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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-6622-2020 (O&M)
Date of decision: 30.01.2024

Pardeep Kumar

...Petitioner

Versus

The Additional District Magistrate Patiala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amandeep Singh Jawandha, Advocate
for the petitioner.

Mr. Kunal Muthreja, AAG, Punjab
for respondent No. 1.

Mr. K. R. Dhawan, Advocate
for respondent No. 2.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the impugned order dated 26.03.2019 (Annexure P-6) passed by respondent No. 1 whereby the application filed by respondent No. 2 was allowed and the petitioner was directed to vacate the house in question.
2. Brief facts of the present case are that respondent No. 2, who is a senior citizen and is stated to be handicapped, had filed an application dated 17.04.2018 under Section 22(2) of the Maintenance and Welfare of Parents & Senior Citizens Act, 2007 read with its Rules for the protection of her life and property with respect to House measuring 51 square yards

situated in Bank Street, Nabha, District Patiala, Police Station Kotwali Nabha, on the plea that respondent No. 2 is the owner in possession of the house in question and a suit for declaration has been decreed vide judgment dated 08.09.2016 (Annexure P-1) declaring her to be the owner of the said property. It was averred that the present petitioner, who is the brother of respondent No. 2, had threatened the respondent No. 2 that he would kill her with a *Kirpan* and knife and that the present petitioner was already residing in another house belonging to the father of respondent No. 2 which measured 60 square yards and was near to the house in question. It was further averred that respondent No. 2 had several times requested the petitioner to vacate the premises but he had refused to do so. A reply (Annexure P-5) to the said application was filed, in which it was stated by the present petitioner that he had filed a Regular Second Appeal against the judgment of the Courts below vide which the suit filed by respondent No. 2 was decreed and the same was pending and accordingly, the present application was not maintainable. The Additional District Magistrate, Patiala vide order dated 26.03.2019 (Annexure P-6) allowed the said application of respondent No. 2 and directed the petitioner to deliver the possession of the house in question. In the said order, it was observed that respondent No. 2 was the owner of the house in dispute and the said fact has been affirmed by the Civil Court, and that the petitioner had not produced any stay order, if passed in the said Regular Second Appeal so as to dispute the ownership of respondent No. 2 and after considering all the aspects, including the fact that respondent No. 2 was a senior citizen and that there

were other disputes between the petitioner and respondent No. 2, the Additional District Magistrate passed the said order of eviction. It is the said order which has been challenged in the present writ petition. It will be relevant to note that RSA No. 6348-2018 has also been dismissed by a coordinate Bench of this Court vide judgment dated 14.05.2019 (Annexure P-3).

3. Learned counsel for the petitioner has submitted that since respondent No. 2 had filed a civil suit for declaration which has been decreed and has been upheld upto this Court, it was not open to the respondent No. 2 to file an application under the Senior Citizens Act and the respondent No. 2 at best should have sought execution of the judgment and decree of the Civil Court in order to take possession from the petitioner. It is further submitted that since no execution has been filed, the impugned order deserves to be set aside and the present writ petition deserves to be allowed.

4. Learned counsel for respondent No. 2, on the other hand, has opposed the present petition and has submitted that by virtue of the judgment of the Civil Court, the ownership of respondent No. 2 has been established and a person, who is an owner and a senior citizen, is entitled to file an application under the Senior Citizens Act for eviction in view of the law laid down by the Hon'ble Supreme Court in **Smt. S Vanitha Vs. The Deputy Commissioner Bengaluru Urban District & Ors.**, reported as **2021(15) SCC 730**.

5. This Court has heard learned counsel for the parties and has perused the paperbook.

6. The fact that respondent No. 2 is a senior citizen is not disputed before this Court. Even a perusal of the application (Annexure P-4) would show that in the year 2018, when the application was filed, respondent No. 2 was 64 years of age and was thus a senior citizen. Respondent No. 2 has further stated that she is handicapped. With respect to ownership of the property in question, it would be relevant to note that respondent No. 2 had filed a civil suit No. 285T of 08.07.2016/29.07.2011 (Annexure P-1) for declaration to the effect that she was the owner of the premises in question against General Public, Municipal Committee and the present petitioner, and the said suit was decreed vide judgment dated 08.09.2016. The decree sheet passed in the said suit is reproduced hereinbelow:-

“DECREE SHEET

In the Court of Sh. Ram Pal, PCS, Civil Judge(Junior Division), Nabha.

Civil Suit No. 285T of 8.7.16/29.7.2011

ID No. CS/38698/2013

Decided on: 08.09.2016

Renu Kumari daughter of late Sh. Hans Raj son of Salig Ram, wife of Sh. Kanti Parkash Goyal, resident of Bank Street, Nabha, presently resident of Guru Arjan Dev Colony, House No. 95, Rajpura Town, Rajpura.

..Plaintiff

Versus

- 1. General Public,*
- 2. Municipal Committee, Nabha through its Executive Officer.*
- 3. Pardeep Kumar son of Hans Raj, resident of Bank Street, Nabha Impleaded vide order dated 15.12.2012)*

..Defendants

Suit for declaration to the effect that the plaintiff is the exclusive owner in possession of a residential house measuring 51 Sq. Yards, bounded as East: Property Shamlat, West: House of Hans Raj, now his sons, North: House of Balbir Chand, Krishan Chand, South: Bank Street, consisting of one room, a store, chobara and remaining court yards, situated in Bank Street, Nabha and a Suit for mandatory injunction directing the defendant No.2 to enter and

sanction the name of plaintiff in the municipal record, as per registered Will Vasika No. 136 dated 11.10.1989, executed by Hans Raj now deceased father of plaintiff in favour of the plaintiff.

That the value of the suit for the purposes of court fee and jurisdiction Is Rs.195/- for declaration and Rs.130/- for mandatory injunction on which a court fee stamps of Rs.100/- is affixed on the plaint.

This suit is coming up for final disposal today 1.. 08.09.2016 before Ram Pal PCS, Civil Judge (Jr. Divn) Nabha in the presence of Sh. J.M.Singh, Advocate, counsel for the plaintiff Sh. Amar Chand Advocate counsel for the defendant No.3, Suit against defendant No.2 dismissed as withdrawn, Defendant No.1 exparte. **It is hereby ordered that suit of the plaintiff succeeds and the same is hereby decreed with costs to the effect that plaintiff is exclusive owner in possession of residential house measuring 51 Sq. Yards, bounded as East: Property Shamlat, West: House of Hans Raj, now his sons, North: House of Balbir Chand, Krishan Chand, South: Bank Street, consisting of one room, a store, chobara and remaining court yards, situated in Bank Street, Nabha. She is also held entitled to mandatory Injunction and as such defendant No.2 is hereby directed to enter name of plaintiff in the municipal record regarding suit house.**

Costs of the suit

		Plaintiff(s)	Defendant(s)
1.	Stamps for plaint	Rs.100-00	Rs. 00-00
2.	Stamps for powers	Rs.10-00	Rs.10-00
3.	Stamps for process	Rs.50-00	Rs.00-00
4.	Stamps for Misc.	Rs.40-00	Rs.40-00
5.	Diet money/ publication fees	Rs.550-00	Rs.00-00
6.	Counsel Fee	Rs.22,000-00	Rs.00-00
	Total	Rs.22,750-00	Rs.50-00

7. Thus, respondent No. 2 was held to be the owner of the premises in question. It is not in dispute that the appeal filed against the said judgment by the present petitioner was dismissed vide judgment dated 15.05.2018 (Annexure P-2) and the RSA filed against the same was also dismissed by a Coordinate Bench of

this Court vide judgment dated 14.05.2019 (Annexure P-3). Thus, it was clearly established that respondent No. 2 was the owner of the premises in question. A perusal of the pleadings in the application and the reply would show that there was a dispute between the petitioner and respondent No. 2 and also that there are averments made by respondent No. 2 to the effect that respondent No. 2 is handicapped and that the petitioner had even threatened to murder her with a *kirpan* and knife and thus, for the purpose of ensuring the protection of the senior citizen, the order of eviction was necessarily required to be passed which has been rightly passed by respondent No. 1 vide order dated 26.03.2019 and there is no infirmity or illegality in the same.

8. The Hon'ble Supreme Court in the case of *Smt. S Vanitha (supra)*, had observed that a Tribunal constituted under the Senior Citizens Act, 2007 (hereinafter, "2007 Act") has the authority to pass an order of eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent and that, the eviction in other words would be an incidence of the enforcement of the right to maintenance and protection. Relevant part of para No.25 of the said judgment is reproduced herein below: -

“xxx xxx xxx xxx xxx xxx

25. The substance of sub-section (2) of Section 23, as submitted by the Second and Third respondents, is that the Tribunal had the jurisdiction to pass an order directing the eviction of the appellant who is their daughter-in-law. According to the submission, the power to order eviction is implicit in the provision guaranteeing a “right to receive maintenance out of an estate” and the enforcement of that right. In supporting the submission, they have referred to the view which has been taken by several High Courts, indicating that the Tribunal may order the eviction of a child or a relative from the property of a senior citizen, where there has been a breach of the obligation to maintain the senior citizen. The Tribunal under the

Senior Citizens Act 2007 may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent. Eviction, in other words would be an incident of the enforcement of the right to maintenance and protection.”

9. In the abovesaid judgment, the Hon'ble Supreme Court had taken into consideration the legislative scheme of the 2007 Act & reference was also made to Chapter V of the 2007 Act which provides for “protection of life and property of senior citizens”. The objects of the 2007 Act which included a need to give more attention to the care & protection of older persons was also taken into consideration. It was observed that the procedure to be followed by the Tribunal is of a summary nature. The contesting claim of both the parties to the effect as to whether the authorities under the 2007 Act have the jurisdiction to entertain the proceedings for eviction was also noticed. Relevant part of paragraph No.6, paragraphs 15, 16, 17 in their entirety as well as relevant portion of Paragraphs 19 and 20 of the abovesaid judgment are reproduced as under: -

“xxx xxx xxx xxx xxx xxx

6. The appellant specifically raised an objection to the jurisdiction of the authorities to entertain the proceedings seeking her eviction from the premises. She submitted that while the Senior Citizens Act 2007 provides for the maintenance of a senior citizen or a parent, there is no provision envisaging an order of eviction, and that the authorities had no jurisdiction to direct her removal from the premises.

C. Legislative scheme: Senior Citizens Act, 2007

xxx xxx xxx xxx xxx xxx

15 The rival submissions will now be analysed.

16 Our analysis of the rival submissions must begin with explaining and interpreting the salient feature of the Senior Citizens Act 2007 which have a bearing on the present controversy. “Maintenance is defined in an inclusive manner to i ” ncorporate,

among other things, provisions for food, clothing, residence, medical assistance and treatment. In defining the expression “property”, the legislation uses broad terminology encompassing “property of any kind” and to include “rights or interests in such property”. Overriding effect is given to the provisions of the enactment by Section 3. Besides the definitions which are comprised in Chapter I, Chapter II is titled “Maintenance of Parents and Senior Citizens” while Chapter V is titled “Protection of Life and Property of Senior Citizen”.

17. The Statement of Objects and Reasons indicates the rationale for the enactment of the law:

“Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that aging has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time – consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

xxx xxx xxx xxx xxx xxx

19. xxx xxx xxx Hence, in the case of the children of a senior citizen, the obligation to maintain a parent is not conditional on being in possession of property of the senior citizen or upon a right of future inheritance.

20. The procedure to be followed by a Maintenance Tribunal (constituted under Section 7 is of a summary nature as provided in Section 8(1) and with all the powers of a Civil Court, as provided in Section 8(2).

xxx xxx xxx xxx xxx xxx”

10. The abovesaid judgment has been followed by this Court in
CWP-15170-2023 titled as **“Ravi Kumar Vs. Deputy Commissioner-**

cumAppellate Tribunal, Jhajjar and others”, decided on 20.07.2023 while upholding the order of eviction passed by the authorities under the Act of 2007 and the LPA-1387-2023 filed against the said order has also been dismissed.

11. The arguments raised by the learned counsel for the petitioner to the effect that respondent No. 2 should have sought execution of the Civil Court decree instead of filing the application under the Senior Citizen Act is completely misconceived and deserves to be rejected for the following reasons:-

(i) The Civil Court proceedings have been initiated by respondent No. 2 on account of there being a dispute with respect to the ownership of the property in question and the said suit was a declaratory suit and by virtue of the decree passed in the said civil suit, which has been upheld upto this Court, the said dispute was finally decided and it was held that respondent No. 2 is the owner of the property in question. Moreover, no decree for possession was passed in the said civil suit and thus, the question of executing the said decree for seeking possession from the petitioner does not arise.

(ii) It is a matter of settled law that in case a special Act, like the 2007 Act, provides for certain rights to a certain category of individuals, then the said individual cannot be restrained from invoking and enforcing the said rights on the ground that other alternate remedies are available to the said individual.

12. In the present case, the respondent No. 2 being a senior citizen filed an application before the competent Authority under the Senior Citizens Act which was in accordance with law and which fulfilled all the ingredients as required under the Act for the grant of relief and thus, the competent authority after considering the case of the respondent No. 2 has rightly passed the impugned order which deserves to be upheld.

13. Keeping in view the abovesaid facts and circumstances, the present petition being meritless deserves to be dismissed and is accordingly dismissed.

30.01.2024
Mehak

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No