

CWP No.24146 of 2018 -1-

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

CWP No.24146 of 2018

Date of decision: September 20, 2018

Ashwani Kumar and another

...Petitioners

Versus

The Additional District Magistrate Patiala and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr.S.S.Sisodia, Advocate for the petitioner.

Rakesh Kumar Jain, J. (Oral)

This petition is filed by the mother-in-law and father-in-law of respondent No.5 against the order dated 25.7.2018 passed by the Additional District Magistrate, Patiala by which application filed by them under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act') has been dismissed.

In brief, the petitioners' son Rahul got married with respondent No.5 on 17.6.2011. Respondent No.5 alongwith her husband started living in House No.339, Street No.3, Guru Nanak Nagar, Patiala.

Learned counsel for the petitioners has submitted that due to incompatibility of the son of the petitioners and respondent No.5, the respondent No.5 filed a complaint under the Protection of Women from Domestic Violence Act, 2005 before the Additional Chief Judicial Magistrate, Patiala and their son Rahul filed a petition under Section 11 of the Hindu Marriage Act, 1955 against respondent No.5 before the Additional District Judge, Patiala for declaring the marriage void. It is also submitted that respondent No.5 is working as a drawing Teacher in Government High School,

Gangrola, District Patiala. It is submitted that since respondent No.5 was not

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having good relations with the petitioners and was causing unnecessary harassment, therefore, the petitioners filed this application under Section 22-C of the Act for seeking her eviction from their house claiming her to be in unauthorised possession. It is also submitted that their son Rahul is living separately somewhere in Ludhiana. Counsel for the petitioners has further submitted that the Additional District Magistrate Patiala has committed patent error of law in dismissing their application on the ground that their son is residing with them.

I have heard learned counsel for the petitioners and perused the record with his able assistance.

Insofar as the complaint filed under the provisions of Protection of Women from Domestic Violence Act, 2005, by respondent No.5 against her husband and both the petitioners is concerned, the same has already been consigned to record after the order was passed on 18.2.2015 by the Judicial Magistrate Ist Class, Patiala on account of a compromise arrived at between the parties. Similarly, the petition under Section 11 of the Hindu Marriage Act, 1955 has also been withdrawn by the husband of respondent No.5 on account of a compromise between the parties on 21.2.2015. Counsel for the petitioners, however, submits that the husband of respondent No.5 has filed FAO-M-52 of 2018 against the order by which petition filed under Section 11 of the Hindu Marriage Act, 1955 was dismissed as withdrawn. The question thus would arise as to whether the petition filed by the parents of Rahul and in-laws of respondent No.5 for seeking eviction of respondent No.5 would be maintainable? A similar matter i.e. ***CWP No.22162 of 2018 titled as Atma Singh Samra Vs. District Magistrate Jalandhar and others decided on 17.9.2018*** in which also the application was filed exclusively against the daughter-in-law by her parents-in-law was dismissed by this Court on the

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ground that the daughter-in-law, whose husband is alive, would not come within the definition of “heir” whereas the application under Section 22 of the Act can only be filed in terms of the action plan against son, daughter or heir. It has been observed in the case of *Atma Singh (supra)* that the definition of “heir” is provided in Hindu Succession Act, 1956 (for short ‘the Act 1956’) which means that a person, whether male or female, who is entitled to succeed to the property of an intestate under that Act. The word “Intestate” is also defined under Section 3 (g) of the Act, 1956 which means a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect. The legal heir can succeed to the property of intestate as provided in Schedule appended with the Act which is divided into two Classes i.e. Class I and Class II. Ironically the daughter-in-law whose husband is alive, does not fall in either of the Classes, therefore, she does not fall within the definition of “heir” meaning thereby she would not succeed to the property left behind by her in-laws i.e. father-in-law and mother-in-law if they die intestate. Therefore, in my considered opinion, the application under Section 22 of the Act is not maintainable against the daughter-in-law whose husband is alive. In the present case, it appears that the son of the petitioners has left the house so as to give an opportunity to the petitioners to file application exclusively against the daughter-in-law otherwise, it is the moral duty of the husband to maintain his wife. In view thereof, I do not find any merit in this petition and the same is hereby dismissed.

September 20, 2018
Meenu

(Rakesh Kumar Jain)
Judge