

CWP No.2330 of 2018

Gurpreet Kaur
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high court

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

CWP No.2330 of 2018

Date of Decision: 05.02.2018

Sharmila

....Petitioner

Versus

State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Surinder Singh Duhan, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for set asiding impugned order dated 10.01.2018 (Annexure P-3) passed by the Presiding Officer-cum-Sub Divisional Magistrate, Jind, District Jind, whereby, the petitioner has been ordered to vacate House No.3883, Urban Estate, Jind, within a period of one month as per provisions of Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (here-in-after referred to as `the Act, 2007)

Respondent no.4-Phool Kumari is mother-in-law of petitioner-Sharmila. An application was moved by Phool Kumari under Section 22 of the Act, 2007 before Sub Divisional Magistrate, Jind for getting House No.3883, Urban Estate, Jind, vacated, stating therein, that being an old lady of 77 years, she comes under the category of senior citizen. Said house was purchased by her from her own income and the payment was made from her retiral benefits. Reply of said application was filed by the petitioner stating that her husband died due to *Ulcer* and the house, in dispute, was

purchased from the joint Hindu account and also from the income of deceased husband out of agriculture proceeds. Even huge amount was spent to renovate the house from her own resources. The application filed by respondent No.4 was allowed vide order dated 10.01.2018 and the order for vacating the house, in dispute, within a period of one month was passed.

Said order dated 10.01.2018 has been challenged by the petitioner by raising various grounds.

Learned counsel for the petitioner submits that the petitioner does not fall under the definition of Children and Relative as defined under Section 2(a) and 2(g) of the Act, 2007 being widow of son of respondent No.4 and as such, the provisions of Act, 2007 are not applicable. Learned counsel also submits that it is the duty of the District Magistrate to see as to whether the life and property of the senior citizens is protected to the extent that they are able to live with security and dignity. It is also the argument of learned counsel for the petitioner that respondent No.4 is residing in different house for the last more than 20 years along with her husband and in such circumstances, it cannot be said that there is any danger to the property of senior citizen and protection is required to save the property. Respondent no.4 and her husband are retired government servants and they are peacefully residing in different house. Petitioner herself is being harassed by respondent No.4 after the death of her husband on 13.05.2016 and the petitioner is entitled for 50% share in the property left by her husband. At the end, learned counsel for the petitioner submits that the application moved by respondent No.4 is the misuse of process of law and the impugned order has been passed contrary to the provisions of law. Provisions of Act, 2007 which are not attracted in the present case.

Notice of motion.

Notice on behalf of Caveator has been accepted by Mr. Sanjay Kumar, Advocate, who submits that the petitioner has concealed the material facts from the Court and the present petition is liable to be dismissed on the ground of concealment and misrepresentation. Petitioner (daughter-in-law) has remarried and various litigations are pending between the parties. Even at the time of hearing of the application, the petitioner could not produce any document to show that the house, in dispute, was purchased by her or out of joint income.

Heard the arguments of learned counsel for the parties and have also perused the impugned order as well as other documents available on the file.

Facts are not disputed. The application moved by respondent No.4 under Section 22 of the Act, 2007 was allowed vide order dated 10.01.2018 and order for vacation of house, in dispute, within a period of one month was passed. The findings recorded by the Presiding Officer-cum-Sub Divisional Magistrate, Jind are reproduced as under :-

“ I have carefully perused the file and have heard both the parties personally. The file has been perused and after hearing both the parties, I came to the conclusion that applicant Phool Kumari aged 77 years has purchased house No.3883, Urban Estate, Jind from the benefits received on her retirement, which is self acquired property, whose registration is in the name of applicant Phool Kumari, vide Deed No.548 dated 19.05.1998. Whose photocopies is available on the file. From this, it clearly proves that applicant is having complete right over this property.

Respondent has not produced any type of evidence

that at the time of purchase of this house she was given any help. Respondent has not proved that this property H.No.3883, Urban Estate, Jind came to the share of her husband under the ancestral property and respondent could not be able to prove that the above said house came to her share under the family settlement. Now respondent has solemnized second marriage. Under the provisions of this Act, Senior Citizen can file application for protection of person and property against the concerned that relative and person, from whom he apprehend loss. Hon'ble High Court in 2015(6) PLJ 83, 2016 (2) PLJ page 641 para No.19 and 20 and Punjab Law Reports 139 para No.28 and 42 has provided that any senior citizen can file an application for protection of person and property against the person who is causing the loss. Therefore, the above mentioned ruling is fully applicable to this case. Whereas, with regard to the pendency of the rent case in this regard before the Civil Court, Jind, there is no effect on this case under the provisions of Section 22 of this Act. Therefore, finding no force in the averments of the respondents, while accepting the application of the applicant, I passed the order that the respondent shall vacate the above said house No.3883, Urban Estate, Jind within one month. Whereas, no further action is required on the file, the file be consigned to record room and one-one copy of the order is given to both the parties. Order is pronounced in the Court in the presence of both the parties.”

It is apparent from the said order that the house, in dispute, was purchased by respondent No.4 and the same is her self-acquired property. Petitioner could not produce any evidence to show that any amount was paid by her at the time of purchase of that house. Even it could not be proved on record that the husband of the petitioner was having any share in that property or any family settlement was there between the parties.

Section 22 of the Act, 2007 is relevant for resolving the present controversy, which is reproduced as under :-

“22. Authorities who may be specified for implementing the provisions of this Act.-(1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.”

Chapter V of the Rules 2009 is also relevant which provides the duties and powers of District Magistrate. Rule 23(2)(i) is reproduced as under :-

“23. Duties and power of the District Magistrate. (Section 19 and 22). - (1) The District Magistrate shall perform the duties and exercise the powers mentioned in sub-rules (2) and (3) so as to ensure that the provisions of the Act are properly carried out in his district.

(2) It shall be the duty of the District Magistrate to -

(i) ensure that life and property of senior citizens of the district are protected and they are able to live with security and dignity.”

The object of the Act, 2007 and Rules 2012 is to ensure that in case, a children or a relative neglects or refuse to maintain a senior citizen

being unable to maintain himself/herself then on being satisfied of such neglect or refusal, the authority has the power to order such children or relative to maintain the senior citizen.

During hearing of the application moved by respondent No.4, the petitioner could not produce any type of evidence to show that at the time of purchase of that house, any financial assistance was given to respondent No.4. Even it could not be proved that the house, in dispute, came to the share of her husband being the ancestral property or it came to her share under family settlement. Moreover, the petitioner has solemnized second marriage.

In order to appreciate the object of Act, 2007, it is necessary to analyze the relevant provisions of said Act. The statement of objects and reasons set out that the traditional norms and values of the Indian Society which emphasized on providing care for elderly persons in joint family system under those circumstances when they are facing emotional neglect and lack of physical and financial support. In spite of provisions of maintenance under Section 125 Cr.P.C., it was deemed necessary that there should be simple, inexpensive and speedy provisions to claim maintenance for the parents. The Act is not restricted to only providing maintenance but cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives. One of the major aims was to find out a suitable mechanism for the protection of 'life and property of older persons.' Section 2 contains the definitions and clause (f) defines 'property', which is as under :-

“Definitions :- In this Act, unless the context otherwise requires :-

a) xx xx xx

b) xx xx xx

c) xx xx xx

d) xx xx xx

e) xx xx xx

“(f) **Property**” means property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property.”

The definition of property within the meaning of the Act is wide and comprehensive with the object of securing the interest of the elders. It is to be read along with Section 6 which makes the provisions of the said Act to have overriding effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act including any instrument having effect under any other Act.

Chapter-II of the said Act deals with the maintenance of parents and senior citizens while Chapter-IV deals with the medical care. The relevant Chapter-V provides for protection of life and property of senior citizens. Section 21 provides for measures of publicity, awareness etc. for welfare of senior citizens, while Section 22 provides for the Authorities who may be specified for implementing the provisions of the said Act. Section 22 reads as under:-

“22. Authorities who may be specified for implementing the provisions of this Act

(1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior

citizens.”

Thus what is envisaged is both protection of life and protection of property through a comprehensive action plan.

In order to prevent interference by Civil Courts qua any action taken in furtherance of the provisions of the said Act, Section 27 bars the jurisdiction of the Civil Courts, especially in respect of injunction. Section 27 of the said Act reads as under:-

“27. Jurisdiction of civil courts barred

No Civil Court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act.”

Sub Section (1) of Section 32 of the said Act requires the State Government to make rules for carrying out the purposes of this Act which in turn would imply that the same inter-alia provides for protection of life and property of senior citizens under clause (f) of sub section (2) of section 32 of the said Act.

The Hon'ble Supreme Court in **S.R. Batra v. Taruna Batra, 2007(1) RCR (Criminal) 403: 2007 (1) RCR (Civil) 378: 2007 (1) Recent Apex Judgments (R.A.J.) 1: (2007) 3 SCC 169**, held that the wife could claim the right of residence in terms of Section 17(1) of the Act, only in a `shared household' and a `shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. It was held that the house which was the exclusive property of the mother-in-law could not be said to be a `shared household' entitling the daughter-in-law to claim a right of residence therein. The Hon'ble Court negated the contention on behalf of the daughter-in-law that as per the definition, `shared household' would

include a household where the aggrieved person had lived or at any stage had lived in a domestic relationship. It was observed that if such submission is accepted it would lead to chaos, because in that event every place where the husband and wife had resided would be a shared household. The Hon'ble Court also observed that the definition of 'shared household' in Section 2(s) appears to be the result of clumsy drafting and that it had given it a sensible interpretation.

The pertinent observations of the Hon'ble Court are as under:

“24. Learned counsel for the respondent Smt. Taruna Batra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household.

25. We cannot agree with this submission.

26. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grandparents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces, etc. If the interpretation canvassed by the learned counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

27. It is well settled that any interpretation which leads to absurdity should not be accepted.

28. Learned counsel for the respondent Smt. Taruna Batra has relied upon Section 19(1)(f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's (sic) in-laws or other relatives.

29. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of Appellant 2, mother of Amit Batra. Hence it cannot be called a "shared household".

30. No doubt, the definition of "shared household" in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society."

This decision has been reiterated by the Hon'ble Supreme Court in **Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel, 2008 (2) R.C.R. (Criminal) 699; 2008 (3) Recent Apex Judgments (R.A.J.) 50: (2008) 4 SCC 649**. In this case, the Hon'ble Supreme Court adverted to the legal position that in terms of Sections 18 and 19 the Hindu Adoption and Maintenance Act, 1956, liability in regard to maintenance of wife is upon her husband and only on his death does it become the liability of the father-in-law. In the context of the 2005 Act, it was observed that it provided a higher right in favour of wife, which extends to the joint properties in which the husband has a share. It was held that an order of maintenance against the

husband can be executed only against the husband and his properties but not against the property of her mother-in-law.

The relevant observations in this context are as under:

“27. The Domestic Violence Act provides for a higher right in favour of a wife. She not only acquires a right to be maintained but also thereunder acquires a right of residence. The right of residence is a higher right. The said right as per the legislation extends to joint properties in which the husband has a share.

28. Interpreting the provisions of the Domestic Violence Act this Court in **S.R. Batra v. Taruna Batra** held that even a wife could not claim a right of residence in the property belonging to her mother-in-law, stating:

“17. There is no such law in India like the British Matrimonial Homes Act, 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law.

18. Here, the house in question belongs to the mother-in-law of Smt Taruna Batra and it does not belong to her husband Amit Batra. Hence, Smt Taruna Batra cannot claim any right to live in the said house.

19. Appellant 2, the mother-in-law of Smt Taruna Batra has stated that she had taken a loan for acquiring the house and it is not a joint family property. We see no reason to disbelieve this statement.”

Following these decisions, different High Courts have ruled that a residence belonging to the mother-in-law or father-in-law would not be a 'shared household' within the meaning of Section 2(s) of the 2005 Act and that a daughter-in-law would have no right of residence therein in terms of Section 17(1) of the 2005 Act. Following cases may be usefully referred to : **Ekta Arora vs. Ajay Arora and another**, 2015 AIR (Delhi) 180,

V.P.Anuradha vs. S.Sugantha alias Suganthi and others, 2015(4) RCR (Criminal) 631 and A.R.Hashir and others vs. Shima and others, 2015 (5) RCR (Civil) 35.

The Delhi High Court in two decisions which were relied upon by the Ld. Counsel for the petitioner has distinguished the aforementioned decisions of the Hon'ble Supreme in the matter of the restricted meaning given to 'shared household' as not including a property wherein the husband does not have any right, title or interest. In Navneet Arora's case(supra), the decision of the Hon'ble Supreme Court in S. R. Batra's case was explained as having been rendered in the fact situation obtaining therein where Taruna Batra (the aggrieved daughter-in-law) and her husband Amit Batra had been residing on the first floor, whereas the mother-inlaw, (the owner of the house in question) along with her husband were residing on the ground floor. The Court held that they were not residing as members of a 'shared household' as understood in the legalistic sense as the residence and kitchen were separate. It was concluded that S.R. Batra's case is only an authority for the proposition that under the 2005 Act, a wife is precluded from claiming the right of residence in a premises, not owned by the husband, where she had lived with her husband separately, but not as a member of the 'joint family' along with the relatives of the husband who own the premises. But if the couple live with the relatives of the husband as members of 'joint family' along with the relatives of the husband in premises owned by such relatives of the husband, then such residence would fall within the meaning of 'shared household' giving the wife the right of residence therein irrespective of the fact whether her husband has any right, title or interest therein. It was explained that living as 'joint family' meant living under one

roof and having a common kitchen.

It is a settled proposition of law that daughter-in-law cannot be said to have a right in the house of father-in-law/mother-in-law who lodged a complaint, where litigation is pending between the parties and in the present case, the FIR was registered at the instance of respondent No.4. No evidence has been placed on record to claim the ownership of the house, whereas, as per definition of the property under Section 2(f) of the Act, 2007, any right or interest in such property is also included under the definition of property. The right of the petitioner over the house, in dispute, is totally misbelieved by considering the definition of property as provided under Section 2(f) of the Act, 2007. It is clear that the property means property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and even includes rights or interest in such property.

In view of facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the petitioner and the present petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

05.02.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No