

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

LPA-1289-2019 (O&M)

Date of decision:- 24.07.2019

Narinder Sayal

...Appellant

Versus

Anita Sayal @ Aneta Sayal and others

...Respondents

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

Present:- Mr. Rohit Sud, Advocate,
for the appellant.

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KRISHNA MURARI, C.J. (ORAL)

This intra court appeal under clause X of the Letters Patent is directed against the interim order dated 01.07.2019 passed by the learned Single Judge staying eviction of the petitioners (respondents No. 1 to 4 herein) from the premises in question in pursuant to an order passed in proceedings under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short the Act of 2007).

2. It is an admitted case between the parties that prior to institution of the proceedings under the Act of 2007, a Civil Suit for permanent injunction was filed by respondents No. 1 to 4 before the Civil Court taking a plea that the property in question is Joint Hindu Family Coparcenary Property and an order of injunction was also admittedly passed by the Civil Court, Jalandhar on 13.08.2018 in favour of respondents No. 1 to 4 to the following effect:-

"As the plaintiff and his family is in possession of the suit property alongwith defendants, the defendants

are restrained from dispossessing or disconnecting the electricity and other basic necessities attached with the property No. 147 and the remaining interim reliefs claimed by the plaintiff is hereby dismissed. Accordingly, the application in hand is partly allowed as stated above."

3. Subsequent to the aforesaid proceedings and order, the appellant initiated proceedings under the Act of 2007 seeking eviction of respondents No. 1 to 4 from the property in question. Admittedly, the proceedings were initiated to override and nullify the injunction order passed in the Civil Suit. Vide order dated 20.03.2019, the complaint made by the appellant was allowed by the District Magistrate, Jalandhar and respondents No. 1 to 4 were directed to be evicted from the property in question. Finding that the order was running directly contrary to the injunction order passed by the Civil Court, respondents No. 1 to 4 approached this Court by filing a writ petition. Learned Single Judge finding that two parallel proceedings for the same cause of action cannot continue, while issuing notice of motion for 11.09.2019, he stayed the eviction of respondents No. 1 to 4 till the next date of listing.

4. Learned counsel for the appellant submits that since Section 3 of the Act of 2007 has an overriding effect, the order of injunction passed is of no consequence. Learned counsel for the appellant relied upon two Division Bench judgements of this Court in LPA-1007-2013 titled as *Justice Shanti Sarup Dewan, Chief Justice (Retired) and another Vs Union Territory, Chandigarh and others* (decided on 26.09.2013) and CWP-24508-2015 titled as *Gurpreet Singh Vs State of Punjab and others* (decided on 01.12.2015) to support the contention that the proceedings of the Civil Court lose their efficacy

once proceedings under the Act of 2007 are initiated.

5. In *Justice Shanti Sarup Dewan's* case (supra), the argument raised by the son of the senior citizen was that he was born in the house in Chandigarh which is a Joint Hindu family property and is a Hindu Undivided Family (HUF) and he being a coparcener alongwith his wife and daughter is residing in the same and could not have been evicted.

6. In the above facts and circumstances, the Division Bench of this Court directed that if respondent No. 7 wanted to establish any legal right or share in the house in question, he was free to file appropriate civil proceedings, but without infringing the exclusive rights of the appellants in the "**interregnum period**" implying that there would be no interim injunction qua occupation by the Civil Court as that would be a violation of the provisions of the said Act.

7. In the case in hand, the position is entirely opposite. The suit has already been filed and the injunction is already operating. Hence, the reliance placed upon by learned counsel for the appellant on *Justice Shanti Sarup Dewan's* case (supra) is totally misconceived and the principles enunciated therein do not apply to the present case.

8. In *Gurpreet Singh's* case (supra), the Division Bench of this Court has again observed in respect of the proceedings under the Act of 2007 as under:-

"However, we may say that such summary exercise of the jurisdiction is without prejudice to the rights of the parties which may be determined by the Civil Court in accordance with law."

9. Thus, the argument advanced by the learned counsel for the appellant that the proceedings of the Civil Court and the order of injunction passed therein lose their efficacy once proceedings under Section 3 of the Act of 2007 are initiated

has no locus standi and is not liable to be accepted. Apart from the above facts, the dispute is still pending before the learned Single Judge and the appeal is directed only against the interim order. Therefore, we do not wish to proceed any further in the matter lest it may prejudice the rights of either of the parties in the proceedings pending before the learned Single Judge.

10. In the wake of the above facts and discussion, we do not find any good ground to interfere with the judgement of the learned Single Judge, at this stage.

11. The appeal accordingly fails and stands dismissed, at this stage.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

24.07.2019
Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No