



CWP-24544-2024 :1:

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-24544-2024 (O&M)
Date of decision : 05.02.2025

GARIMA JAIN

..... Petitioner

VERSUS

THE DEPUTY COMMISSIONER-CUM-CHAIRMAN, APPELLATE
TRIBUNAL, SONIPAT AND ORS

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. Sushil Jain, Advocate
for the petitioner.

Mr. Jagdish Manchanda, Advocate
for respondents No.3.

Mr. Gurpreet Jayia, Advocate
for respondent No.4.

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the grievance of the petitioner is that on the application filed by to respondent No.3-senior citizen under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as '2007 Act') vide impugned order dated 24.07.2024 (Annexure P-10), the Sub-Divisional Magistrate ordered maintenance of Rs.25,000/- upon the petitioner and her husband by 5th of every month and after expiry of the period of appeal, respondent No.3 was allowed to enter in the disputed House No.99, T.P. Scheme Section 15, Sonipat. The petitioner filed an appeal alongwith stay application against the impugned order dated

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24.07.2024 and vide order dated 17.09.2024 the stay application has been rejected. Hence, the present petition.

2. Learned counsel for the petitioner argues that in an application filed under Section 23 of 2007 Act, the respondent No.3-senior citizen claimed the house to be hers and prayed for the cancellation of the said sale deed on the ground that the house in question was purchased by the senior citizen out of her own funds but in the name of her son and the daughter-in-law hence, she has a right to claim the property as her own so as to reside in the said property. In order passed by the Tribunal on the application of the senior citizen, a direction has been given that though, the property being claimed as the ownership of the senior citizen cannot be accepted as the same is in the favour of the son and the daughter-in-law but, the senior citizen will be paid financial maintenance and she will live in the said house. The said order passed by the Tribunal dated 24.07.2024 is under challenge in the present petition.

3. Learned counsel for the petitioner further argues that once, the property in question does not belong to the respondent No.3-senior citizen, claiming the entrance into the said property which belongs to the petitioner, as granted by the authorities while exercising jurisdiction under 2007 Act, is contrary to the provisions of the 2007 Act and the said order dated 24.07.2024 is liable to be *set aside*.

4. Learned counsel for the petitioner further argues that the senior citizen is fully sufficient to reside wherever she wants keeping in view the fact that she is getting pension of more than Rs.50,000/- but the only

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purpose of entering the house in question is to create problem for the petitioner as there is a matrimonial dispute between the petitioner and her husband and the proceedings initiated under 2007 Act is only to dislodge the petitioner/daughter-in-law from the house which is in the ownership of the daughter-in-law alongwith respondent No.4-son of the senior citizen.

5. Learned counsel for the petitioner submits that the said facts have been totally ignored by the authorities concerned while passing the orders which have been impugned in the present petition and therefore, the orders may kindly be *set aside*.

6. Learned counsel appearing on behalf of senior citizen does not dispute the fact that as of now, the house in question where the right of entrance has been given to the senior citizen vide the impugned orders, is in the joint ownership of the petitioner daughter-in-law as well as the son of the senior citizen.

7. Learned counsel for the respondent-senior citizen further submits that the senior citizen is claiming the ownership of the said property on the ground that she has purchased the house in question out of her own funds for which, a civil suit has already been filed so as to claim the declaration that senior citizen is the owner of the said property hence, as the dispute qua ownership exists, the senior citizen has been given right to enter the said property so as to live a dignified life. Hence, the impugned orders may kindly be maintained.

8. I have heard learned counsel for the parties and have gone through the record with their able assistance.

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9. It is a conceded fact that there is a matrimonial dispute between the petitioner and respondent No.4 i.e. husband and wife. The property in question belongs to respondent-husband and petitioner-wife and respondent No.3 is the mother of respondent No.4-husband. Respondent No.4 is not living in the property in question and is presently pursuing his higher studies in Kolkata.

10. The question which needs adjudication is whether, a petition under Section 23 of the 2007 Act is maintainable in the present case so as to cancel the sale deed or not. The respondent No.3-senior citizen was not claiming maintenance but was claiming the cancellation of the sale deed in favour of the daughter-in-law and son on the ground of misrepresentation. The property which is in the name of the petitioner and respondent No.4 was not given by the senior citizen but was purchased from the third party. The claim of the senior citizen is that she was the source of funding is yet to be proved in the suit filed by respondent No.3. Once, as of now the property stands in the name of the petitioner as well as respondent No.4, there was no jurisdiction with the senior citizen to file an application under Section 23 of the 2007 Act qua the said property so as to cancel the said sale deed to which transaction, she is not even at party. The authorities concerned though have rightly come to the conclusion that the benefit under Section 23 of 2007 Act qua the cancellation of sale deed in question cannot be granted to the senior citizen but, without even appreciating whether, any claim of the maintenance was made by respondent No.3, the authority exercising jurisdiction under 2007 Act has not only given maintenance to respondent



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No.3 but also entrance to a property which as of now does not belong to respondent No.3. The senior citizen is already getting Rs.50,000/- as a pension and was already residing outside the premises since long. That being so, direction given to the petitioner to allow the senior citizen to enter the said premises, is beyond the jurisdiction keeping in view the provisions of Section 23 of 2007 Act. Respondent No.3 can claim maintenance as directed from her son, if she need to execute the order dated 27.04.2024.

11. Keeping in view the above, the impugned orders dated 24.07.2024 (Annexure P-10) and 17.09.2024 (Annexure P-13) are accordingly *set aside* in the terms and conditions mentioned hereinbefore.

12. As the senior citizen has already filed a suit claiming the ownership of the house, the learned counsel appearing on behalf of the petitioner/daughter-in law submits that in case, any order is passed by the competent authority in the said suit, the same will be complied with subject to availing appropriate legal remedies available to the petitioner. Nothing mentioned in this order will effect the civil suit filed by the senior citizen claiming the property to be her ownership in any manner.

13. Present petition is allowed.

14. Pending applications, if any, also stand disposed of accordingly.

(HARSIMRAN SINGH SETHI)
JUDGE

05.02.2025
Rimpal

Whether speaking/reasoned	Yes
Whether Reportable :	No