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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**(204) CWP-8501-2016 (O&M)
Date of Decision : March 18, 2025**

Harjit Kaur and another .. Petitioners

Versus

Union Territory of Chandigarh and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Petitioner No.1 in person.

Mr. Sanjiv Ghai, Addl. Standing Counsel for U.T. Chd.,
for respondent No.1.

Mr. Sandeep Jain, Advocate, with
Mr. Davinder Kumar, Advocate and
Mr. Sachin Jain, Advocate, for respondent No.2.

Mr. K.D. Sachdeva, Advocate, for respondents No. 3 and 4.

HARSIMRAN SINGH SETHI J. (ORAL)

1. Present writ petition has been filed for setting aside the order dated 07.04.2016 (Annexure P-17) by which, the application under Section 21 and 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred as '2007 Act') filed by respondents No.2-senior citizen seeking the possession of the House No.3100 Sector 40-D, Chandigarh has been allowed by the District Magistrate, U.T. Chandigarh.

2. Certain facts needs to be enumerated for the correct appreciation of the issue in hand.

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3. Petitioner No.1 is the daughter of respondent No.2-senior citizen (father). Ranjit Kaur, who was initially the petitioner No.2 but was later on transposed as respondent No.3 vide order dated 05.08.2022 of this Court, is the mother of petitioner No.1 and wife of respondent No.2. Respondent No.2-senior citizen (father) filed the application invoking the jurisdiction under the 2007 Act for the protection of life and liberty and the property i.e. House No.3100, Sector 40-D, Chandigarh. The said claim was raised by the respondent No.2-senior citizen (father) on the ground that he is a general power of attorney holder in respect of House No.3100, Sector 40-D, Chandigarh, which house is actually allotted to one Bilhar Singh son of Bojha Ram, resident of House No.2749, Sector 22-C, Chandigarh and is owned by him and keeping in view the said power of attorney, respondent No.2-senior citizen (father) is entitled for the vacation of the said premises which is in the possession of petitioner No.1 Harjit Kaur as well as Ranjit Kaur (earlier petitioner No.2)-wife of the respondent No.2-senior citizen. The respondent No.2-senior citizen namely Gulshan Beer Singh claimed eviction of his daughter (petitioner No.1) from the property in question.

4. The application filed by the respondent No.2-senior citizen came to be decided by the District Magistrate, U.T. Chandigarh vide order dated 07.04.2016 (Annexure P-17) wherein, the application filed by the respondent No.2-senior citizen was allowed to the extent that the left portion of the house which is in the occupation of the petitioner No.1 should be vacated by her and the CCTV cameras which have been fixed in the house should be removed. The said order dated 07.04.2016 (Annexure P-17) by which petitioner No.1 was directed to vacate the house, is under

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challenge in the present writ petition.

5. Petitioner No.1 who appears in person, argues that the impugned order dated 07.04.2016 (Annexure P-17) has been passed in the favour of respondent No.2-senior citizen on the application filed under Sections 21 and 22 of the 2007 Act wherein, direction has been given to petitioner No.1 to vacate the premises of the property in question whereas, the said direction so as to vacate the premises in question given by the authorities concerned vide impugned order dated 07.04.2016 (Annexure P-7) exercising jurisdiction under 2007 Act is not made out in the facts and circumstances of the present case.

6. Petitioner No.1 submits that as the respondent No.2-senior citizen is not the owner of the property in question, no order could have been passed in his favour by the authorities exercising jurisdiction under 2007 Act so as to direct the petitioner No.1 to vacate the House No.3100, Sector 40-D, Chandigarh and therefore, direction given to petitioner No.1 to vacate the premises is beyond the jurisdiction of the authorities concerned as per 2007 Act and hence, the impugned order dated 07.04.2016 (Annexure P-17) is liable to be set aside.

7. Upon notice of motion, the respondents have appeared.

8. Learned counsel for respondent No.2-senior citizen submits that though, there was an agreement to sell between the original owner namely Bilhar Singh son of Bojha Ram of the property in question i.e. House No.3100, Sector 40-D, Chandigarh, and respondent No.2-senior citizen and an irrevocable power of attorney has been given to respondent No.2-senior citizen, which entitles the respondent No.2-senior citizen to

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claim the said property under his ownership and the said claim has rightly been accepted by the authority concerned exercising power under 2007 Act hence, the writ petition filed by petitioner No.1 may kindly be dismissed.

9. Learned counsel appearing on behalf of respondents No. 3 and 4 who is the mother and sister of the petitioner respectively submits that though, respondent No.3 was initially the petitioner No.2 in the present petition but as the daughter i.e petitioner No.1 was not taking care of her, she had decided to withdraw her petition and had left the premises to join respondent No.4 and is now residing with her and she further intends to come back to the property i.e. House No.3100, Sector 40-D, Chandigarh to live at this stage of her life.

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

11. The conceded position which emerges in the facts and circumstances of the present case is that the claim has been raised by the respondent No.2-senior citizen under Section 21 and 22 of the 2007 Act. The prayer made is that the property i.e. House No.3100, Sector 40-D, Chandigarh belongs to the respondent No.2-senior citizen and the said property should be got vacated which is within the possession of petitioner No.1.

12. It may be noticed that any property which is owned by the respondent No.2-senior citizen and is in possession of any of his relative/children can be got vacated in case, a case is made out before the authorities concerned exercising jurisdiction under 2007 Act.

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13. In the present case, the dispute is with regard to House No.3100, Sector 40-D, Chandigarh, which is in the possession of petitioner No.1 and the possession of the said property is being claimed by respondent No.2-senior citizen claiming himself to be the owner of the aforementioned property.

14. On being asked whether, the respondent No.2-senior citizen is the owner of the property, learned counsel for the respondents submits that as of now, there is an agreement to sell of the property in question by the owner namely Bilhar Singh son of Bojha Ram with the respondent No.2-senior citizen namely Gulshan Beer Singh and there is an irrevocable power of attorney which has been given by Bilhar Singh in favour of Gulshan Beer Singh which fact clearly shows that the property in question actually belongs to respondent No.2-senior citizen namely Gulshan Beer Singh.

15. The said assertion needs to be tested on the basis of the settled principle of law whether, an agreement to sell with irrevocable power of attorney, will create the title or not. The said question has been decided by the Hon'ble Supreme Court of India in ***Civil Appeal No.3266-3267 of 2025 titled as M.S. Ananthamurthy and another vs. J. Manjula and others, decided on 27.02.2025*** wherein, it has been held that the power of attorney and the agreement to sell, even if the same are irrevocable, does not create a title or create interest in the property. The relevant paragraphs 47, 56 and 62 of the said judgment are as under:-

“47.It is a settled law that a transfer of immovable property by way of sale can only be by a deed of conveyance. An agreement to sell is not a conveyance. It is not a document

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of title or a deed of transfer of deed of transfer of property and

does not confer ownership right or title. In [Suraj Lamp](#) (supra) this Court had reiterated that an agreement to sell does not meet the requirements of [Sections 54 and 55](#) of the TPA to effectuate a ‘transfer’.

56. The practice of transferring an immovable property vide a GPA and agreement to sell has been discouraged by the following observations of this Court in [Suraj Lamp](#) (supra). The relevant observations are reproduced hereinbelow:-

“24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of “GPA sales” or “SA/GPA/will transfers” do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of [Section 53-A](#) of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales.”

62. We are conscious of the fact that the holder of POA did not choose to register the agreement to sell executed by the original owner in her favour. On this, we would like to underscore the observations of this Court on the objective and advantages of registration in [Suraj Lamp](#) (supra). The relevant excerpt has been reproduced hereinbelow:-

“Advantages of registration

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15. In the earlier order dated 15-5-2009 [(2009) 7 SCC 363 :

(2009) 3 SCC (Civ) 126] , the objects and benefits of registration were explained and we extract them for ready reference: (SCC p. 367, paras 15-18) “15. [The Registration Act, 1908](#) was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration.

16. [Section 17](#) of the Registration Act clearly provides that any document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in future ‘any right, title or interest’ whether vested or contingent of the value of Rs 100 and upwards to or in immovable property.

17. [Section 49](#) of the said Act provides that no document required by [Section 17](#) to be registered shall, affect any immovable property comprised therein or received as evidence of any transaction affected such property, unless it has been registered. Registration of a document gives notice to the world that such a document has been executed.

18. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person(s) presently having right,

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title, and interest in the property. It gives solemnity of form

and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.”

Registration of documents makes the process of verification and certification of title easier and simpler. It reduces disputes and litigations to a large extent.”

16. Learned counsel for respondent No.2-senior citizen has not been able to rebut the said principle of law, if applied, respondent No.2 cannot be treated to be the owner of the premises as of now i.e. House No.3100, Sector 40-D, Chandigarh so as to claim the benefit under 2007 Act.

17. Once, as per the settled principle of law, the property does not belong to the respondent No.2-senior citizen as of now and even in the record of the Chandigarh Administration, the property in question stands in the name of Bilhar Singh, without appreciating the said fact in the correct perspective, the authorities have exercised jurisdiction under the 2007 Act so as to treat the respondent No.2-senior citizen as the owner of the property in question in order to give direction to petitioner No.1 to vacate the premises of the same.

18. The direction which has been given by the authorities while passing the impugned order dated 07.04.2016 (Annexure P-17) is without

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jurisdiction and appreciating the provisions of the 2007 Act which only

creates a right with the senior citizen qua the property being owned by them and has been transferred to the children or relatives without any consideration or fulfilling the essentials which are laid down under the Act.

19. In the totality of the facts and circumstances which clearly shows that the respondent No.2-senior citizen not being the owner of the property in question as of now, cannot seek the eviction of petitioner No.1 from the premises of the property in question. In case, the possession of the property is to be sought by the respondent No.2-senior citizen being the holder of the power of attorney of the property in question, he has to avail the remedy under the Civil Court and not under 2007 Act.

20. Keeping in view the above, the impugned order dated 07.04.2016 (Annexure P-17) is set aside. However, liberty is given to the respondent No.2-senior citizen to avail appropriate remedy before appropriate forum in case they seek the possession of the property in question on behalf of the owner.

21. The present writ petition is allowed in above terms.

22. Civil miscellaneous application pending if any, also stands disposed of.

March 18, 2025
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes