

101

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-. -

CWP-11057-2021
Date of decision: 14.11.2022

Beant Kaur

.....*Petitioner*

versus

Buta Ram and others

....*Respondents*

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. Gourave Bhayyia Gilohtra, Advocate
for the petitioner

Mr. S S Rangi, Advocate and
Mr. H S Tuli, Advocate
for respondent No. 1

-. -

Rajbir Sehrawat, J. (Oral)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, praying for issuance of a writ in the nature of certiorari for setting aside the order dated 03.03.2021 (Annexure P-9) passed by the Additional District Magistrate, Ambala, under Section 22(c) of the Maintenance and Welfare of Senior Citizens Act, 2007 (in short, 'Senior Citizens Act'), thereby evicting the petitioner and her three minor children from the house in question.

The facts, as pleaded in the petition, are that the petitioner is the daughter in law of respondent No. 1 (Buta Ram). The petitioner is serving as a Head Constable in the police department. The petitioner got married to the son of respondent No. 1, namely Parvinder Kumar alias Pommi in the year 2006. Out of the said wedlock, two children were born.

Respondent No. 1 was the owner of House No. 87, Durga Nagar, Nasirpur, Hissar Road, Ambala City. Later on; the house in question was transferred by respondent No. 1 in the name of husband of the petitioner by way of a gift deed. However, husband of the petitioner had developed some wrong habits and he started extracting money from the people; by making false promises and defrauding them. As a result, several FIRs were registered against husband of the petitioner. In this situation, in the year 2018, husband of the petitioner had left the house. Since then, the petitioner is residing all alone, along with her children in the house in question. However, on 20.05.2020, husband of the petitioner had transferred the house in question to respondent No. 1 vide gift deed. Thereafter, in October, 2020, husband of the petitioner had filed a divorce petition against the petitioner, which is still pending. Just to harass and oust the petitioner, in collusion with his son, respondent No. 1 had filed an application under section 22 of the Senior Citizens Act to get the petitioner and her children evicted from the house in question. The Additional District Magistrate, Ambala has passed the impugned order of eviction of the petitioner from the house in question. Hence, the present petition.

Arguing the case, counsel for the petitioner has submitted that the proceeding under the Senior Citizens Act, initiated by respondent No. 1 against the petitioner is totally mala fide and collusive. Otherwise, the petitioner was, in no way, interfering with the life and liberty of her father-in-law/respondent No. 1. The entire effort, in the present case, happens to be just to oust the petitioner from the house in question. Therefore, gifting the property by husband of the petitioner to respondent No. 1 and the

divorce petition, both, came in a quick succession. Counsel for the petitioner has further submitted that he has the instructions to submit that the petitioner has always been ready to serve her father-in-law/respondent No. 1. Further, the petitioner is ready to occupy the first floor and mummy portion along with the back side portion of the ground floor of the house where two rooms, bathroom and kitchen are situated. However, father-in-law/respondent No. 1 is not agreeing even to that proposal. Counsel for the petitioner has relied upon a judgment rendered by Hon'ble the Supreme Court in '***S. Vanitha vs. Deputy Commissioner Bengaluru, Urban District and others***', ***2020 SCC Online SC 1023***, to submit that a petition for eviction is not even maintainable against the daughter-in-law. While summing up the arguments, counsel for the petitioner has submitted that there is no factual or legal basis to pass the impugned order, evicting the petitioner from the house in question. Therefore, the impugned order deserves to be set aside.

Per contra, counsel for respondent no.1 has submitted that since the house in question belongs to respondent No. 1/father-in-law of the petitioner, therefore, he has every right to enjoy the same in the manner, he so desired. It is only because the petitioner was creating nuisance that the respondent No. 1 was compelled to take this extreme step so as to protect his property and his life and liberty. Otherwise, the father in law/respondent No. 1 is having no mala fide intention against the petitioner. To buttress his arguments, counsel for respondent No. 1 has submitted that even during pendency of the proceedings under the Senior Citizens Act, the father-in-law/respondent No. 1 has executed a registered Will, in which, he has given

a portion of the house in question to the husband of the petitioner. Therefore, the order impugned in the present petition has rightly been passed by the Additional District Magistrate, Ambala and, as such, the present petition deserves to be dismissed. Counsel for respondent No. 1 has relied upon a judgment passed by the Division Bench of this Court in '*Vrinda Sharma vs State of Haryana and others*', *LPA-141-2022*, **decided on 18.02.2022**, to contend that the house in question belongs to respondent No. 1, therefore, the petitioner had a right to reside in the house only till respondent No. 1 so desires.

Having heard counsel for the parties, this Court finds substance in the arguments raised by counsel for the petitioner. It is not even in dispute that the petitioner is the daughter-in-law of respondent No. 1 and two children were born out of the wedlock of the petitioner with the son of respondent No. 1. It is also not in dispute that husband of the petitioner was owner of the house in question till the year 2020. It is just before filing of the divorce petition that the husband of the petitioner had transferred the property in favour of respondent No. 1 by way of a gift deed. Therefore, there is substance in the arguments raised by counsel for the petitioner that the proceedings against the petitioner, in all their manifestations, are collusive in nature; being in tandem with the desire of husband of the petitioner.

Another aspect, which has been presented before this Court is that the petitioner, who is present in the Court, has even offered to maintain her father-in-law/respondent No. 1 by paying all kind of the bills and by making special provisions for him on the ground floor of the house in

question; keeping in consideration his old-age condition. However, respondent No. 1 seems to be not interested in residing in the house in question for the reasons, as mentioned in the Will executed by respondent No. 1, that he is residing in another house with his other son (Surinder Kumar). Therefore, question of not maintaining respondent No. 1 by the petitioner does not arise. Moreover, the petitioner, being the daughter-in-law, was not responsible to maintain respondent No. 1, in the first instance. Therefore, the order impugned in the present petition is passed without any substantial grievance of respondent No. 1.

The fact that the proceedings initiated by respondent No. 1 were not bona fide is also reflected from the fact that he preferred a petition for eviction of the petitioner despite the fact that he is residing in an other house with his other son. Therefore, there was no interference on the part of the petitioner with the life and liberty of respondent No. 1. Moreover, the Will; which, at this stage, is not disputed by either of the parties as a fact, though they may dispute the veracity of the same in some other proceedings; shows that despite giving another house to other son (Surinder Kumar), 50% share of the house in question has also been bequeathed in favour of that other son; by excluding husband of the petitioner. In totality of the circumstances, this Court finds that the facts involved in the present petition neither appears to be prejudicial to the life and liberty of respondent No. 1 nor harmful to the property owned by him. Therefore, this Court does not find any factual or legal basis to sustain the order impugned in the present petition. Moreover, this Court finds substance in the argument of counsel for the petitioner and a reference made to judgment rendered in

'*S. Vanitha's* case (supra), at least to the limited extent that the action of respondent No. 1 was collusive in nature and, therefore, the proceedings initiated by respondent No. 1, being non-bona fide, cannot be permitted to continue any further.

In view of the foregoing discussion, the present writ petition is allowed and the impugned order in the present petition is set aside.

However, it is clarified that a reference to the Will executed by respondent No. 1, has been made in the present proceedings, only for the purpose of appreciating submissions by the parties and not to pronounce any verdict about validity of the same. The parties shall be at liberty to avail other alternate legal remedy qua the same; in accordance with law.

(Rajbir Sehrawat)
Judge

14.11.2022
mohan bimbra

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