

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

CR No. 7598 of 2015 (O&M)

Date of decision: 22.01.2016

Jagmeet Kaur Pannu

... Petitioner

versus

Ranjit Kaur Pannu

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Gurminder Singh, Senior Advocate with
Mr. R.V.S. Chugh, Advocate for the petitioner.

Dr. Puneet Kaur Sekhon, Advocate for the respondent.

K.Kannan, J. (ORAL)

I THE MATTER PUT TO CHALLENGE

1. The revision petition is against the order passed by the Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short the 'Act') directing that the gift executed by the mother in favour of the daughter is voidable at her instance and hence ordered to be voided. This was on a plea that the mother had executed the gift in favour of her daughter with reference to 25% of the share through a registered instrument on 03.01.2013 and that her own hope that she will be supported and maintained by the donee was belied by her conduct and therefore the petitioner was entitled to have the document voided through the order of the Tribunal.

On notice of a plea for voiding the document made under Section 23, the respondent stated her objections and denied the assertions that there was any vitiating circumstances contemplated by law to render it void and that further there had been no demand of maintenance nor was there any denial on her part to provide the basic amenities or physical needs of the transferor.

II THE GROUNDS FOR AVOIDING GIFT-3 FACETS

2. The Tribunal relied on the assertion of the mother that the daughter was not behaving with her properly and abused her with filthy language and treated these assertions as justifying the demand for the document being declared null and void. This order passed by the Tribunal on 23.07.2015 is a subject of challenge before this Court. Learned senior counsel read out to me the terms of the documents that has been ordered to be voided and pointed out to three requirements under Section 23 of the Act before the order could be passed. Section itself would be required to be reproduced:

23. Transfer of property to be void in certain circumstances

1. Where any senior citizen who, after the commencement of this Act, has 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 organization referred to in Explanation to sub-section (1) of section 5.

3. First requirement according to the senior counsel, is that there shall be a condition attached that the transferee shall provide the basic amenities and physical needs, secondly, such a transferee failed to provide basic amenities and physical needs, thirdly, the transfer will be deemed to have been made by fraud and coercion and undue influence, or at the option of the transferor to be treated as void and declared as such by the Tribunal.

III TERMS OF DOCUMENT EXAMINED

4. The terms of the documents creating a transfer would, therefore, require to be seen whether the condition as contemplated under Section 23 has been referred to in the document or there was any scope for imposing such condition. The preamble portion that is relevant would be the following:

“ AND WHEREAS the Transferee being the daughter of the transferor, the transferor has great love and affection for the transferee and out of this love and affection the said transferor has decided to transfer the 25% share of house No. 2560, Sector 35-C Chandigarh in favour of the said transferee and the said transferee has also accepted the transfer of the aforesaid property from the said transferor.

NOW, THEREFORE, this transfer deed further witnessed that in consideration of the love and affection the said transferor has for the said transferee, the transferor do hereby transfers, conveys and assings, all her rights, titles, interest, in the said house i.e. 25% share of house No. 2560, Sector 35-C, Chandigarh measuring 475.32 Sq. Yds. Alongwith all her rights titles, interests, easements,

appurtenances in favour of the said transferee for all times to come absolutely and for ever to have and to hold by the said transferee subject to the terms and conditions of allotment letter and conveyance deed and the said transferee have agreed to accept the said property.”

5. It is stated to be subject of further terms and conditions and for our purpose, the relevant provisions would be Clauses 1, 2, 3 & 9 which are reproduced as under:

1. That the physical possession of the said property under transfer, has been handed over to the transferee.
2. That the said transferor has also delivered to the said transferee, documents of title, of the said property under transfer, for her records and ready reference.
3. That the said transferee shall hereinafter peacefully hold, use and enjoy the said property as her own property, without any hesitation, hindrances, interruption, claims, demands, whatsoever by or from the said transferor or any other person or persons whosoever through her.
4.
5.
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8.

9. That the said transferee has now become the absolute owner of the said property i.e. 25% share of house No. 2560 Sector 35-C Chandigarh and the site/land thereunder, under transfer, in full proprietary rights, and the said transferee is entitled to apply to the Estate Officer, U.T. Chandigarh, and get the ownership of the said property transferred in her (transferee's) name, in the records of the

Estate Office, U.T. Chandigarh.

It does not require any major forensic exercise to discern that there exists no condition that the transferee would provide the basic amenities and physical needs.

IV CONDITIONS FOR MAINTENANCE CANNOT BE ASSUMED AS A CONSIDERATION FOR GIFT

6. Learned counsel appearing on behalf of respondent No.1 has to traverse a large ground to explain as to how the petition itself could be maintained for cancellation of the document if there was no condition attached. The forceful argument is made by making reference to judgment of Division Bench of this Court in Sumesh Anana Vs. Smt. Vinod Anand and others, LPA No. 1689 of 2015 (O&M), decided on 01.12.2015. It was a case of a challenge to the order passed by the Tribunal annulling a gift deed and affirmed by a single Judge's finding. The terms of the gift deed has not been recorded in the judgment bu the reference to a perusal of what the Division Bench undertook reads as under:

“A perusal of the gift deed (AnnexureP-1) shows that it was executed in lieu of the services of the appellant and love and affection. It was not on payment of any monetary consideration. It was recorded therein that the document is being executed of her own will without any pressure.”

The Court while dismissing the appeal filed by the donee who had challenged the order of the Tribunal and the single Bench, held that the document which recorded that the gift was being executed

in lieu of services of the appellant and love and affection, would mean that the transfer was being made with the pious hope of the past services rendered. It must in turn be understood as a document made on the condition that the future conduct would also exist in the same fashion. If the donee had failed to take care of the physical needs and basic amenities in the old age, the appellant had made himself liable for avoidance of transfer of documents.

7. The reliance of this judgment to support an argument that there need be no condition regarding the provision for basic amenities and basic physical needs to the transfer would be causing violence to the simple expression employed under Section 23 of the Act. Yet another judgment relied on by the learned counsel is the Promil Tomar and others Vs. State of Haryana and others, 2013 Lawsuit (P&H) 5896 is also a decision interpreting Section 23 but to our lack of benefit, the recitals of the documents are not set out in the said judgment also. The Court was holding that there is a latent condition of the support for basic amenities and physical needs in a transfer made by parent to his/her son or daughter and if the donor declares that such a latent condition is breached, the gift deed would also be liable for being challenged. In my respectful view, it will be wrong to be looking for latent condition when the law requires a condition to be stated and that condition was not being fulfilled. That is the only way I can read it, for, this provision must be seen in the context of what the law already provides in the manner of transfer of rights to immovable properties.

V NO CONFLICT BETWEEN TP ACT AND 2007 ACT

8. The Act of 2007 which is a special legislation ought to be no doubt, lent primacy, if there was a conflict with any previous Central Law which is general, viz, The Transfer of Property Act. The golden rule of interpretation always is that the parliament did not intend to bring about any conflict. The two enactments have to be interpreted in such a way that if the provisions can exist side by side, such a harmonious construction shall be made. If there is, however, a direct conflict by the bare reading of provisions then the special legislation will override a general legislation. In Maya Mathew Vs. State of Kerala and others, 2010 (4) SCC 498. The Hon'ble Supreme Court has held that:

- (i) When a provision of law regulates a particular subject and a subsequent law contains a provision regulating the same subject, there is no presumption that the later law repeals the earlier law. The rule making authority while making the later rule is deemed to know the existing law on the subject. If the subsequent law does not repeal the earlier rule, there can be no presumption of an intention to repeal the earlier rule;
- (ii) When two provisions of law-one being a general law and the other being special law govern a matter, the Court should endeavour to apply a harmonious construction to the said provisions. But where the intention of the rule making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect.
- (iii).....

(iv) Where a later special law is repugnant to or inconsistent with an earlier general law, the later special law will prevail over the earlier general law.

9. Section 126 of the Transfer of Property Act deals with revocation or suspension of gift and it reads as under:

126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

This important provision lays down a rule of public policy that a person who transfers a right to the property cannot set down his own volition as a basis for his revocation. If the provisions of TP Act, other than the provision relating to sale is not applicable in Punjab, the principle under Section 126 is surely applicable. If there is any condition allowing for a document to be revoked or cancelled at his own will, then that condition itself will be treated as void wholly or in part as the case may be. We have extracted Section 23 already, the provision relating to the transfer shall be made on a condition that the transferee shall provide the basic amenities. It must be observed that

laying down a condition for a revocation is not itself an anathema under the scheme of Transfer of the Property Act. What is, however, interdicted by the general law of Transfer of Property Act is a revocation cannot depend on the will of the donor. That provision has not been breached in any way under Section 23 of 2007. It will be, therefore, wrong to suppose that a new genre of right has been created under Section 23 of 2007 Act of what Section 126 of Transfer of Property Act does not provide for. On the other hand, Section 23 must be treated to make certain things clear of what was merely left to judicial interpretations previously.

VI DIRECTION TO MAINTAIN EXPRESSLY STATED COULD BE PIOUS WISH; OR, IT COULD BE A PRE-CONDITION.

10. There have been views held from decisions of several courts that if a gift deed is clear and operative to transfer the right of property to another but also contains expression of desire by the donor that the donee will maintain the person, the expression contained in a gift deed must be treated as pious wish and the sheer fact that the donee did not fulfill the condition cannot vitiate the gift. For instance, the Orissa High court in Tila Bewa Vs. Mana bewa AIR 1962 (Ori) 130; the Travancore Cochin High Court in Gandadhara Iyer Vs. Kulathu Iyer Sankara AIR 1952 Travancore Cochin 47 and this Court in Jai Singh Vs. Sarabjit Singh and another in CR No. 8825 of 2014 decided on 27.11.2015 have held that a gift followed by a direction to maintain the donor is only a pious wish and not to be presumed as conditional.

11. It is to make certain that a person who makes the gift under the belief that the donee will support the donor and provide basic amenities and look after the physical needs that Section 23 has been enacted. But if that expectation is belied and the donor is betrayed by the trust by the donee's conduct of indifference, then the donor shall have an assured right under this Section to cancel the gift. It is to ward off a prospect of donee to plead that the gift was not made on such a condition and that it was a pious wish that the express provision of Section 23 has been made. With or without the provision of Section 23, the polemics of judicial interpretation have always been that a gift cannot be cancelled or revoked at the whims of the transferor. That is precisely what is attempted to be done now.

VII IMPUGNED ORDER BETRAYS TOTAL LACK OF APPLICATION OF MIND

12. The order passed by the Tribunal is a shocking revelation of utter lack of application of mind or application of any principle of law. Apart from setting out all the averments regarding the relationship between the parties, the Tribunal makes a sudden inference in one line that by virtue of Section 23 the document is to be treated as void. There is no judicial exercise undertaken by the Tribunal to examine whether the documents contained any condition and whether there had been any demand made by the mother on the daughter that provided the proof for the Tribunal to render a finding that the transferee refused to provide such amenities and physical needs. Shockingly the order does not even

say that the transferee refused to maintain the donor. All that the Tribunal has relied on is the assertion made by the mother that “the daughter is not behaving with her properly and abused her and used filthy language to her several times of telephone”. The decision rendered without examining the legal requirement of what was required to be found is untenable. Assuming, for argument sake, that such a latent condition must be treated as existing and that is breached in the mother's perception, there is no averment or proof that transferee was not willing to maintain her or refused or failed to provide for such amenities and physical needs. The order passed by the Tribunal is wholly erroneous and legally unsupportable.

VIII DISPOSITION

13. Before, I proceeded to dispose of the case, I wanted to assure to myself that the petitioner was not a transferee who betrayed the trust of the mother and was making an attempt to transfer the property to the detriment of the mother and make a quick buck of the property that she obtained from her mother. This was on account of a passionate plea made by another daughter present in Court with her mother that she had apprehensions that the petitioner will sell the property and create problems to her peaceful enjoyment at the instance of the purchaser. The senior counsel appearing on behalf of the petitioner stated that he had the instructions to say that there will be no such transfer and there will be no impediment of her peaceful possession of the whole property during her life time. He even assured

that she will maintain her mother at all times and will pay any reasonable amount as maintenance or any amount as the Court directs. The mother took some time to deliberate on the same but after a time, she would return to say she would rather to have a judgment rendered on merits and that she was not prepared to bargain for maintenance or take any undertaking from the daughter that she will not alienate the property. To me, the intentions of the mother are explicit. Her fanciful and unfortunately a fickle minded intent at that, can not be allowed to prevail. She will rest contented that come what may, her own rights to reside peacefully in the house is not under any threat and she is needlessly trying to raise a phantom and kill it. If she has any concerns for her son in whose favour she claims to have created a settlement of 50%, Section 44 of TP Act or the principle underlying it will protect him against an attempt at intrusion of any stranger purchaser.

14. The order simply cannot stand and the revision petition is allowed. The order of the Tribunal is set aside and the gift deed in favour of the petitioner stands restored.

(K.KANNAN)
JUDGE

22.01.2016

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