

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.125

Case No. : C.R.No.4161 of 2023

Date of Decision : July 26, 2023

Deepak Kumar and another Petitioners

vs.

Amrit Kaur Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Sumit Kumar, Advocate
for the petitioners.

* * *

GURBIR SINGH, J. :

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 22.05.2023 (Annexure P-7), passed by learned Additional Civil Judge (Senior Division), Hoshiarpur, vide which the application filed by the defendants-petitioners under Order 7 Rule 11 CPC has been dismissed.

2. Learned counsel for the petitioners submits that the respondent-plaintiff filed a suit for mandatory injunction against the petitioner and his wife to deliver the possession or eviction from the house in dispute, as mentioned in heading of the plaint. It is argued that issue regarding possession of the house has already been decided by District Magistrate-cum-Appellate Tribunal, on the application of respondent-plaintiff, filed during pendency of the suit, under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007, vide order dated 05.12.2019 (Annexure P-3).

The petitioners-defendants challenged the aforesaid order by way of filing

CWP No.5799 of 2020, wherein order regarding status quo regarding property in question was passed by a Co-ordinate Bench of this Court (Annexure P-4). After passing of afore-stated order of eviction by District Magistrate, the suit of the plaintiff has become infructuous.

3. Heard submissions made by learned counsel for the petitioners.

4. The instant suit has been filed by plaintiff-Amrit Kaur against the petitioner and his wife for grant of mandatory injunction seeking possession of the house inter alia on the ground that the suit property is her self-acquired property and defendant no.1 and his wife turned her out of the said house. The petitioners-respondents filed written statement and took the plea that there were two adjoining constructed houses, one in the name of the respondent-plaintiff and the other in the name of her husband. As per the oral family settlement, the house in dispute was given to petitioner no.1 for his residence and the other house was given to elder brother of petitioner no.1. The respondent-plaintiff is living happily with her husband and elder son in the other house, as per her own choice. She has already filed an application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007, wherein vide order dated 05.12.2019, petitioner and his wife were ordered to be evicted from the house of the respondent-plaintiff. The order dated 05.12.2019 reads as under :-

“Smt. Amrit Kaur w/o Prem Nath r/o Village Guru Arjan Dev Nagar, Piplawala, Tehsil and District Hoshiarpur has filed this case through its counsel under Section 23 of Maintenance and Welfare of Parents and Senior Citizen Act, 2007 before this Court. As per which the complainant's

age is 62 years and she comes in category of senior citizen and Respondent No. 1 is his son and Respondent No. 2 is his daughter-in-law. Complainant is owner of the disputed house and Respondents are forcibly residing in this house and have evicted the Complainant from the house. Due to which she is residing with her other son. On dated 23.04.2019 when complainant went to her house (disputed house) then Respondents hurled abuses at her and did not allow her to enter in the house. Similarly, on dated 01.05.2019 she went again to her house but Respondents treated her in same way like earlier and threatened her that if she came again then they will kill her. Due to which she filed complaint before Police Station, Model Town, Hoshiarpur which is pending. Complainant has no source of income and possession of her house is forcibly taken by Respondents. Therefore, she has prayed that as per relevant sections of the above Act, the action be taken and the Respondents be evicted from her house and possession of the house be provided to her so that she can live rest of her life peacefully.

Upon receiving the complaint, notice was issued to both parties and they were summoned. During hearing counsel of complainant reiterated the facts of the complaints and informed the Court that in the house wherein Respondents are residing with family is under ownership of the complainant and the behaviour of the Respondents is very bad with the complainant and they often keep on causing quarrel and hurling abuses at complainant and they also beat her. She

attempted to counsel the respondents several times but no change in their behaviour is observed. Being in old age, the complainant intends to live rest of her life peacefully. Due to which she wishes to evict the above Respondents from her house. Therefore, action be conducted under Section 23 of The Maintenance and Welfare of Parents and Senior Citizen Act, 2007 and order be issued for eviction of the Respondents from her house.

During hearing, the counsel of Respondents submitted written arguments. As per which both parties are undergoing court case for the disputed house before Hon'ble Court of Additional Civil Judge (Senior Division). Hoshiarpur. In addition to this apart from the disputed house the father of the Respondent also has one more house. With family consent the Respondent No.1's father has given the disputed house to him and second house was given to his elder brother. As per which both are residing separately. They conducted renovation of the disputed house and have incurred lot of expenses. This house has electricity, water and telephone connections in name of Respondent No.1. Complainant with its own wish has went to reside with other son. They have never conducted any fight or caused any beating to her. Whereas they are willing to keep the complainant with them and to provide service and care to her. Complainant's complaint has false and baseless facts. Therefore, this present complaint be dismissed.

Verbal arguments of both parties were heard and the documents on case file were also

examined and it has been found that complainant is owner of the disputed house and she has provided her consent to the Respondents for residing in the house. Complainant has filed complaints against Respondents before Police Department and Civil Court from which it gets evident that Respondents misbehave with her and are not fulfilling her primary and basic needs. If the children are not provide service and care to the senior citizen parents during their old age then the children have no right over the property of parents. While considering the above facts, I, Isha Kalia, IAS, District Magistrate-cum-Appellate Tribunal, Hoshiarpur, under section 23 of The Maintenance and Welfare of Parents and Senior Citizen Act, 2007, hereby order to evict the respondents from the house of complainant. Along with this Sub Divisional Magistrate, Hoshiarpur is hereby directed that he may ensure compliance of this order and if any hindrance is being faced in complying with this order then in this regard he may take assistance from Police. Case file be consigned to record room after compliance.”

5. A plaint under Order 7 Rule 11 CPC can be rejected where it does not disclose a cause of action or where relief claimed is under-valued or plaint is written on insufficiently stamped paper or suit is barred by any law. The passing of order dated 05.12.2019, mentioned above, neither operates res judicata nor the suit is barred due to passing of said order. There is no illegality in the impugned order passed by the learned Trial Court. in the

6.

The order dated 22.05.2023 (Annexure P-7), passed by learned Additional Civil Judge (Senior Division), Hoshiarpur, vide which the application filed by the defendants-petitioners under Order 7 Rule 11 CPC has been dismissed, is in accordance with law. There is no ground to interfere in the same.
7.

Accordingly, I find no merit in the present revision petition and the same is hereby dismissed.
8.

Pending applications, if any, shall stand disposed of along with this judgment.

July 26, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.