

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

CWP-7356-2018 (O&M)
Date of decision : 02.09.2019

Baldev Kaur

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Amaninder Preet, Advocate,
for the petitioner.

Ms. Anju Arora, Addl.A.G., Punjab.

Mr. Gursimranjit Singh, Advocate,
for respondent Nos.4 and 5.

JITENDRA CHAUHAN, J.

The petitioner seeks quashing of order dated 13.07.2017 (Annexure P-5), passed by learned Sub Divisional Magistrate, Barnala, whereby, the application moved by the petitioner under Sections 21, 22 and 9 of the Maintenance & Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the Act'), has been dismissed; and order dated 30.11.2017 (Annexure P-7), passed by learned Appellate Tribunal-cum-Deputy Commissioner, Barnala, whereby, the appeal preferred by the petitioner against order dated 13.07.2017 (Annexure P-5), also stands dismissed.

It is contended that the petitioner purchased a house vide sale deed No.1656 dated 26.06.1997 (Annexure P-1), from one Surjit Singh son of Jassa Singh, for a sale consideration of ₹10,000/-. After their marriage, respondent Nos.4 and 5, being son and daughter-in-law, respectively, of the

petitioner, started harassing the petitioner and her husband. Consequently, she and her husband disinherited respondent Nos.4 and 5 from their movable and immovable properties. As a counter-blast, the private respondents in connivance with each other got registered one FIR bearing No.6 of 17.01.2007 under Sections 498A and 406 of the Indian Penal Code at P.S. City Barnala, against the petitioner and her husband. However, both the accused were acquitted vide judgment dated 13.08.2013 (Annexure P-2), passed by the trial Court.

It is further submitted that the petitioner being unaware of the provisions of the Act, preferred a civil suit against private respondents. Prior thereto, the petitioner had also verbally requested for possession of the house in question and also sought ₹10,000/- per month as maintenance amount but the private respondents did not accede to her request. Thereafter, the petitioner preferred application dated 20.07.2016 (Annexure P-3), under Section 21, 22 and 9 of the Act which was dismissed vide impugned order dated 13.07.2017 (Annexure P-3). The statutory appeal preferred by the petitioner also stands rejected vide impugned order dated 13.07.2017 (Annexure P-5). Hence, the instant petition.

Learned counsel contends that both the authorities below have erred in appreciating that one of the major objectives of the Act is to provide a suitable mechanism for protection of life and property of the older persons. Learned Courts below have failed to understand the protection given under the Act is independent to any other legal remedy under the civil or criminal law. Though, the petitioner did file the civil suit, but the remedy under the Act is summary in nature and the provisions of the Act have

overriding effect qua any other enactment. The petitioner is the owner of the property and deserves to enjoy the same in the last years of her life.

Learned State counsel submits that the dispute is inter se the private parties and no interest of the State is involved therein.

Learned counsel for respondent Nos.4 and 5 submits that the application of the petitioner has rightly been dismissed being not maintainable as she had been pursuing two remedies at the same time for the same cause of action. The civil suit for possession and permanent injunction preferred by the petitioner stands dismissed vide judgment and decree dated 27.07.2016 (Annexure R-1). In fact, though the plot in question was purchased by the petitioner but the construction thereupon has been raised by the private respondents. The property has fallen in the share of the respondent No.4 in the family settlement.

Heard.

It is not in dispute that prior to filing application under the Act, the petitioner had approached the Civil Court seeking possession and permanent injunction qua the property in dispute. During the pendency of the civil suit, she preferred the application dated 20.07.2016 (Annexure P-3). Learned SDM, Barnala, vide impugned order (Annexure P-5), rejected the application of the petitioner being not maintainable as the civil suit was still pending. This Court does not find any illegality or perversity with the finding recorded by the Court below. The petitioner on one hand preferred civil suit and for the same relief, instituted application under the Act, which is impermissible in law. Now, the civil suit stands dismissed by the trial Court vide judgment (Annexure R-1) and it has been specifically noticed in

the judgment that the plaintiff did not come forward to lead any evidence to prove that she is owner of the house and the defendant-respondent Nos.4 and 5 are trespassers. Thus, there is, *prima facie*, no evidence on record that respondent Nos.4 and 5 took forcible possession of the house in question.

In view of the above, this Court does not find any ground to interfere with the impugned orders (Annexures P-5 and P-7), passed by learned authorities below and the same are hereby affirmed. Consequently, the instant petition is dismissed.

However, the petitioner shall be at liberty to lay challenge to the judgment and decree dated 27.07.2016 (Annexure R-1), passed by learned trial Court, if so advised.

02.09.2019
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(JITENDRA CHAUHAN)
JUDGE

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