

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

**CWP No.7358 of 2016
Date of decision:23.02.2017**

Virender Singh and others

... Petitioners

Vs.

District Magistrate Rohtak and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sharad Aggarwal, Advocate
for the petitioners.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

Mr. S.S.Lamba, Advocate
for respondent No.3.

AMIT RAWAL J. (Oral)

The instant writ petition is instituted by Virender Singh and others, i.e., son, daughter-in-law and grandson of respondent No.3 – Shanti Devi, aged 87 years which has arisen out of the proceedings initiated by respondent No.3 under Section 3 of the Maintenance and Welfare of Parents and Senior Citizens, Act 2007 (hereinafter referred to as “2007 Act”), whereby, she had sought the eviction of the petitioners from House No.247/29 Ramgopal Colony, Rohtak.

The respondent-complainant in a complaint averred that she has six daughters, one son and her husband, Jagbir Singh died of malignancy/cancer, who, as per the registered Will dated 7.10.2010, bequeathed the entire property in her favour, whereas, the petitioners, herein, are the residents of Australia and whenever they come to India, they threatened her and do not allow her relatives to enter into house due to which she is facing great hardship. In fact, her life and liberty to live with security and dignity are at stake. In the proceedings initiated by Sub-Divisional Magistrate, who on the basis of the statement suffered by petitioner No.1-Virender Singh, regarding giving ground floor to his mother, disposed of the petition. The aforementioned finding was assailed by filing an appeal before the Deputy Commissioner, who vide order dated 27.01.2016 while accepting the appeal directed the petitioners to handover the vacant possession of aforesaid house to respondent No.3 within 30 days.

Mr. Sharad Aggarwal, learned counsel appearing on behalf of the petitioners submits that no doubt, the Will aforementioned, executed by late Jagbir Singh is in existence but the fact remains that during his life, he had executed a gift deed (Annexure P-4) in respect of the property in favour of his grandson, petitioner No.3, thus, the finding of the District Magistrate by taking into consideration the mutation on the basis of the Will is wholly erroneous and perverse. The registered document has conferred a title on petitioner no.3 and therefore, the jurisdiction could not have been invoked and the parties were required to be relegated to the Civil Court for

adjudication of the lis.

Mr. Sharad Aggarwal, on instructions from his client/ petitioner no.1- Virender Singh, who is present in the Court, submits that he is willing to provide all the facilities to his old ailing mother, like car, ground floor etc., thus, the order under challenge is liable to be set aside.

Per contra, Mr. S.S.Lamba, learned counsel appearing on behalf of respondent No.3 submits that there is a categoric averment in the complaint of using the premises as godown and the factum of Australian Citizen has not been denied, in view of the statement recorded by Sub-Divisional Magistrate extracted in the order of District Magistrate which reads as under:-

“Stated that the house measuring 420 sq. yards have been gifted by my father Sh. Jagbir Singh to his grandson Rohit Nagpal vide gift deed No.6699 dated 03.10.2013 (Copy enclosed. Therefore, the real owner of the house is Rohit Nandal. Sub Divisional Magistrate did not issue notice to Rohit Nandal and the said gift deed No.6699 dated 03.10.2013 was in possession of Rohit Nandal. He is owner in possession of the said house and no notice has been issued to him even in appeal. This is our family matter and my mother has been staying in this house peacefully for many years. After the death of my father I left my job to take care of my mother and have stayed alone from March, 2014 to January 2015. During this

time my wife Seema Nandal was living in Australia and my mother had no complaint till January 2015 and she was very happy. I went to Australia for 3 months on 12.01.2015. At my back, in March, 2015 she left the house under the influence of some people and I had to arrange for the security of the vacant house from Melbourne. Now there are no. of allegations being leveled against me. As per the order of Sub Divisional Magistrate dated 11.09.2015, I vacated the ground floor of the house but my mother never turned up. My mother under the influence of other have been filing false complaints against us and thus helping others grab out family property illegally. We are residents of Australia and visit India every now and then. Therefore, in the proceedings of the frivolous complaints made by my mother we are losing out precious time and money which is also resulting into mental agony. Therefore, we pray before you to bring this litigation to an end.”

In support of his contention, he relies upon the the judgments rendered by the Hon'ble Division Bench of this Court in **Gurpreet Singh vs. State of Punjab and others 2016(1) RCR (Civil) 324** and as well as un-reported judgment rendered by LPA Bench in **Justice Shanti Sarup Dewan, Chief Justice (retired) and another vs. Union Territory, Chandigarh and others** in LPA No.1007 of 2013 on 26.09.2013 to contend

that if at all, the petitioners are claiming any right on the basis of the Will, they can seek declaration in the Competent Court and until and unless that right is not determined, they cannot occupy the premises, for, today their status is not of a licensee subject to the outcome of the finding of the Civil Court and thus, urges this Court for affirming the findings under challenge.

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

During the course of hearing, Mr. Sharad Aggarwal, Advocate has passed on vernacular copy of the registered Will dated 07.10.2010 executed by Jagbir Singh. I have gone through the contents of the Will which revealed that the property situated in Mumbai has been bequeathed to Virender Singh, whereas, all other immovable properties, during his life time, have been given/bequeathed to respondent No.3- Shanti Devi. The law of bequeathing the ownership during life time of the widow is no longer *res integra*, keeping in view the provisions of Section 14(1) of Hindu Succession Act which has extensively been debated upon by many Courts and as well as by the Hon'ble Supreme Court in **Jupudy Pardha Sarathy vs. Pentapati Rama Krishna and others 2016(2) SCC 56.**

Thus, for all intents and purposes, respondent No.3, in view of the aforementioned Will, has become an absolute owner of the property. If at all, the petitioners have any grievance qua ownership of the property and mutation, as mutation does not confer any title because it is only for fiscal

purposes, they are at liberty, particularly petitioner no.3 being donee to claim declaration on the basis of the aforementioned Will, in respect of the gift deed but till then, they cannot retain the premises owing to allegations made in the complaint which I do not intend to delve further as sanity and wisdom may dawn upon the parties, particularly on the petitioners during the rest of the life or at any point of time and the differences of the discord is reduced/settled. The Haryana Government has already framed Rules, i.e., The Haryana Maintenance of Parents and Senior Citizens Rules, 2009 and Rule 23 envisages a power to the District Magistrate to ensure the life and liberty of the senior citizens of the district to be protected so that they are able to live with safety and dignity. Even an Action Plan has also been notified in the State of Haryana vide notification dated 26.05.2015 wherein the procedure for eviction from property/residential building of senior citizens has been prescribed. For the sake of brevity, the relevant Rules read as under:-

“1. Procedure for eviction from property/residential building of Senior Citizens/ parent:

- (i) Complaints received (as per provisions of the Maintenance of Parents and Senior Citizens Act, 2007) regarding life and property of Senior Citizens by different Department NGOs/Social Worker, Helpline for Senior Citizens and District Magistrate himself, shall be forwarded to the District Magistrate of the concerned district for further action.*
- (ii) The District Magistrate shall immediately forward such complaints/ applications to the concerned Sub Divisional*

Magistrates for verification of the title of the property and facts of the case through revenue department/concerned Tehsildars within 15 days from the date of receipt of such complaint/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 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 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.

(v) The Notice shall:- (a) Specify the ground 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 issue 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/served to all persons concerned.

2. Eviction Order from property/residential building of Senior Citizens/Parents:

(i) If, after considering the cause, if any, shown by any persons 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 of the public premises;

(ii) The District magistrate may also associate NGOs/ Voluntary organizations/ social workers working for the welfare of senior citizens for the enforcement of eviction order;

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, of the concerned district shall have powers to enforce the eviction orders through the Police Department.

Iii) The District Magistrate, of the concerned district shall

further arrange to handover the property/premises in question to the concerned Senior Citizens/parents.

iv) The District Magistrate, of the concerned district shall forward a monthly report of such cases to the Director General, Social Justice & Empowerment Department Haryana, Chandigarh by 7th of the following month for review of such cases in the State Council for Senior Citizens constitute 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 Hon'ble Minister of Social Welfare, Haryana.”

The period of 30 days has been prescribed for eviction. In Gurpreet Singh's case (supra), the Hon'ble Court had an occasion to hold that right of son to seek the remedy in Civil Court cannot be taken away but for the time being, his status would be of licensee. Even in the judgment rendered in Justice Shanti Sarup Dewan's case supra, the Honble Division Bench had also given similar right to the son but in the meanwhile, had been ordered to vacate the premises. The enforcement of orders and actions related to police department have also been incorporated, thus, I would refrain myself on commenting upon the relief intended to be sought in a Civil Court as it would be domain of the Civil Court but for the time being the petitioners cannot be permitted to retain the premises and therefore, liable to vacate the same.

Resultantly, the order of the District Magistrate granting the eviction is hereby upheld. The period of 30 days is granted to the petitioners to vacate the aforementioned premises subject to the observations made herein-above.

Accordingly, the writ petition stands dismissed.

In case, the aforementioned eviction order is not respected and regarded, in essence, the petitioners do not vacate the premises, the procedure prescribed within the Action Plan regarding the enforcement of the order shall follow.

(AMIT RAWAL)
JUDGE

February 23, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No