

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

**LPA No.1268 of 2019(O&M)  
Date of decision: 23.07.2019**

Vijay Kumar and others

... Appellants

Versus

Deputy Commissioner-cum-District Magistrate, Yamuna Nagar and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,  
CHIEF JUSTICE  
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present: Mr. Sherry K. Singla, Advocate, for the appellants.  
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**ARUN PALLI, J.**

This is an intra-court appeal under Clause X of the Letters Patent against an order and judgment dated 23.01.2019, rendered by the learned single Judge, vide which the writ petition preferred by the appellants against an order dated 21.06.2018, passed by the District Magistrate, Yamunanagar, under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the Act'), requiring the appellants to vacate possession of the house of late Smt. Rani Bai @ Raj Rani, has since been dismissed.

The facts that are required to be noticed are limited.

Late Smt. Rani Bai wife of late Sh. Sukhdayal, being a senior citizen, moved the authorities under the Act. In brief, the case set out by her was that she was 80 years of age and owner of Barak No.114. She had a brother, namely, Dalmir Chand and appellant No.1 is his son, whereas appellant Nos.2 & 3 are sons of appellant No.1 and appellant No.4-Neelam

is the wife of Vijay Kumar (appellant No.1). For Rani Bai was a widow and of an old age, upon assurance given by the appellants that they would look after her and provide necessary assistance, they were permitted to reside with her in part of the house in question. However, soon thereafter the behaviour of the appellants changed and eventually after being harassed, she was thrown out of her own house. Since then, she was residing with her daughter Smt. Sunita Setia. For Smt. Rani Bai had no other source of income or property except the house in question, which merely consisted of an area measuring 36 sq. yards, she prayed before the authorities to put her back in possession after getting it vacated from the appellants.

The case set out by the appellants in defence was that Smt. Rani Bai had no concern with the house in question, for, the same was never purchased by her. In fact, post death of her husband in year 1963, it was the father of appellant No.1, namely, Dalmir Chand, who kept Smt. Rani Bai and her two minor daughters with himself at Yamunanagar. Further, it was purely out of love and affection, Dalmir Chand purchased the said house in the name of Smt. Rani Bai. Further, on 07.02.2011, Smt. Rani Bai executed a Will in favour of appellant-Vijay Kumar and his wife Smt. Neelam. Whereafter, Smt. Rani Bai left the house in question at her own volition and started residing with her daughter. Dalmir Chand died on 31.12.2017, whereafter a compromise dated 29.01.2018 was effected as per which the house in question was to be sold and it was to be recited in the sale deed that appellant-Vijay Kumar had 1/3<sup>rd</sup> share therein. And, till the house was sold, the appellants were entitled to retain possession. Thus, the application moved by Smt. Rani Bai was misconceived and liable to be dismissed.

Upon a consideration of the matter and the material on record, the District Magistrate, Yamunanagar, concluded that in terms of the report of Sub Divisional Officer (N) Jagadhari, Smt. Rani Bai was the owner of the house in question. It was proved that she was 80 years of age and was a senior citizen. Further, the appellants were not performing their moral duties and rather harassed her. Thus, she was entitled to possession of her house in terms of Clause 1 of Action Plan as envisaged in Sub-section (2) of Section 22 of the Act. Accordingly, vide order dated 21.06.2018, the appellants were directed to vacate possession within 30 days from the date of passing of the order. That is how, the appellants approached this Court vide civil writ petition referred to above, which has been dismissed vide impugned order and judgment. Thus, this appeal.

We have heard learned counsel for the appellants and perused the record.

Ex facie, Smt. Rani Bai was the owner of the house in question, consisting of an area measuring 36 sq. yards, pursuant to a sale deed dated 31.05.1978. Nothing was brought on record either to show if the appellants entered possession of the said house pursuant to any legally enforceable right. In fact, they occupied a portion thereof, for, they undertook to serve Smt. Rani Bai, who was a widow and in the evening of her life. Thus, the nature of their possession was merely of a licensee. Once the authority under the Act concluded that Smt. Rani Bai was harassed, maltreated and eventually thrown out of her own house, the restoration of her possession was the only and the inevitable option before the authorities. Though, unfortunately Smt. Rani Bai died during the pendency of the writ petition on 03.12.2018, now her two daughters, arrayed as parties, are in to struggle and

litigate. Significantly, though the appellants chose to file a written statement/reply before the District Magistrate, but for reasons best known to them they chose not to participate in the proceedings thereafter and were, thus, proceeded against ex parte. Claim of the appellants that house in question was purchased by father of appellant No.1 out of his own funds or Rani Bai, she executed a Will dated 07.02.2011, in favour of appellant No.1 and his wife Neelam, depriving her two real daughters of everything. A compromise dated 29.01.2018 is also being relied upon whereunder appellant No.1 was to acquire 1/3<sup>rd</sup> share in the house. Suffice it to say, owing to the nature of proceedings at hands, we are not equipped to delve into the claim of the appellants qua title predicated upon the documents referred to above. The appellants, if so advised, would be at liberty to approach the civil court to seek an appropriate relief. Upon being pointedly asked, learned counsel for the appellants failed to refer anything on record to show if the conclusions recorded by the authority under the Act as also the learned single Judge were either contrary to the record or suffered from any material illegality.

In the wake of the above, we too are dissuaded to interfere with the order dated 21.06.2018, passed by the District Magistrate, Yamunanagar, as also the impugned order and judgment rendered by the learned single Judge. The appeal being devoid of merit is, accordingly, dismissed.

**( Krishna Murari )**  
**Chief Justice**

**( Arun Palli )**  
**Judge**

**23.07.2019**  
**Rajan**

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| Whether speaking / reasoned: | YES |
| Whether Reportable:          | NO  |