

Harchand Singh @ Chand Singh S/o Hardit Singh was the

CWP No.17025 of 2013 (O&M)

[2]

owner of land measuring 44 Kanal 04 Marlas, 58 Kanal 15 Marlas, 25 Kanal 10 Marlas and some other land, situated in the revenue estate of village Dhanaula, Tehsil and District Barnala. He left behind his widow Bachan Kaur who inherited the aforesaid property. Gurmail Singh S/o Harchand Singh had four children, namely, Gobinder Singh (since deceased), Hardish Kaur (daughter-respondent No.4), Sarabjit Kaur (daughter-petitioner) and Manjit Kaur (daughter-respondent No.5). Bachan Kaur and Gurmail Singh executed their respective Wills in favour of Surjit Kaur-respondent No.3 on 25.02.1999 vide Vasika Nos.216 and 217 respectively. Bachan Kaur died on 19.06.2007 and the property left behind by her was mutated in favour of respondent No.3 on 15.08.2007. Gurmail Singh died on 14.11.2007 and his property was also mutated in favour of respondent No.3 on 06.01.2008. On 26.06.2010, a family arrangement was arrived at in which respondent No.4 got 54 Kanals 10 Marlas of land, whereas petitioner and respondent No.5 got 75 Kanal 19 Marlas of land to the extent of half share each. Respondent No.3 executed two transfer of ownership deeds vide Vasika No.817 dated 30.07.2010 of land measuring 75 Kanal 19 Marlas in favour of the petitioner and respondent No.5 to the extent of $\frac{1}{2}$ share each and Vasika No.816 of land measuring 54 Kanal 10 Marlas in favour of respondent No.4 on the same day. Mutation No.7454 dated 14.06.2012 was also sanctioned regarding the transfer of land by Vasika No.817 dated 30.07.2010 of the land measuring 75 Kanal 19 Marlas in favour of the petitioner and respondent No.5 to the extent of $\frac{1}{2}$ share each. The petitioner sold 11 Kanal 08 Marlas of land to Jasveer Kaur wife of Devinder Singh

CWP No.17025 of 2013 (O&M)

[3]

and Jaskaran Singh S/o Devinder Singh vide registered sale deeds No.472 and 473 both dated 06.06.2012.

Respondent No.3 filed Civil Suit No.554 dated 23.12.2011 in the Court of Civil Judge, Barnala for declaration to the effect that the transfer of ownership deeds No.816 in favour of respondent No.4, and 817 in favour of the petitioner and respondent No.5 are null and void having been executed by playing fraud and misrepresentation. A compromise was arrived at in that suit and an application dated 31.01.2012 was filed for withdrawal of the suit. The statement of respondent No.3 was recorded regarding compromise and the suit was dismissed as withdrawn on 31.01.2012. It is alleged that respondent No.3, having been instigated by respondent No.4, who had the lion share of 54 Kanal 10 Marlas, filed two applications under Sections 9 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "Act") before the learned Tribunal constituted under Section 7 of the Act, one against the petitioner and respondent No.5 and another against respondent No.4. The Tribunal fixed the interim maintenance for respondent No.3 to the tune of ₹7,500/- per month, ordered to be paid in equal shares of ₹2,500/- by all the three daughters. It is alleged that respondent No.5 appeared before the Tribunal and suffered a statement that she had no objection if the application under Section 23 of the Act is allowed and the transfer of ownership deed No.817 dated 30.07.2010 is cancelled. Both the applications were decided by two separate orders dated 18.09.2012. The application filed against the petitioner and respondent No.5 for maintenance

CWP No.17025 of 2013 (O&M)

[4]

was decided, directing them to pay ₹5,000/- to respondent No.3 and similar order was passed against respondent No.4 to pay ₹2,500/- but the application for cancellation of transfer of ownership deed was dismissed.

Respondent No.3 challenged the order dated 18.09.2012 passed by the Tribunal by way of two separate appeals before the Appellate Tribunal constituted under Section 15 of the Act. The Appellate Tribunal, vide its impugned order dated 14.05.2012, set aside the transfer of ownership deed-Vasika No.817 dated 30.07.2010, executed by respondent No.3 in favour of the petitioner and respondent No.5 on the ground that respondent No.5, one of the beneficiaries of the transfer deed, has herself suffered the statement that she had no objection if the transfer deed is cancelled. It is also further alleged that Jasveer Kaur and Jaskaran Singh, to whom the petitioner had sold the land measuring 11 Kanal 08 Marlas out of the land transferred to her share by respondent No.3, have also filed a suit for declaration that they are *bona fide* purchasers, which is still pending.

Counsel for the petitioner has submitted that the impugned order passed by the Appellate Tribunal is patently illegal as far as the cancellation of the transfer of ownership deeds is concerned on the basis of the statement of respondent No.5 who did not raise any objection in allowing the application of respondent No.3. It is submitted that the petitioner cannot be bound by the statement of respondent No.5 as she has her own right to the property on the basis of the transfer of ownership deed. It is also submitted that Section 23 of the Act does not apply as the transfer of the land by respondent No.3 by way of transfer deed was not conditional

CWP No.17025 of 2013 (O&M)

[5]

and was rather without any consideration.

On the other hand, counsel for the respondents has submitted that a joint transfer deed was executed by respondent No.3 in favour of the petitioner and respondent No.5 of the land measuring 75 Kanal 19 Marlas to the extent of ½ share each and since respondent No.5 did not raise any objection to the cancellation of the deed, it is deemed to have been cancelled in respect of the petitioner as well. It is also submitted that Section 23 of the Act is fully applicable because respondent No.3 had transferred the immovable property in favour of the petitioner and respondent No.5 for the consideration of rendering of their services to her during her old age.

I have heard learned counsel for the parties and examined the available record.

The facts of this case are not in dispute. The only issue which requires to be decided is as to whether the transfer deed vide Vasika No.817 dated 30.07.2010 shall be deemed to be cancelled for not providing basic amenities and basic physical needs by the transferee to the transferor?

In order to appreciate the controversy, it would be relevant to refer to Section 23 of the Act, which is 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 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.”

The literal dissection of the aforesaid provisions would be that (i) it applies to the senior citizen defined under Section 2(h) of the Act (ii) to the transfer of the property defined under Section 2(f) after the commencement of the Act i.e. 29.12.2007, (iii) the transfer is with a condition that the transferee would provide the basic amenities and basic physical needs to the transferor, (iv) if the transferee refuses or fails to provide such amenities and physical needs, then the transfer of the property shall be deemed to have been made by fraud or coercion or undue influence, (v) it would be at the option of the transferor to get it declared void by the Tribunal.

The transfer in this case is by Vasika No.817 dated 30.07.2010, i.e. much after the commencement of the Act on 29.12.2007; the property is agricultural land which is an immovable property and the transferor/respondent No.3 is the senior citizen being of the age of 69 years. Now the question would be as to whether the transfer of the property by the transferor was made subject to the condition that the transferee shall provide basic amenities and basic physical needs to the transferor? In this regard,

CWP No.17025 of 2013 (O&M)

[7]

the transfer deed i.e. Vasika No.817 dated 30.07.2010 is on record as Annexure P-4 in which the transferor has stated that *“my daughters Sarabjit Kaur and Manjit Kaur are rendering services to me. I wish to reward them for their services. As such, I, with my independent will and in my full senses, transfer the ownership of land measuring 75 Kanal 19 Marla in favour of my daughters Sarabjit Kaur and Manjit Kaur”*. From a bare reading of the document, it is clear that the transfer has been made for the services being rendered by the petitioner and respondent No.5 in favour of respondent No.3 in *presenti* and there was no condition that they would keep on providing basic amenities and basic physical needs to the transferor in future as well. Thus, it was a gift made by respondent No.3 in favour of the petitioner and respondent No.5, being happy with the services rendered to her, but the transfer deed is totally silent regarding the provision of basic amenities and basic physical needs to respondent No.3 in future as well which could attract the provisions of Section 23 of the Act, in which it is provided that in case the transferee fails to provide such amenities and basic physical needs, then the transfer of the property in favour of the transferee shall be deemed to have been made by fraud or coercion or undue influence and would remain at the option of the transferor to get it declared void by the Tribunal. The judgment relied upon by the respondents in the case of **Promil Tomar and others vs. State of Haryana and others**, 2014(1) PLJ 303, in which this Court has held that there was an implied latent promise, has been distinguished by another Bench of this Court in the case of **Jagmeet Kaur Pannu vs. Ranjit Kaur Pannu**, CR No.7598 of 2015,

CWP No.17025 of 2013 (O&M)

[8]

decided on 22.01.2016, in which it has been observed that in **Promil Tomar's case (supra)**, the recital document was not set out in the judgment and observed that it would be wrong to look for a latent condition to be stated that the condition was not being fulfilled.

Even otherwise, there was an error in the impugned order wherein the transfer in favour of the petitioner has also been set aside on the premise that respondent No.5 had suffered a statement for allowing the application of respondent No.3. Once the property has been transferred by a duly executed document of transfer, the ownership rights vests in the person concerned much-less the transferee and it cannot be taken away on the basis of a statement made by a co-transferee as the said statement cannot affect the rights of the said person which have been acquired under the said transfer deed.

Thus, in view of the aforesaid discussion, the present petition is found to be meritorious and hence, the same is hereby allowed and the impugned order is set aside.

March 30, 2016
vinod*

(Rakesh Kumar Jain)
Judge