

In the High Court of Punjab and Haryana at Chandigarh.

**CWP-24773 of 2013
Decided on 28.11.2016**

Deepak adopted son of Hoshiyar Singh

--Petitioner

Vs.

Maintenance Tribunal, Narnaul and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Prateek Mahajan, Advocate, for the petitioner
Mr.J.S.Mehndiratta, Advocate,for respondent Nos.2 and 3

Rakesh Kumar Jain,J: (Oral)

This petition is directed against the orders dated 14.10.2013 and 06.11.2013 passed by the S.D.O (Civil) Narnaul-cum-President of the Maintenance Tribunal, Sub Division, Ateli, on an application filed by respondent Nos. 2 and 3 under Sections 4,5, 9 & Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short,'the Act').

In brief, respondent Nos. 2 and 3 have six daughters and no male issue. They adopted son of the eldest daughter by way of a registered Adoption Deed No. 12 dated 01.07.1994. Respondent No.2 executed a registered Gift Deed No.560 dated 21.06.2012 in favour of the petitioner regarding the building which comprises of a residential house of 12 rooms and 5 shops out of which respondent No.2 has been carrying business of

jewellery in one shop while there are tenants in four shops. It is further averred that respondent Nos. 2 and 3 are in exclusive possession of 8 out of 12 rooms of residential house while luggage of the petitioner is lying in four rooms.

Respondent No.2 initially filed a Civil Suit No.359 of 2012 for declaration challenging the Gift Deed dated 21.06.2012 which was dismissed by the Civil Judge (Senior Division) Narnaul.

During the pendency of the suit, respondent Nos. 2 and 3 filed an application under the Act on which an order was passed directing the respondent to remove his luggage from the house and hand over the possession of the shops to respondent Nos. 2 and 3 vide order dated 06.11.2013.

Aggrieved against the said order, respondent No.3 filed the present petition in which at the time of notice of motion, the Court directed the petitioner to deposit ₹30,000/- with the Registrar (Judicial) within one week for the litigation expenses which were to be released to respondent Nos.2 and 3. The said amount has already been released to respondent Nos. 2 and 3 and the interim order passed against them is still continuing.

Learned counsel for the petitioner has submitted that the application filed under Section 23 of the Act is not maintainable as the order for vacation can be passed under Section 22 of the Act and that too in terms of the action plan and not by the Tribunal as the Tribunal has the jurisdiction to pass order to declare as document of transfer of property void in terms of Section 23 of the Act only.

On the other hand, learned counsel for the respondents has submitted that respondent No.2 is about 76 years of age and had adopted

his daughter's son only for the purpose that he would serve him in his old age.

During the course of hearing, the petitioner who is present in Court has been asked as to whether he is ready and willing to serve his father so as to finish this litigation once for all. He stated in response that he is ready to pay ₹10,000/- per month to respondent Nos. 2 and 3 towards their maintenance and also offered to serve them as and when they require.

According to this Court, this statement is sufficient to satisfy respondent Nos.2 and 3 also because otherwise in law, the application filed by them is maintainable under Section 22 instead of Section 23 of the Act and the other legal defects therein because even the order passed by the S.D.O (Civil) Narnaul, directing the vacation of the property in possession of the petitioner at an interim stage is also patently erroneous but in order to do complete justice between the parties, I am of the considered opinion that if an amount of ₹10,000/- per month as undertaken by the petitioner (in person) is paid to respondent Nos. 2 and 3 from the month of December, 2016 onwards, the issue raised by the respondents shall be settled once for all.

Consequently, in view of the above, not only the impugned orders are set aside but also the application filed before the Tribunal for claiming maintenance are disposed of.

28.11.2016
rr

(Rakesh Kumar Jain)
Judge

Whether Speaking/Reasoned:

Yes/No.

Whether Reportable:

Yes/No