

C.W.P. No. 5117 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 5117 of 2018

DATE OF DECISION:01.03.2018

Jagtar Singh and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Keshav Pratap Singh, Advocate
for the petitioners.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing of impugned order dated 12.1.2018 (Annexure P-1) passed by Additional Deputy Commissioner-cum-Collector, SAS Nagar (Mohali)-respondent No.2, whereby, the petitioners have been ordered to be evicted from the house wherein they are residing within a period of 45 days from the date of passing of the order. A further prayer has also been made for issuance of a direction to the respondents not to interfere in the peaceful possession of the petitioners, over the house in question, by staying operation of impugned order dated 12.1.2018.

Briefly, the facts of the case are that respondent No.3-Surjit Kaur filed an application for eviction of the petitioners from the house situated at Village Bhankharpur, Tehsil Dera Bassi, District SAS Nagar,

Mohali before respondent No.2. It was stated by respondent No.3 in the application that she is an old lady of 70 years and her husband had expired on 15.9.2016. Petitioners, who are son and daughter-in-law of respondent No.3, respectively, are harassing her, not maintaining her and also living in the house in question illegally without having any rights. It is also stated in the application by respondent No.3 that the house in question was purchased by her husband 35/36 years back and the same was constructed by him only. Notice in the application was issued to the petitioners and the same was contested by the parties. Ultimately, the application filed by respondent No.3 was allowed by respondent No.2 vide its order dated 12.1.2018 and the petitioners were directed to vacate the house of respondent No.3 within a period of 45 days from the date of passing of the order, which is subject matter of challenge in the present petition.

Learned counsel for the petitioners contends that the house in dispute is situated in red line area (lal dora) and there is no proof of ownership. It was purchased by father of petitioner No.1 and since the date of purchase, petitioners are residing there. Learned counsel further contends that father of petitioner No.1 has not made any Will in favour of respondent No.3 and in absence thereof, petitioner No.1 is also co-sharer in the house being the legal heir along with his mother, after the death of his father. Without having any document of ownership of respondent No.3 pertaining to the house in dispute, the impugned order has been passed. Learned counsel for the petitioners also contends that father of petitioner No.1 filed a suit for permanent injunction against petitioner No.1 but the same was dismissed in default vide order dated 30.5.2017. It is also the argument of learned counsel for the petitioners that an application for

eviction was filed at the instance of brothers of petitioner No.1, who were residing with respondent No. 3 as they wanted to grab the house by throwing out the petitioners from that house. At the end, learned counsel for the petitioners contends that both the petitioners are entitled for their share in the house in dispute and without any application of mind, the impugned order has been passed by respondent No.2 while allowing the claim of respondent No.3.

Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned order and other documents available on the file.

Facts of the case are not disputed. The application filed by respondent No.3 was allowed by learned Additional Deputy Commissioner-cum-Collector, SAS Nagar, Mohali vide its order dated 12.1.2018 by relying upon the report of SDM Derabassi as the house is situated within the red line and there is no entry in the revenue record regarding the house in dispute. The documents submitted by respondent No.3 were verified by the Gram Panchayat and it was found that house in dispute was owned by Atma Singh and after his death, respondent No.3 became owner of the house. The application filed by respondent No.3 was allowed in view of provisions of Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act, 2007').

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.3, the petitioners could not produce any type of evidence to show that at the time of purchase of that house, any financial assistance was given by petitioner No.1. Even it could not be proved that the house, in dispute, came to the share of petitioners being the ancestral property or it came to their share under family settlement.

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.

The petitioners have not placed on record any evidence to show

that the house in dispute came to share of petitioner No.1. Nothing has been shown to the Court while raising arguments also. Both the petitioners are claiming their right over the house in dispute only on the ground that house in dispute was purchased by father of petitioner No.1 and father-in-law of petitioner No.2 but it has not been disputed that the mother-in-law has come in possession of that house as there is no revenue record to show that the house was transferred in the name of petitioner No.1. Even no record has been shown to this Court to the extent that after the death of father of petitioner No.1, the property or house was divided between petitioner No.1 and his mother i.e. respondent No.3.

On joint reading of the object of the Act 2007, provisions of Sections 22 and 23 and Punjab Maintenance and Welfare of Parents and Sennior Citizen Rules, 2012 (hereinafter referred to as '2012 Rules') framed under Section 32 of the Act i.e. Rules 22 and 23 of the 2012 Rules read with Action Plan providing procedure for eviction from property/residential building of senior citizens/parent, indicate that the District Magistrate is competent to order eviction of an unauthorized occupants in terms of said provisions. The provisions of Act came up for consideration before a Division Bench of this Court in case of Shanti Sarup Dewan Vs. U.T., Chandigarh 2014 (5) RCR (Civil) 656, wherein, considering the provisions of the Act, it was observed that the Act is not only restricted to grant maintenance but also cast an obligation on the persons, who inherit the property of their aged relatives to maintain such aged relatives and the Act was aimed to provide for institutionalization of a suitable mechanism for protection of life and liberty of old persons. In **Hamina Kang Vs. District Magistrate (UT), Chandigarh and others**, 2016 (1) RCR (Civil) 976, this

Court while taking into consideration all the provisions of the Act, held that a daughter-in-law staying in the property exclusively owned by mother-in-law cannot be held entitled to claim right of residence and the eviction order could be passed against her in proceedings under the Act. Similarly in **Gurpreet Singh Vs. State of Punjab** 2016 (1) RCR (Civil) 324, the provisions of the Act, 2012 Rules and the action plan for protection of life and liberty of the senior citizen framed under Rule 23 of the said Rules providing procedure for eviction of a son from the house owned by his senior citizen father came up for consideration. The Division Bench of this Court held that the District Magistrate is the competent authority to take steps for protection of life and property of the senior citizen and the summary exercise of jurisdiction by the District Magistrate is permissible to evict the son who could be a licensee and the moment the licensor terminates the licence, there is no vested right of any kind in the licensee to remain in possession of the property.

By considering the objective of the Act, 2007 and the Rules applicable and on the basis of report of SDM, Derabassi, claim petition filed by respondent No.3 was allowed and order for eviction from house in dispute of respondent No.3 was passed.

Accordingly, there is no merit in the submissions made by learned counsel for the petitioners and as such the petition being devoid of any merit is hereby dismissed.

March 01, 2018
pooja

(DAYA CHAUDHARY)
JUDGE