

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

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CWP No.9919 of 2016 (O&M)
DATE OF DECISION : 18th FEBRUARY, 2022

Satwant Singh and another

.... Petitioners

Versus

**Deputy Commissioner-cum-District Magistrate, Union Territory of
Chandigarh & another**

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court
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Present : Mr. Shekhar Verma, Advocate and
Mr. Dushyant Sarvesh, Advocate for the petitioners.

Mr. Vivek Chauhan, Additional Standing Counsel, UT and
Mr. Rohit Kaushik, Advocate for respondent No.1.

Mr. Ashish Gupta, Advocate for respondent NO.2.

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RAJBIR SEHRAWAT, J. (Oral)

CM-1952-CWP-2022

For reasons mentioned in the application, the same is
allowed as prayed for and the Will (Annexure A-1) is taken on record.

CWP No.9919 of 2016

1. The petitioners have filed this petition under Articles 226
and 227 of the Constitution of India, praying for issuance of a writ in the
nature of mandamus/certiorari for setting aside and quashing the order
dated 07.04.2016 passed by the Deputy Commissioner-cum-District
Magistrate, Union Territory, Chandigarh under Sections 21 & 22 of the

Maintenance and Welfare of Parents and Senior Citizens Act, 2007, being illegal, without jurisdiction; along with certain other prayers.

2. The facts giving rise to the present petition are that respondent No.2, who is father of petitioner No.1 and father-in-law of petitioner No.2, had filed an application before respondent No.1-District Magistrate, UT, Chandigarh under Sections 21 & 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short, the 'Senior Citizens Act'), seeking eviction from the property, which is House No.2040, Sector 19-C, Chandigarh and Booth No.123, Sector 19, Sadar Bazar, Chandigarh. The respondent No.2 had asserted in the application that he was the owner of the property in question, i.e., the house having devolved upon him by Will of his mother and the shop having been purchased by him long time ago. It was further asserted that the petitioners were in illegal possession of the house. Since the petitioners were harassing him, therefore, he had even disowned them and had divested them of all rights qua his properties. The petitioners harassed and tortured him despite they having been disowned by respondent No.2. Not only this, respondent No.2 had filed a suit for getting possession of the property in question and the same was allowed by the Civil Court. The appeal filed by the petitioners was also dismissed. Hence, respondent No.2 should have been handed over the possession of the properties much earlier. However, the petitioners continued with the forcible possession of the same. As a ploy to harass respondent No.2, the petitioner No.2 filed a suit seeking injunction against dispossession except in accordance with law. Since the respondent No.2 did not have any intention to violate the law, therefore,

having appeared before the Civil Court he made a statement that he would take legal recourse for getting the possession of the property. Accordingly, the above mentioned civil suit seeking possession, was filed by the respondent No.2, which already stands decreed. When the petitioners had exhausted their other remedies, then petitioner No.1 filed another civil suit against respondent No.2 and got a status quo order from the Civil Court; by concealing all the sequence of facts and previous litigation between the parties. When respondent No.2 appeared before the trial Court in that case and brought the facts to the notice of the court, then petitioner No.1 had withdrawn that civil suit as well. Hence, even on legal counts, the petitioners have no right to stay in the property. Since respondent No.2 was being harassed by petitioners and his properties were being misused, therefore, the application was moved before respondent No.1-District Magistrate for seeking eviction order. The same has been allowed by respondent No.1. Hence, the present petition has been filed by the son and the daughter-in-law of the respondent No.2-father.

3. Arguing the case of the petitioners, learned counsel for the petitioners has submitted that respondent No.2 was not the owner of the property. In fact, the property has come from grand-mother of petitioner No.1 through a Will. Under that Will, respondent No.2-father could have only a limited right qua the said property. However, he had no absolute right. The petitioner No.1 and his wife-petitioner No.2, were residing in the house as 'licensee' of grand mother. Qua the conduct of respondent No.2-father, it has been submitted on behalf of the petitioners that respondent No.2 was in relation with another woman. In connivance

with the said woman respondent No.2 was creating problems for the petitioners. Hence, the report was made to the police as well. In those proceedings, on the basis of the statements made by several persons, the police had found that respondent No.2 was not being harassed. Therefore, the impugned order is wrongly passed. Going forward, the counsel for the petitioners has submitted that respondent No.1-District Magistrate does not even have power to order eviction under the Senior Citizen Act or the Rules applicable in the matter. The counsel has relied upon the judgment rendered by this Court in case of ***Simrat Randhawa versus State of Punjab and others***, passed in ***CWP No.4744 of 2018*** decided on 23.01.2020. Accordingly, it has been submitted by the counsel for the petitioners that instead of District Magistrate, only the civil court will have the jurisdiction qua passing of eviction orders regarding the property in dispute. It is further submitted by the counsel for the petitioner that even if the house in question is taken to be under the ownership of respondent No.2, yet respondent No.2 is not the owner qua the booth in the Sadar Bazar. No document of ownership has been placed on record, by the respondent No.2.

4. On the other hand, the counsel for respondent No.2-father has submitted that the argument qua lack of jurisdiction with District Magistrate, is totally against the Rules. Relying upon Rule 20(3)(1)(iv) of the Chandigarh Maintenance and Welfare of Parents and Senior Citizens Rules, the counsel for respondent No.2 has submitted that there is a specific Rule which confers the power upon District Magistrate and describes the procedure for ordering the eviction. Therefore, the District Magistrate has the statutory power to pass the eviction order. The order

has rightly been passed by the competent authority. Still further the counsel for the respondent No.2 has submitted that on whatever count the arguments of the petitioners are considered, the present petition is bound to fail. If the petitioners say that the District Magistrate has no jurisdiction, rather the Civil Court has the jurisdiction, then the Civil Court has already passed decree in favour of respondent No.2; ordering the petitioners to vacate the properties in question. Otherwise, under the Act, the order has rightly been passed by the competent authority. The counsel has further submitted that the very fact that repeated litigation has been initiated by the petitioners against respondent No.2 shows that respondent No.2, being a senior citizen and father of the petitioner No.1 and father in law of petitioner No.2, is being harassed. The petitioners had gone to the extent of character assassination of respondent No.2 by leveling false allegations against him. The wife of respondent No.2 expired in the year 2006. Thereafter, since there was nobody to take care of respondent No.2, therefore, out of sympathy one lady used to provide some times some essential requirements to respondent No.2. Maligning such pious relation arising out of sympathy is nothing but a wicked thought process. Otherwise also, the said lady was having her husband, children and grand-children as well. Therefore, the allegations qua character of respondent No.2 were absurd to the hilt. Even the family of that lady was sought to be involved in vicious litigation by the petitioners. Therefore, in one of the proceedings before the police the husband of that lady had to make a statement that he will not permit his wife even to visit the house of respondent No.2. Thereafter, the family of that lady even had to leave that locality and shift to some other place.

The petitioners have been using police machinery and have been flouting the legal orders. Accordingly, it is submitted that the order has rightly been passed.

5. The counsel has also pointed out that in a similar situation this court has held in the case of ***Justice Shanti Sarup Dewan and another versus Union Territory, Chandigarh and others (LPA No. 1007 of 2013 decided on 26.09.2013)***, that the Magistrate has the power to order eviction at the instance of the senior citizen. The said judgment has been followed by various benches of this court in several judgments.

6. The counsel for respondent No.2 has also submitted that the life of respondent No.2 has been made such a hell by his son and his daughter-in-law that he has thought it fit to donate the entire properties owned by him, in charity; after his death; instead of letting the same to be inherited by the petitioners. Accordingly, he has executed a registered Will, which has been placed on record by way of an application today, vide which properties have been bequeathed in favour of a *Gurudwara*. This shows that respondent No.2 has been harassed by the petitioners to the extreme limits.

7. Having heard the counsel for the parties, this court does not find any substance in the arguments of the counsel for the petitioners. Although, the counsel for the petitioner No.1 has questioned the title of respondent No.2 asserting that his name also mentioned as part of the Will executed by his grant mother, however, the Will itself says that petitioner No.1 would get the property only after death of respondent No.2. The first right has been created in favour of respondent No.2 only.

Whether the subsequent or the second stage devolution through the Will

is even sustainable in law or not, that could still be a moot question in view of the law of property, however, the title of respondent No.2 is unquestionable even as per the assertions made by the petitioners. The succession in favour of petitioner No.1 shall open only after death of respondent No.2. So far as the shop in question, is concerned, it has been specifically asserted in the application moved before the District Magistrate that respondent No.2 had purchased that shop in the year 1993 and 1995. That assertion has already gone unrebutted before the authority. Although the counsel for the petitioners has relied upon title deed in favour of some Chaman Lal and Jaipal and some allotment letter in favour; however, that document is of a date much prior to the date when respondent No.2 claims to have purchased the said property from those very persons. The said document does not even form the part of the record before the District Magistrate. Nor is anything on record before this court either to show that the above said owners continued to be the owner even after date of purchase claimed by respondent No.2. Hence, the assertion of the petitioners qua title of respondent No.2 is totally unsubstantiated from any record and is only a ploy to attempt to defeat the remedy of respondent No.2.

8. Otherwise also respondent No.2 was not left with any alternative but to avail the remedy before the District Magistrate; so as to get the possession of the property in question. So far as the civil court, is concerned, there was already a civil court decree passed in his favour in the year 2016; and even the appeal against the said judgment and decree stood dismissed way back in the year 2019. Since, in the meantime, the petitioners had filed the present writ petition and there was an interim

order in their favour, passed in this petition, therefore, the appellate court, while dismissing the appeals filed by the petitioners, had observed that respondent No.2 shall be entitled to take possession of the properties in question after the present petition is disposed of. Hence, even on that count, respondent No.2 cannot be denied the benefit of possession of the properties in question.

9. This court also finds conduct of the petitioners, in character assassination of their father and father-in-law; to be strange. In a bid to usurp the properties of father, the petitioners have gone to the extent of taking him to the police, as well as leveling allegations of having relation with other woman. On this point, the court finds substance in the argument of counsel for respondent No.2 that the respondent No.2 is of the age of 72 years and the said lady, with whom the petitioners allege the respondent No.2 having any kind of relation, was also a woman having husband, children and even grand-children. Therefore, on the face of it, the allegations against respondent No.2 appears to be thoroughly absurd and designed only to malign the image of respondent No.2 and to make attempt to grab his properties by discrediting him. This kind of conduct on the part of the petitioners, also lends credence to the assertion of respondent No.2 that he has been harassed to such an extent that he had to think of divesting the petitioners of his legacy as such. The very fact that respondent No.2 has executed a registered Will in favour of Gurduwara Dasvi Patshahi, Nada Sahib, Panchkula, Haryana, donating his entire property after his death, rules out any possibility of any cordial relations between the petitioners and the respondent No.2. To test the veracity of the intentions of respondent No.2, who is present with the

counsel, this court had again asked him whether he actually intended to donate the properties through the Will as he has executed, or he has executed the Will only to defeat the case of the petitioners. The response of the petitioner to this query from the Bench is more convincing; because the reply which has come from respondent No.2 is that he is ready to donate this property out-rightly even today. There could not be better proof of intention of a person, who is ready to get divested of everything.

10. Although, counsel for the petitioners have raised a vague argument that the petitioner No.1 was in possession of the property as 'licensee' from the time of his grant-mother, however, nothing has been placed on record to show any 'license' of any kind in favour of petitioner No.1, as such. Needless to say that 'filial relations' cannot be confused with the 'property relations' and 'filial privileges'; which are enjoyed by a person being family member, cannot be raised to the level of 'property rights' created in favour of any member of the family. Wherever the law contemplates creating property rights on a member of family, only because of his existence as member of the family, that is specifically so provided by the law. Very good example of this aspect is the coparcenary rights in Hindu Family, where the sons and daughters get rights by birth. There are some other family relations as well, which can entail some rights qua properties, like; right to maintenance can create charge upon the property in favour of children, wife and other dependent. Unless the law contemplates property right by birth or right on the basis of being only a family member, no such property right can be assumed in favour of any family member by birth or by matrimony. The family

relations shall continue only as filial relations and privilege of using the property of a family member would be only filial privilege, *de horse* any right to the property as such. The term license, as defined under Section 52 of the Indian Easements Act, 1882 contemplates creation of 'right' qua the property through agreement specially meant for creation of license. Maintaining family relations cannot be interpreted as such an agreement. Moreover, the Senior Citizen Act has been given an overriding effect by Section 3 of the Act. Therefore, all other property rights and property relations of any kind stands obliterated for the purposes of considerations contemplated under the Act.

11. The counsel for the petitioners have placed heavy reliance upon the judgment rendered by this court in the case of ***Simrat Randhawa (supra)***. However, a bare reading of the judgment shows that, that case was related to the provision as existed in the Punjab Action Plan. The same was found unsustainable. However, for the territory of Chandigarh specific Rules have been framed and the Rule 20(3)(1) (IV) of the said Rules has given powers specifically to the District Magistrate to entertain the application for eviction and to pass the necessary order on having been convinced by the applicant. This Rule was specifically considered by the Bench in the abovesaid case and therefore, the same was distinguished from the Punjab Action Plan, upholding powers of District Magistrate. It was also held in that case that the right to get eviction can be taken as a consequence of order passed under Section 23 of the Act. Moreover, right to get eviction is an integral part of right of senior citizen to get his property protected; under Section 23 of the Act. If this right to get the eviction, is not taken as an integral part of Section

23 of the Act, then the entire aspect provided under Section 23 regarding declaration of the transfer as void, would be rendered meaningless. It cannot be interpreted, by any means, that senior citizen can get the transfer declared as void under Section 23 of the Act, then he has to be forced to file a separate suit for possession before the civil Court. Any such interpretation would be totally inconsistent with the object, intent and the content of the Senior citizen Act. The object of the Senior Citizen Act is to provide speedy remedy to the applicant; by superseding all other provisions, including the law relating to the property and jurisdiction of the Civil Court. Hence, the language, intent and purpose of Section 23 itself makes it clear that right to seek eviction is an integral part of Section 23 of the Act.

12. In view of the above, finding no merit in the present petition, the same is dismissed.

13. It is further ordered that since respondent No.2-father has already fought lengthy legal battle, including the one before the Civil Court, therefore, if respondent No.2 applies for police help for claiming the possession of the properties in dispute, then the police help shall be provided to him for that purpose; without requiring any further orders from any court.

14. All pending application, if any, shall stand disposed of accordingly.

18th FEBRUARY, 2022
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

No

Whether Reportable:

Yes

No