

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

CWP No.7914 of 2018 (O&M)
Date of decision: October 31, 2018

Salwinder Singh & another ...Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Ramandeep Singh Pandher, Advocate for the petitioners.
Mr. Sahil Sharma, DAG, Punjab.
Mr. Pritam Singh Saini, Advocate for respondent No.2.

Rajan Gupta, J.

Petitioners pose a challenge to order dated 09.01.2018, passed by Additional District Magistrate, S.A.S. Nagar, whereby application under Section 5 and 22 (1) (2) of Maintenance and Welfare of Parents and Senior Citizen Act, 2007, filed by Shanti Devi (respondent No.2 herein), has been accepted and petitioners have been directed to vacate the house in question within a period of 45 days from the date of order.

Learned counsel for the petitioners has urged before this court that the order suffers from patent illegality. According to him, father of petitioner No.1 before his death had left an unregistered Will dated 28.04.2006, on the basis of which mutation of the land was also sanctioned in his favour. Thus, the authority had no jurisdiction to pass the impugned order, which deserves to be set-aside.

Plea has been opposed by learned counsel appearing for respondent No.2. He submits that the Will dated 28.4.2006 was challenged by

respondent No.2 by way of Civil Suit No.90 of 2015 filed against the petitioners, which was decreed vide judgment and decree dated 25.9.2018, whereby petitioner No.1 was restrained from selling, alienating and encumbering the suit property on the basis of alleged Will dated 28.4.2006.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

Brief factual matrix of the case is that respondent No.2 Shanti Devi, who is 75 years of age and is a senior citizens, filed an application under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 against the petitioners, seeking their eviction from the house situated within the Abadi of village Haibatpur, District SAS Nagar, stating therein that petitioners are her son and daughter-in-law. Her husband was owner in possession of land and house in village Haibatpur, which was built by him. However, petitioner No.1 on the basis of a forged and fake Will got mutation of the land sanctioned in his name. For cancellation of the said Will, she had filed a suit in the civil court. Petitioner had not been looking after her and even started misbehaving, maltreating and threatening to kill her. After considering entire material on record as well as report of Sub Divisional Magistrate, Dera Bassi, the Additional District Magistrate allowed the application filed by respondent No.2 and directed the petitioners to vacate the said house within a period of 45 days. However, petitioners were given liberty to live in the house, which they had given on rent after getting the same vacated.

I find no infirmity with the order. Admittedly, the family had two houses situated within the red line of the village, regarding which there

is no entry in the revenue record. One house had been given on rent by petitioner No.1. The authority has allowed the petitioners to live therein after getting the same vacated from tenants. Further the Will dated 28.04.2006 has been set-aside by the civil court. In judgment reported as ***Gurpreet Singh vs. State of Punjab and others, 2016 (1) R.C.R. (Civil) 324***, a Division Bench of this court held as under:-

“12. The petitioner is a licensee living in the premises on the basis of concession given by his father to live in the property owned by him. As a licensee, the petitioner is only permitted to enjoy the possession of the property licensed but without creating any interest in the property. A licence stands terminated the moment the licensor conveys a notice of termination of a licence. There is no vested right of any kind in the licensee to remain in possession of the property licensed. Admittedly, respondent No.4 is the owner of the property in question. The petitioner is living in part of the property. Such property owned by respondent No.4 is required to be protected as mandated by Section 22 of the Act read with Rule 23 of the Rules and para 1 of the Action Plan. There cannot be any effective protection of property of the senior citizens unless the District Magistrate has the power to put the senior citizen into possession of the property and/or to restrain or eject the person who wishes to interfere in the possession of the property of the senior citizen. Protection of the property of a senior citizen includes all incidences, rights and obligations in respect of property in question. Once a senior citizen makes a complaint to District Magistrate against his son to vacate the premises of which the son is a licensee, such summary procedure will ensure for the benefit of the senior citizen. The petitioner would have no right to resist his eviction only on the ground that the Act does not contemplate eviction of an occupant. Eviction is one part of the right to protect the property of a senior citizen which right could be exercised by a senior citizen in terms of

provisions of the statute, Rules framed and the Action Plan notified.”

In view of above, I am of the considered view that the pleas raised before this court are without any merit. Same are hereby rejected. Petition is hereby dismissed.

October 31, 2018
'Rajpal'

(RAJAN GUPTA)
JUDGE

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No