

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

**CWP-18625-2018
Date of decision : 03.05.2023**

Satish Kumar Khera@ Satish Khera ...Petitioner

Vs.

**The Assistant Collector Ist Grade Rohtak,
Haryana and others ...Respondents**

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Gurpreet Singh, Advocate
for the petitioner.

Mr. Zorawar Singh Chauhan, DAG, Haryana.

Mr. B.S. Khehar, Advocate
Legal Aid Counsel
for respondent Nos. 3 and 4.

MANOJ BAJAJ, J.

Petitioner-Satish Kumar Khera has filed this writ petition under Article 226 Constitution of India for issuance of a writ in the nature of certiorari for setting aside the order dated 27.12.2017 (Annexure P-5) passed by the Deputy Commissioner, Rohtak, whereby appeal filed by him against the order dated 07.07.2017 (Annexure P-3) passed under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was dismissed.

Learned counsel submits that the petitioner having served the Indian Railways, retired on 31.01.2010 and during his service period, he used to visit his mother Smt. Nand Rani Khera, who was owner of house measuring 72 sq.yards. Learned counsel has further pointed out that the petitioner's mother had executed a Will dated 19.02.1978, thereby bequeathing half share in a house each to the petitioner and his elder brother-Om Parkash and the said Will became operative on her death on 20.05.1985. The ground floor of the house came to petitioner's share, whereas the first floor was given to the respondent No.4, who is widow of

petitioner's elder brother-Om Parkash Khera. He submits that the petitioner had given the ground floor to his nephew, namely, Sanjay Khera (elder son of Om Parkash) and he alongwith his brother Harsh Khera had thrown out their mother who started residing in rented accommodation. After retirement when petitioner went to the house, he was not allowed to reside, but upon service of legal notice, Sanjay Khera, petitioner's nephew vacated the ground floor of the house. Learned counsel has drawn the attention of the Court to the application filed by senior citizen to contend that on 09.01.2016, the petitioner was dispossessed from the property and was not allowed to enter in the house and he gave a complaint to the police and finally he filed an application under Section 22 Maintenance and Welfare of Parents and Senior Citizens Act, 2007 seeking possession. He submits that Sub Divisional Magistrate, Rohtak vide impugned order dated 07.07.2017 dismissed the application on the ground that the petitioner can approach the Civil Court for the possession of half share in the house on the basis of Will and the said decision has been also upheld by the appellate Court. Learned counsel submits that the impugned decisions are wrong and illegal, therefore, interference is warranted by this Court.

Upon hearing the learned counsel and considering the above background, this Court finds that the whole case of the petitioner is based upon his rights in the immovable property on the strength of the Will executed by his mother and there is noting on record to indicate that he ever got possession of the ground floor of the house pursuant to the admission by his nephew-Harsh Khera, accepting the testament of their grandmother-Nand Rani Khera. Further, a perusal of the averments contained in para 6 of the reply, it comes out that Harsh Khera has specifically denied the validity of the Will propounded by the petitioner who further pleaded that Smt. Nand Rani Khera had handed over the property in his favour, who served her till her death.

Thus, this Court has no hesitation in holding that in order to seek

possession of the property in question, the petitioner can avail his remedy before Civil Court and the impugned decisions passed by the statutory authorities do not suffer from any illegality.

Resultantly no case is made out for exercise of extraordinary writ jurisdiction under Article 226 Constitution of India.

Dismissed.

(MANOJ BAJAJ)
JUDGE

03.05.2023
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No