

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

LPA No. 820 of 2018 (O&M)

Date of decision: 22.10.2019

Jagmohan Singh

.. Appellant

vs

The State of Punjab and others

.. Respondents

**Coram: Hon'ble Mr. Justice Ravi Shanker Jha, Chief Justice.
Hon'ble Mr. Justice Rajiv Sharma**

Present Mr. Anil Chawla, Advocate, for the appellant.

Mr. Atul Nanda, Advocate General, Punjab (amicus curiae)
assisted by Ms. Amanat Chahal, Assistant Advocate General,
Punjab.

Mr. Jagbir Malik, Advocate, for respondent no.4.

Ravi Shanker Jha, Chief Justice

This LPA has been filed by the appellant being aggrieved by the order passed in CWP No. 27956 of 2017 in April, 2018 whereby the learned Single Judge has dismissed the petition filed by the appellant against the order dated 27.7.2017 passed by the District Magistrate, Amritsar, allowing the application filed by the respondent-mother under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 and has directed the appellant to vacate the house in question within 30 days. The learned Single Judge taking into account the facts of the case and the report of the Naib Tehsildar, which was placed before the District Magistrate, according to which the appellant and his respondent-mother are in joint possession of the house which is leading to friction between the parties has ordered the appellant to vacate the house.

Learned counsel for the appellant submits that though initially the appellant, his brother and sister, all three had agreed for transferring the house in question, namely, House No. 188, Janta Colony, Maqbool Road, Amritsar, in the name of their mother after the death of their father, who is the original allottee, however, subsequently he has withdrawn his consent and wants his right in the property to be determined. It is submitted that in such circumstances the order passed by the learned Single Judge to vacate the premisses without determining the appellant's right or foreclosing his right to get the same established, is contrary to law and deserves to be set aside.

We have heard learned counsel for the appellant and counsel for respondent no.4 as well as Shri Atul Nanda, learned Advocate General, who has been requested to assist this Court as Amicus Curiae.

After hearing the parties at length and to redress the grievance of respondent no.4 and the rights asserted by the appellant and with a view to provide adequate and sufficient maintenance to respondent no.4 and in the light of the undertaking given before this Court by the appellant, the present appeal is disposed of with the following directions:-

- i) The appellant, who is present in Court, shall be permitted to retain possession of one room in the first floor of the house by affixing his lock.
- ii) The appellant undertakes not to live in the house while retaining his possession of the room on the first floor of the house and to remove his belonging therefrom within a period of four weeks from today.
- iii) In lieu of retaining possession of the room on the first floor, the appellant shall pay a sum of ₹ 2,500/- per month by 10th of every month to his mother.

- iv) The appellant in the meanwhile would be at liberty and shall have the right to get his right determined by the competent Court of law by taking appropriate proceedings in accordance with law.
- v) The order passed by this Court under the provisions of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 shall not come in the way of the appellant ascertaining and getting his right determined in accordance with law by a competent Court.
- vi) It is made clear that in case the appellant makes two successive defaults in payment of ₹ 2,500/- per month to respondent no.4, the District Magistrate or the concerned authority would be at liberty to take immediate steps to get the appellant evicted from the premises in question and hand over the possession to respondent no.4.

We would be failing in our duty if we do not record our appreciation for the valuable assistance and advice given to this Court by the learned Amicus Curiae.

With the aforesaid directions the order passed by the learned Single Bench stands modified and the appeal stands disposed of.

(Ravi Shanker Jha)
Chief Justice

22.10.2019
vs

(Rajiv Sharma)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No