

Before Tejinder Singh Dhindsa, J.

MUNI LAL SHARMA—*Petitioner*

versus

DISTRICT MAGISTRATE & OTHERS—*Respondents*

CWP No.18958 of 2017

July 03, 2019

Constitution of India, 1950—Arts. 226 and 227—Maintenance and Welfare of Parents and Senior Citizens Act, 2007—S. 27—Jurisdiction of civil Court barred—Petitioner senior citizen seeking eviction of son, daughter-in-law—Petitioner-absolute owner—Purchased plot—Registered sale deed from his father—District Magistrate held house to be ancestral, relegated petitioner to civil Court—cryptic, non speaking order—Matter remanded.

Held that while forming a view that the property in question is ancestral the facts/pleadings noticed herein above have not even been dealt with. Rather the petitioner has been relegated to approach the competent civil Court.

(Para 7)

Further held that the District Magistrate has even failed to consider the scope of Section 27 of the 2007 Act.

(Para 8)

Further held that issues ought to have been considered by the District Magistrate while dealing with the application moved by a Senior Citizen/parent and seeking eviction of his son/daughter-in-law from the demised premises. Suffice it to observe that the impugned order is a cryptic and non-speaking order. The same as such cannot sustain.

(Para 10)

B.S. Guliani, Advocate
for the petitioner.

Rashmi Attri, A.A.G., Punjab.

G.S. Sirphikhi, Advocate
for respondents No.2 and 3.

TEJINDER SINGH DHINDSA, J.

(1) Instant writ petition is directed against the order dated 14.06.2017 passed by the District Magistrate, Gurdaspur (Annexure P-1), whereby an application moved by the petitioner seeking eviction of respondents No.2 and 3 under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter to be referred to as 'the 2007 Act') has been dismissed.

(2) Counsel for the parties have been heard at length and the pleadings on record have been perused.

(3) In the considered view of this Court, a case for remand to the District Magistrate, Gurdaspur for deciding the application afresh is made out.

(4) Petitioner is a senior citizen aged about 70 years. Respondents No.2 and 3 herein are the son and daughter-in-law of the petitioner respectively.

(5) The petitioner while seeking eviction of the respondents from the house in question had projected a case that he is the absolute owner thereof having purchased the plot through a registered sale deed dated 25.09.1986 from his father and having paid a sum of Rs.7,500/- as sale consideration. Copy of the sale deed stands appended as Annexure P-3. On the basis of the sale deed, the plot in question was transferred in the name of the petitioner. A certificate in such regard was also issued by the Sub Registrar, Batala dated 19.11.1986 (Annexure P-5). Subsequent thereto, the site plan for raising construction upon the plot was also got approved from the Municipal Authorities. Copy of the certificate under Section 192 of the Municipal Act, 1911 has been placed on record at Annexure P-4. Petitioner being an employee of the Department of Telecommunications and posted at D.T.O. Office, Batala had even raised a loan of Rs.49,000/- to raise construction on the plot in question.

(6) The application moved by the petitioner stands dismissed vide impugned order dated 14.06.2017 passed by the District Magistrate, Gurdaspur and the operative part of which reads in the following terms:

“The personal hearing of the parties was thoroughly gone through and the documents attached with the file were perused. As per Will and Conveyance Deed, the property is ancestral. Compromise has taken place regarding the

property in dispute that they would live jointly and would respect each other also. Applicant is a retired employee and is getting pension. If the applicant has any problem, then he may approach competent Court. It is not appropriate for Revenue Department to take any action on this application. There is no weightage in the application submitted by the applicant. The application is being consigned to record. Order announced. Case file may be sent to record room after compliance.

Dated: 14.06.2017

Sd/-
District Magistrate Gurdaspur.”

(7) While forming a view that the property in question is ancestral the facts/pleadings noticed herein above have not even been dealt with. Rather the petitioner has been relegated to approach the competent civil Court.

(8) The District Magistrate has even failed to consider the scope of Section 27 of the 2007 Act and which reads as under:

“Section 27-Jurisdiction of Civil Courts barred.

No Civil Court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any Civil Court in respect of any anything which is done or intended to be done by or under this Act.”

(9) It would further be apposite to take notice that even though in the written statement filed to the instant writ petition at the hands of respondents No.2 and 3, it has been averred that the answering respondents are residing along with their children in the upper portion of the house in question in terms of a 'partition' having been effected but no documents to substantiate such assertion have been adverted to.

(10) All these issues ought to have been considered by the District Magistrate while dealing with the application moved by a senior citizen/parent and seeking eviction of his son/daughter-in-law from the demised premises. Suffice it to observe that the impugned order is a cryptic and non-speaking order. The same as such cannot sustain.

(11) In view of the above, writ petition is allowed to the extent of setting aside of the order dated 14.06.2017 passed by the District Magistrate, Gurdaspur at Annexure P-1. Matter is remanded back to the

District Magistrate, Gurdaspur for deciding the matter afresh on the application that had been moved by the petitioner seeking eviction of respondents No.2 and 3 from the premises in question. Liberty is granted to the petitioner to supplement the application that he had already moved by way of additional pleadings/supporting documents. In the eventuality of the petitioner doing so, the District Magistrate, Gurdaspur would be obligated to grant to respondents No.2 and 3 sufficient opportunity for setting up their defence.

(12) Parties are directed to appear before the District Magistrate Gurdaspur on 15.07.2019. Since the matter involves a claim/prayer set up by a senior citizen under the 2007 Act, it would be expected of the District Magistrate, Gurdaspur to take a final decision expeditiously and in any case within a period of three months from the date of appearance of the parties i.e. 15.07.2019.

(13) It is, however, made clear that nothing contained in this order would be construed as an expression of opinion on the merits of the case.

(14) Writ petition is disposed of in the aforesaid terms.

Shubreet Kaur