

Gulzar Singh v. State of Punjab

PUNJAB AND HARYANA HIGH COURT

*Before: Justice Rakesh Kumar Jain***Gulzar Singh - Petitioner,****Versus****THE STATE OF PUNJAB and others - Respondents.**

CWP No.2710 of 2018

07.02.2018

Maintenance and Welfare of the Parents and Senior Citizen Act, 2007, Section 22(2) - District Magistrate does not have the jurisdiction to proceed against the daughter-in-law, whose husband is alive as she is not one of the heirs of her father-in-law - "Action Plan".

Held,

9. The sine qua non for the District Magistrate is that he can pass order of eviction only against the son, daughter or legal heir of the senior citizen or a parent. The terms "son" and "daughter" do not require any definition but the term "legal heir" requires to be defined. The Act is silent about the definition of the "legal heir" rather it only defines the "children" and the "relative". The "children" includes son, daughter, grandson and granddaughter but does not include a minor and "relative" means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death. The definition of "relative" would come into play if the senior citizen is childless. In the present case, the petitioner Gulzar Singh is having a son, therefore, the definition of "relative", insofar as respondent no.5 is concerned, is not applicable. If the definition of "legal heir" is not provided in the Act and the Court has to rely on the definition of "legal representative" provided in Section 2(11) of the Code of Civil Procedure, 1908, which means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

10. Thus, the legal heir would be a person who would succeed to the property or estate of a person. Gulzar Singh is a Hindu and his succession would be governed by the provisions of the Hindu Succession Act, 1956 (hereinafter referred to as the "Act of 1956"). In case the petitioner dies intestate, then his succession would open and his estate would devolve upon his legal heirs who are defined in Section 8 of the Act of 1956, according to which daughter-in-law is neither a Class I nor Class II heir, therefore, she would not succeed to the property of her father-in-law. It is altogether different situation if the daughter-in-law is a widow,

then she would succeed to the property left by her deceased husband, who would succeed to the property of his father. Here in this case, respondent no.5 is not the widow, therefore, she does not fall either within the definition of son, daughter or legal heir or any of the other heirs.

Ms. Ruchi Sekhri, for the petitioner.

Rakesh Kumar Jain, J. (Oral) - This petition is filed by a senior citizen for seeking a writ in the nature of mandamus, directing respondent no.2-District Magistrate-cum- District Welfare & Protection Officer to evict respondent no.5-daughter-in-law from his residential house in terms of the Action Plan framed under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Punjab), as notified on 27.11.2014 [hereinafter referred to as the "Action Plan"].

2. In brief, the petitioner filed an application before respondent no.2 under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "Act") alleging that respondent no.5 (daughter-in-law) is in occupation of the house owned by him, who is consistently harassing and humiliating him physically, mentally and economically, therefore, he has prayed that the said house may be got vacated from her possession. The District Magistrate has passed an interim order dated 31.10.2017 directing the Sub Divisional Magistrate, Dasuya to visit the spot and ensure that the petitioner gets an entry into his own house No.339, No.13 (Old), near Babian Da Gurudwara, Tanda and his life and property be protected. It was further directed that he should also ensure that respondent no.5 may not create any hurdle in availability of any routine articles required for the use of the petitioner.

3. Learned counsel for the petitioner has submitted that respondent no.2 is not deciding his application in terms of the Action Plan by way of evicting respondent no.5 from the house owned by him as she is in unauthorized occupation thereof. She has referred to the provisions of the Action Plan, in which the complete procedure is provided for seeking eviction from property/residential building of a senior citizen or parent.

4. Learned counsel for the petitioner submits that instead of passing an interim order allowing the petitioner to enter into his own house, the District Magistrate should have passed the eviction order.

5. I have heard learned counsel for the petitioner and examined the available record with her able assistance.

6. The issue involved in this case is as to whether the District Magistrate has got the jurisdiction to pass an order against a daughter-in-law in for her eviction from the house owned by a senior citizen or a parent in terms of Action Plan?

7. In order to answer this question, it would be apt to refer to the Action Plan for seeking eviction of an unauthorized occupant from the property/residential building of a senior

citizen or a parent. The said provision is reproduced as under:-

"1. Procedure for eviction from property/residential building of Senior Citizens/parent:

- i) Complaints received (as per provisions of the Maintenance of Parents and Senior Citizens Act, 2007) regarding life and property of Senior Citizens by different Department/Agencies i.e. Social security, Sub Divisional Magistrate, Police Department, NGOs/Social Worker, Helpline for Senior Citizens and District Magistrate himself; shall be forwarded to the District Magistrate of the concerned district for further action.*
- (ii) The District Magistrate shall immediately forward such complaints/applications to the concerned Sub Divisional Magistrate for verification of the title of the property and facts of the case through revenue department/concerned Tehsildars within 15 days from the date of receipt of such complaint/application.*
- (iii) The Sub Divisional Magistrates shall submit its report to the District Magistrate for final orders within 21 days from the date of receipt of the complaint/application.*
- (iv) If the District Magistrate is of opinion that any son or daughter or legal heir of a senior citizens/parents are in unauthorized occupation of any property as defined in the Maintenance and Welfare of parents and Senior Citizens Act 2007, and that they should be evicted, the District Magistrate shall issue in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.*

(v) The Notice shall:-

- a) Specify the ground on which the order of eviction is proposed to be made; and*
- b) Require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than then days from the date of issue thereof.*

2. Eviction order from property/residential building of Senior Citizens/Parents:

- (i) If, after considering the cause, if any, shown by any persons in pursuance to the notice and any evidence he/she may produce in support of the same and after giving him/her a reasonable opportunity of being heard, the District Magistrate is satisfied that the property/premises are in unauthorized occupation, the District Magistrate or other officer duly authorized may make an order of eviction, for reasons to be recorded therein, directing that the property/residential building shall be vacated, on such date, not later than 45 days from the date of receipt of such order, as may be specified in that order, by all persons who may be in occupation thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises;*

- (ii) The District Magistrate may also associate NGOs/Voluntary organizations/social workers*

working for the welfare of senior citizens for the enforcement of order;"

8. The Legislature has provided procedure that if an application is made to the District Magistrate or received by him in terms of Clause 1(i) of the Action Plan, then the District Magistrate would immediately forward the said complaint or the application to the concerned Sub Divisional Magistrate for verification of the title of the property. The Sub Divisional Magistrate, in turn, has to submit his report to the District Magistrate for the purpose of final orders. In case it is found that the property belongs to the senior citizen/parent and if the District Magistrate is of the opinion that any son or daughter or legal heir of a senior citizen/parents is in unauthorized occupation of any property and they deserve to be evicted, then he would issue a notice to them in the manner prescribed, calling upon the said persons to show cause as to why an order of eviction should not be issued against them/him/her. The action plan further provides the contents of the notice to be issued by the District Magistrate and, thereafter, the District Magistrate would pass the order of eviction and the Legislature has also granted powers to enforce the order passed by the District Magistrate.

9. The sine qua non for the District Magistrate is that he can pass order of eviction only against the son, daughter or legal heir of the senior citizen or a parent. The terms "son" and "daughter" do not require any definition but the term "legal heir" requires to be defined. The Act is silent about the definition of the "legal heir" rather it only defines the "children" and the "relative". The "children" includes son, daughter, grandson and granddaughter but does not include a minor and "relative" means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death. The definition of "relative" would come into play if the senior citizen is childless. In the present case, the petitioner Gulzar Singh is having a son, therefore, the definition of "relative", insofar as respondent no.5 is concerned, is not applicable. If the definition of "legal heir" is not provided in the Act and the Court has to rely on the definition of "legal representative" provided in Section 2(11) of the Code of Civil Procedure, 1908, which means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

10. Thus, the legal heir would be a person who would succeed to the property or estate of a person. Gulzar Singh is a Hindu and his succession would be governed by the provisions of the Hindu Succession Act, 1956 (hereinafter referred to as the "Act of 1956"). In case the petitioner dies intestate, then his succession would open and his estate would devolve upon his legal heirs who are defined in Section 8 of the Act of 1956, according to which daughter-in-law is neither a Class I nor Class II heir, therefore, she would not succeed to the property of her father-in-law. It is altogether different situation if the daughter-in-law is a widow, then she would succeed to the property left by her deceased husband, who would succeed to the property of his father. Here in this case, respondent no.5 is not the widow, therefore, she does not fall either within the definition of son, daughter or legal heir or any of the other heirs.

11. Thus, the application filed by the petitioner before the District Magistrate is totally misconceived as the District Magistrate does not have the jurisdiction to proceed against the daughter-in-law, whose husband is alive as she is not one of the heirs of her father-in-law (petitioner herein).

12. In view thereof, I do not find any merit to interfere in the present petition and hence, the same is hereby dismissed, though without any order as to costs.