, the suit is pending and the petitioner can set up a claim of ownership by virtue of sale deed by way of counter-claim and claim all other reliefs which are available but not in the manner and mode as indicated above. In case, any counter-claim is set up, the findings given by the Magistrate will not come in the way of the petitioner. It could be considered only for the purpose of adjudication of the application under Section 4 of 2007 Act.

Keeping in view the aforementioned, I do not find any ground

for interference with the order under challenge, much less, judicial review.

The writ petition is dismissed.

(AMIT RAWAL)
JUDGE

January 18, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No