

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.

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