

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

**CM-1201-2019 in/and
[CWP-25946-2018\(O&M\)](#)**

Date of decision-23.01.2019

Sh.Vijay Kumar and others

...Petitioners

Vs.

**Deputy Commissioner-Cum-District Magistrate, Yamunanagar and
others**

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Harsh Mehla, Advocate,
for the petitioners.

Mr. Vikrant Pamboo, D.A.G., Haryana.

Mr. G.C. Shahpuri, Advocate
for the applicants-proposed LRs of respondent No.2.

JITENDRA CHAUHAN, J.

CM-1201-2019

Application is allowed as prayed for and legal heirs of respondent No.2 are brought on record. However, the same shall be subject to all just exceptions. Amended memo of parties is taken on record.

[CWP-25946-2018](#)

This writ petition under Articles 226/227 of the Constitution of India has been filed for the issuance of a writ, in the nature of certiorari for setting aside the *ex parte* order dated 21.06.2018 (Annexure P-1).

Vijay Kumar, petitioner No.1, is the nephew of respondent No.2-Rani Bai @ Raj Rani; whereas, Arjun and Rahul, petitioner Nos.2 and 3, respectively, are the sons and petitioner No.4, is wife of petitioner No.1. After the death of husband of respondent No.2, father of petitioner No.1,

Dalmir Chand, since deceased, being her real brother, supported

respondent No.2 and her two minor daughters. The deceased had also purchased the property in question out of his own funds in the name of his widowed sister-respondent No.2 out of love and affection. Respondent No.2 bequeathed Will dated 07.02.2011 in favour of petitioner No.1-Vijay Kumar and his wife, Smt. Neelam, petitioner No.4 and did not give anything to her daughters in the said Will. Thereafter, a dispute arose between the parties at the behest of daughter of respondent No.2, Sunita Setia, who took along respondent No.2 to reside with her. Meanwhile, father of petitioner No.1 died on 31.12.2017. Thereafter, the dispute was amicably resolved by way of compromise deed dated 29.01.2018 according to which the property in question was to be sold out and 1/3rd share out of the sale proceeds was to go to petitioner No.1. It was also decided that till the time the property was not sold, the same shall remain in the possession of the petitioners. However, despite the compromise, respondent No.2 moved a petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [for short 'the Act'].

Learned counsel for the petitioners, *inter alia*, contends that the application filed under Section 23 of the Act against the petitioners was not maintainable as they do not fall within the definition of son, daughter and legal heir. Respondent No.2 has her own daughters and as per Section 15 of the Hindu Succession Act, 1956 [for short 'the 1956 Act'], dealing with the General rules of succession in the case of female Hindus, the property of the female Hindu dying intestate shall devolve according to the rules set out in Section 16 of the 1956 Act i.e. firstly, upon the sons and daughters and the husband. It is submitted that once the daughters of respondent No.2 are still alive and if she dies intestate, her property, at the first instance, would

devolve upon them and therefore, there would be heirs to succeed her property and not the petitioners, who are the progeny of her brother. He further states that the application filed for setting aside the *ex parte* proceedings was dismissed illegally on the ground that there is no such provision in the Act. It is thus submitted that if the District Magistrate has the jurisdiction to pass the order of *ex parte* proceedings then the power of setting aside the *ex parte* proceedings is also conferred upon the District Magistrate. Counsel also relied upon '***Sushila Devi Vs. Commissioner, Gurugram Division and others 2018(2) R.C.R.(Civil) 450'***.

On the other hand, learned counsel for LR of respondent No.2 states that petitioners had assured respondent No.2 that they will look after her in the old age and due to the said assurance respondent No.2 allowed them to reside in her house. Initially, the petitioners looked after respondent No.2 well but after sometime the promise made was not kept and ultimately she was thrown out of her own house. Respondent No.2 had two daughters, namely, Sunita Rani and Nisha Arora, who have now been arrayed as party-respondents.

I have heard both the sides.

Before proceeding further, it would be apposite to refer to the provisions of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

Section 23 of the Act, reads thus:-

“23 Transfer of property to be void in certain circumstances.

(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that

the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2)Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3)If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.”

As regard the contention of learned counsel for the petitioners regarding *ex parte* proceedings carried out against them, there is no provision or rule in the Act or Rules to cancel the *ex parte* proceedings, whereas Rule 9 of Haryana Maintenance of Parents and Senior Citizen's Rules, 2009 provides for initiation of *ex parte* proceedings for non-appearance of respondent. Even otherwise, a perusal of the report of Sub Divisional Officer (N) Jagadhari, shows that respondent No.2 was the owner of the plot measuring 36 Sq. Yards and the petitioners have been residing in the said house. The respondent No.2 was an octogenarian widow. The petitioners breached the assurance to look after respondent No.2 which was the consideration and foundation of the Will in their favour and used to

harass the respondent. The property in question being self acquired property of the respondent No.2, therefore, the petitioners have no right to claim the property.

Even otherwise, the petitioners are not the progeny of respondent No.2 rather they are progeny of her brother. Thus, respondent No.2 is entitled to take possession of her house as provided under Section 23 of the Act. In view of the above, this Court finds no merit in the present civil writ petition and the same is hereby dismissed.

23.01.2019

ps-I

**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No