

In the High Court of Punjab and Haryana at Chandigarh

**C.W.P. No. 24252 of 2014 (O&M)
Date of Decision: September 23, 2015**

Vinod Anand

... Petitioner

Versus

Deputy Commissioner-cum-Appellate Tribunal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment? **Yes**
- 2) To be referred to the Reporters or not? **Yes**
- 3) Whether the judgment should be reported in the Digest? **Yes**

Present: Mr. Sunil Chadha, Sr. Advocate with
Ms. Swati Verma, Advocate,
for the petitioner.

Mr. S.S. Chandumajra, Addl. A.G., Punjab.

Mr. J.S. Toor, Advocate,
for respondent No.3.

Paramjeet Singh, J.

The present writ petition is second round of an avoidable and unfortunate litigation between mother, son, daughter-in-law and others. The petitioner – mother filed a petition before the Tribunal under

Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the “Act”). The same has been dismissed by respondent no.2 - Sub Divisional Magistrate, Ludhiana (West) vide order dated 10.10.2012 (Annexure P/5) and appeal preferred by the petitioner has also been dismissed by the Deputy Commissioner – cum – Appellate Authority, Ludhiana vide order dated 15.10.2014 (Annexure P/11) and prayer has been made for setting aside the impugned orders and to allow the petition dated 22.07.2011 (Annexure P-1/A).

I had the occasion to deal with almost the identical dispute in *Ashwinder Singh and another vs. Bhagwant Singh and another, 2014(3) R.C.R. (Civil), 906.* It would be apposite to reproduce relevant paragraph:-

“This unfortunate regular second appeal is a poignant reminder of decaying social values and traditions in our country. The case is telltale story of how children have become detached in today's commercialized world and are making attempts to throw out their aged parents from the property which the parents have acquired during their life-time. It is perfect example of children becoming insensate towards parents/senior citizens.

“Maatru Devo Bhava” (revere your mother as God) and “Pitro Devo Bhava” (revere your father as God) is a well-known proverb.

2. On page 1200 of Sri Guru Granth Sahib, Sri Guru Ram Dass has written that “KAAHAY POOT JHAGRAT HA-O SANG BAAP / JIN KAY JANAY BADEERAY TUM

HA-O TIN SIO JHAGRAT PAAP//” (O son, why do you argue with your father? It is a sin to argue with the one who fathered you and raised you.).

3. *The above words of prudence guide us that we have to treat our parents as God. Modernization, technological advancement and social liability have changed our life-style and values. Sadly, our bent of mind and responsibility towards parents has degenerated. We have forgotten about Sharavan Kumar, who placed his blind parents in two baskets and carried the baskets on his shoulder to various places of pilgrimage. We have also forgotten the duties of a son towards aged parents. We have completely given up our ancient traditions when parents were most revered and respected.”*

Concept of Family in Indian context

Family has been the dominating institution, both in the life of the individual and in the life of society. Our children will always be our children. The parents believe that life is trial and error exercise. Even though parents do all right things for children specifically adult children and their family, many a times, this results into tearing break ups which is very anguishing for the parents. This happens when tension rises beyond bearable level. In such circumstances, can there be any good reason to keep cause of trouble under the same roof? At this stage, there is need of a trained therapist practicing in the area.

Introspection by everyone can be helpful to a great extent to settle the differences. Parents and children should think calmly and not

one should be fully convinced that his/her actions are not based on anger or fear, only then parents should ask politely but firmly to pack things and leave the house.

Facts of the case

Brief facts of the case are that petitioner filed petition under Section 23 of the Act for declaring the transfer deed / tabdeel malkiyatnama dated 24.04.2009 bearing vasika no. 775 dated 24.04.2009 executed by the petitioner in favour of respondent no.3 – Sumesh Anand, as illegal, null and void on the ground that it is the result of fraud, undue influence, misrepresentation and also for declaring that the petitioner would continue to remain owner of the property in question and also restraining respondent no.3 from alienating / selling or disposing of or creating any charge over the property in question. The averments in this petition are to the effect that petitioner is aged about 69 years and her husband is 73 years old. Both of them are senior citizens. The petitioner and her husband had purchased the property measuring 500 sq. yards, situated at Apex Nagar, Barewal Awana, Tehsil and District Ludhiana, with the sale consideration of their other property sold by them. Out of sale consideration of that property, they had purchased the area measuring 250 square yards in the name of the petitioner and 250 sq. yards in the name of respondent no.3 – Sumesh Anand. All the expenses

on the construction of this house had been incurred by the petitioner and her husband after availing loan etc. Respondent no.3 and her family started harassing the petitioner and her husband. Respondent no.3 threatened that he will commit suicide if the property is not transferred in his name. Being fed up with all this, the petitioner under undue pressure, coercion executed and got registered transfer deed / tabdeel malqiatnama, vide deed No. 775 dated 24.04.2009 in the name of respondent no.3. On these grounds, application was filed under the provisions of the Act. The Sub Divisional Magistrate, Ludhiana (West) vide order dated 10.10.2012 (Annexure P/5) held that petitioner has failed to prove the conditions mentioned in Section 23, therefore, there is no legal base to declare the transfer deed as void. Thereafter, the petitioner preferred an appeal before the appellate authority. The appellate Authority vide order dated 17.06.2013 (Annexure P/6) remanded the case to the Sub Divisional Magistrate to decide the case afresh. Said order was challenged by the petitioner by filing C.W.P. No. 14988 of 2013 before this Court. This Court vide order dated 02.09.2014 (Annexure P/7) disposed of the said writ petition by passing the following order:-

“..... I set aside the order and direct the appellate Tribunal to afford to the petitioner on the date that it will fix immediately after the papers are received to join issues on the documents filed by the respondents and dispose of the

appeal within one month in the manner sub clause 6 contemplates. The 2nd respondent to whom the case has been transferred by the 1st respondent has expressed inability to do the case and, therefore, the 1st respondent himself or any delegatee duly constituted may carry out the directions contained in this order.”

Thereafter, the appellate authority vide order dated 15.10.2014 (Annexure P/11) dismissed the appeal filed by the petitioner. Hence, this writ petition.

The stand of respondent no.3 in written statement before this Court and the Tribunal is that petitioner has executed the transfer deed voluntarily and there is no condition in the transfer deed that respondent has to maintain them. He never refused to maintain the petitioner and father.

Arguments

I have heard learned counsel for the parties and perused the record.

I have also heard the petitioner, her husband as well as her son – respondent no.3 in my chamber to explore the possibility of effecting compromise/settlement between the parties. But parties are adamant. So, there is no scope of settlement.

Learned counsel for the petitioner vehemently contended

that the Collector-cum-Sub Divisional Magistrate has wrongly and erroneously held that this is not within the power of the Court to declare the transfer deed null and void. It is only within the jurisdiction of the Civil Court. The Collector has erroneously declined relief saying that cogent evident has not been brought on record that respondent - transferee has refused to provide basic amenities to the petitioner and her husband. It is contended that the order passed by the appellate authority is sketchy and cryptic and is not sustainable in the eyes of law. Earlier too, the appellate authority has remanded the case to the Sub Divisional Magistrate for fresh decision. Thereafter, Civil Writ Petition was filed and case was remanded to the appellate authority. After remand, the appellate authority without application of mind dismissed the appeal on the ground that there is no condition mentioned in the gift deed that beneficiary will take care of the transferor and both the parties are asserting that they have constructed and developed the property in question.

On the other hand, learned counsel for the respondents vehemently contended that the orders have been legally passed by the authorities below and petitioner has no claim over the property in question and she has no right and title in the property in question.

Conclusion:

I have considered the contentions raised by learned counsel for the parties and perused the record.

Before I deal with the submissions of learned counsel for the parties, it would be appropriate to reproduce the relevant provisions of the Act. Section 23 of the Act reads as under:-

“23. Transfer of property to be void in certain circumstances : (1) *Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.*

(2) *Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.*

(3) *If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.”*

In the case of **Promil Tomar and others vs. State of Haryana and others, 2014(1) RCR (Civil) 403**, this Court has examined the provision elaborately and ratio of law laid down is applicable in the

present case. Perusal of Section 23(1) of the Act provides that “where

any senior citizen has transferred by way of gift or otherwise, his property, and the transferee refuses or fails to provide amenities and physical needs, the said transfer of the property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.” The transfer by a senior citizen referred to in first part of Section 23 (1) of the Act could be a gift or otherwise. The property transferred by gift or otherwise would include the transfer of the possession of a property or part of it by a senior citizen. The word “otherwise” used under Section 23 (1) of the Act by the legislation would include transfer of ownership and possession by way of a lease deed, mortgage, gift or sale deed. Even a transfer of possession to a licensee by a senior citizen will also fall under the ambit of Section 23 (1) of the Act. The word “otherwise” cannot be ignored from the objective of Section 23 (1) of the Act. In context to the objectives of the Act, “transfer” would mean that transfer of property by senior citizen need not be a gift only but it could be any transfer within the meaning of Transfer of Property Act or would even include transferring of any right of the nature of title or possession. Section 23 (1) of the Act further provides that if the transfer is subject to a condition that transferee shall provide basic amenities and basic physical needs to the transferor and if transferee refuses to do so, the transfer of property

would be deemed to be the result of fraud, coercion or undue influence and would be declared so by the Maintenance Tribunal on the option of transferor. A senior citizen who had transferred his right, title or interest to any other person by gift or otherwise (which would include transfer of possession by lease, mortgage or licence) would become void in the event of transferee refusing to provide amenities and physical needs. The said transfer in such circumstances would be termed as result of fraud, coercion or undue influence and would be void.

The Hon'ble Supreme Court in **S.P. Chengalvaraya Naidu v. Jagannath, 1994(1) R.R.R. 253** has considered the meaning of word “fraud” i.e. an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. It was held in the said judgment that “fraud” vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter.

In the present case, transfer appears to have been the result of threat to commit suicide by respondent no.3. Such an act is an act of deliberate design of securing the property from the petitioner under

undue influence, coercion and false threat of committing suicide appears to be a fraud. In this manner, it appears that respondent no.3 taking undue advantage of the weaknesses of petitioner (mother) got the property transferred in his name.

In view of the law that fraud vitiates all proceedings and vests no right in anybody, petitioner would be entitled to enforce her legal right to declare the transfer i.e. transfer of possession which falls under the definition of 'otherwise' under Section 23(1) of the Act, void, through the Maintenance Tribunal.

In view of above, the impugned orders are set aside. Case is remanded to the Collector-cum-Sub Divisional Magistrate, Ludhiana (West) for fresh decision keeping in view the settled position of law. The parties will also be at liberty to lead evidence by way of affidavits. Needful shall be done within a period of one month from the date of receipt of certified copy of this order.

Parties are directed to appear before the Sub Divisional Magistrate, Ludhiana (West) on 28.10.2015.

Disposed of accordingly.

September 23, 2015
vkd

[Paramjeet Singh]
Judge