

CWP No.23784 of 2017

[1]

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

**CWP No.23784 of 2017
Date of decision:13.10.2017**

Ram Saroop Walia

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Vikas Cuccria, Advocate,
for the petitioner.

Rakesh Kumar Jain, J. (Oral)

The petitioner has challenged the order of the District Magistrate, Panchkula, dated 12.09.2017, by which his application filed under Section 22(2) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "Act") has been dismissed.

In brief, the petitioner is a senior citizen and respondent no.3 is his daughter-in-law, against whom he has filed the application for seeking her eviction from his house, which is allegedly owned by him.

Counsel for the petitioner has submitted that the petitioner has even disowned his son Vivek Walia, husband of respondent no.3, who is causing a lot of inconvenience to him while living in the same house and, therefore, he had filed the application for her eviction in order to live rest of his life in peace.

I have heard learned counsel for the petitioner and examined the

available record with his able assistance.

The application by a senior citizen under Section 22(2) of the Act is not maintainable against the daughter-in-law if the husband of that woman is alive. The reason is very simple as the application under Section 22(2) of the Act has to be filed in terms of the action plan. In case of Haryana, the action plan has been specifically notified, as per which the responsibility of protection of life of a senior citizen is given to the Senior Superintendent of Police concerned and insofar as protection of his property is concerned, the District Magistrate concerned has been made liable for it. In case where a senior citizen seeks to evict a person in occupation of his premises against his wishes, he has to approach the District Magistrate by making a complaint. After the complaint is received, the District Magistrate has to refer the complaint, within 15 days, to the Sub Divisional Magistrate for seeking verification of title. The Sub Divisional Magistrate, in turn, has to report about verification of title of the concerned property to the District Magistrate within 21 days. Thereafter, if the District Magistrate is of the opinion that the son, daughter or legal heir of the senior citizen is in unauthorized occupation of his/her property, much-less against his/her wishes, then he, after affording an opportunity of hearing to the said person, can pass an order of his/her eviction.

The Legislature has specifically used the words “son, daughter and legal heirs”. Insofar as the definition of 'son' and 'daughter' are concerned, it is very well known and not disputed but the definition/term of '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.3 is a married woman and her husband is alive, therefore, the application filed against her in terms of the action plan has rightly been dismissed by the District Magistrate because the application

by itself was not maintainable against the daughter-in-law, whose husband is still alive, as the said application is maintainable only against a son, daughter or legal heir of a senior citizen.

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

October 13, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No