

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-40643-2018(O&M)

Date of Decision: May 17, 2019

Aradhana Jahota

.....Petitioner(s)

versus

Additional Deputy Commissioner-cum-Additional
District Magistrate SAS Nagar and others

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Naveen Batra, Advocate for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

Mr. Hemant Bassi, Advocate for respondent No.2.

Mr. Vineet Soni, Advocate for respondent No.3.

JITENDRA CHAUHAN , J. (Oral)

This writ petition under Articles 226/227 of the Constitution of India has been filed for quashing of the order dated 29.11.2018 (Annexure P-3) passed by Additional District Commissioner-cum-Additional District Magistrate, SAS Nagar vide which the petitioner had been ordered to be evicted from the House No.HL-470, Phase-VII, Mohali under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short “the Act”).

2. It is contended that the marriage of the petitioner was solemnized with respondent No.2-Anil Kumar in the year 2001 and two children were born out of wedlock. The petitioner along with her husband and two children

has been residing on the first floor of House No.HL470, Phase VII, SAS Nagar (Mohali), whereas, respondent No.2-Joginder Pal, father-in-law is occupying the ground floor of the said house along with his elder son-Kapil Jagota and daughter-in-law-Seema Rani. Soon after the marriage, respondent No.2 started harassing and humiliating her for demand of dowry and treated her with cruelty so much so that the petitioner had to register a complaint against the respondents under the Domestic Violence Act. As a counter-blast, respondent No.2-Joginder Pal, father-in-law of the petitioner, filed complaint under the Act, which was accepted vide impugned order dated 29.11.2018 (Annexure P-3), and the petitioner was ordered to be evicted from the house in question.

3. Learned counsel contends that the impugned order is liable to be set aside on the ground that the application for eviction had been filed by the father-in-law against daughter-in-law which is against the provisions of the Act. Further, there is no material on record to prove that respondent No.2 was ever harassed or humiliated by the petitioner. The portion (first floor) wherein the petitioner has been staying had fallen to the share of her husband, Anil Kumar, on the basis of family partition and the petitioner has nothing to do with the ground floor of the house wherein respondent No.2 has been residing. Reliance has been placed on the judgment passed by this Court in ***Rajwinder Kuar Vs. District Magistrate and another (CWP-2828-2018)***.

4. On the other hand, learned counsel for respondent No.2 contends that the petitioner and respondent No.3 are husband and wife have been subjecting him to cruel treatment. The petitioner and her husband-respondent No.3 pressurised answering respondent to pay money for the purchase of a

residential plot and as such, respondent No.2 transferred an amount of ₹4.99 lakh in their joint account. With the help of said money, the petitioner has purchased a residential plot in Mohali. They have also restricted movement of the answering respondent in his own house and are demanding their share in the said property. Aggrieved against the conduct of the petitioner and respondent No.3, the answering respondent has disinherited them from the property in the year 2017 and a public notice was also published in the newspaper. Only thereafter, the petitioner has filed a complaint under Protection of Women from Domestic Violence Act, 2005 with the intention to grab the property.

5. Heard.

6. Respondent No.2-a widower and retiree had filed an application under the Act against his daughter-in-law (the petitioner) and son (respondent No.3). Admittedly, the property in question is self acquired property of respondent No.2. It has come on record that the petitioner and respondent No.3 purchased residential Plot No.883 (measuring 100 square yards) at IT City, Sector 82/82 Mohali, in the name of the petitioner with the amount i.e. ₹ 4.99 lakh given by respondent No.2. After considering the entire material on record and the report from the Sub Divisional officer, the District Magistrate held that the petitioner and respondent No.3 are not taking care of respondent No.2 and ordered eviction of the petitioner as well as respondent No.2 from the premises in question. A Division Bench of this Court in ***Gurpreet Singh Vs. State of Punjab and others, 2016 (1) R.C.R. (Civil) 324, has laid down as under:-***

“12. The petitioner is a licensee living in the premises on the basis of concession given by his father to live in the property

owned by him. As a licensee, the petitioner is only permitted to enjoy the possession of the property licensed but without creating any interest in the property. A licence stands terminated the moment the licensor conveys a notice of termination of a licence. There is no vested right of any kind in the licensee to remain in possession of the property licensed. Admittedly, respondent No.4 is the owner of the property in question. The petitioner is living in part of the property. Such property owned by respondent No.4 is required to be protected as mandated by Section 22 of the Act read with Rule 23 of the Rules and para 1 of the Action Plan. There cannot be any effective protection of property of the senior citizens unless the District Magistrate has the power to put the senior citizen into possession of the property and/or to restrain or eject the person who wishes to interfere in the possession of the property of the senior citizen. Protection of the property of a senior citizen includes all incidences, rights and obligations in respect of property in question. Once a senior citizen makes a complaint to District Magistrate against his son to vacate the premises of which the son is a licensee, such summary procedure will ensure for the benefit of the senior citizen. The petitioner would have no right to resist his eviction only on the ground that the Act does not contemplate eviction of an occupant. Eviction is one part of the right to protect the property of a senior citizen which right could be exercised by a senior citizen in terms of provisions of the statute, Rules framed and the Action Plan notified.”

7. As far as the assertion of the petitioner that she being the daughter-in-law, does not come under the definition of a legal heir is concerned, the same is noticed and deserved to be rejected inasmuch as the impugned eviction order has been passed against the son (respondent No.3) as well as daughter-in-law (petitioner). The ratio of law laid down in **Rajwinder**

Kaur's case (supra) is distinguishable on facts of the present case.

8. In view of the above discussion, this Court does not find any infirmity with the impugned order and the instant petition is dismissed.

9. The petitioner is directed to deliver the possession of the house to respondent No.2 within eight weeks from the date of receipt of certified copy of this judgment.

May 17, 2019
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[JITENDRA CHAUHAN]
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No