

In the High Court of Punjab and Haryana at Chandigarh

**CWP No. 5304 of 2014 (O&M)
Date of Decision: April 27, 2016**

Khushwant Singh Sandhu and another

... Petitioners

Versus

Appellate Tribunal and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

Present: Mr. S.S. Behl, Advocate,
for the petitioners.

Mr. Anmol Rattan Sidhu, Sr. Advocate with
Ms. Anju Arora, Advocate,
for respondent no.3.

Paramjeet Singh Dhaliwal, J.

This is an avoidable and unfortunate litigation between father, son and daughter-in-law. Challenge in the instant writ petition is to the order dated 21.06.2013 (Annexure P/13) passed by respondent no.2 – Sub Divisional Magistrate-cum-Controller, SAS Nagar, Mohali, as well as, order dated 12.11.2013 (Annexure P/15) passed by respondent No.1 – Appellate Tribunal constituted under the Maintenance of Welfare of Parents and Senior Citizens Act, 2007, SAS Nagar (Mohali).

Brief facts of the case are that petitioner no.1-Khushwant Singh Sandhu is the son of respondent no.3 – Sucha Singh Sandhu and petitioner no.2 – Somila Singh Sandhu is wife of petitioner no.1 and daughter-in-law of respondent No.3. Respondent no.3 vide a registered Will dated 26.02.2010 (Annexure P/1) had transferred 2/3rd of his share in House No. 4,

Phase-VII, SAS Nagar (Mohali) in the name of petitioner no.1 and his other son namely Dr. Nav Parkash Singh Sandhu in such a way, so as to make both of them equal partners i.e. bequeathing 50% of the share to each. Also petitioner no.1 was the owner of the remaining 1/3rd share of the property in question. Thereafter, due to a matrimonial dispute between Dr. Nav Parkash Sandhu and his wife, he gave General Power of Attorney to his mother with reference to his share, who further transferred it to respondent no.3. Respondent no.3 in order to prevent the wife of Dr. Nav Parkash Sandhu from getting any share in the said property transferred his own share and the share got through GPA, in favour of petitioner no.1 for a consideration of Rs.1,50,00,000/- (Rs. One crore and fifty lacs) vide transfer deed dated 04.05.2011 (Annexure P/2). Respondent no.3 simultaneously got executed two affidavits by petitioner no.2 (Annexures P/3 and P/4). First affidavit (Annexure P/3) contains an undertaking by petitioner no.2 that she shall take care of and look after respondent no.3 and his wife during their life time and further they shall have a right to live in the said house. The second affidavit (Annexure P/4) talks about a loan taken by petitioner no.2 from respondent no.3 to the tune of Rs.1,50,00,000/-. Dr. Nav Parkash Sandhu visited India in the month of August, 2011 and asked for his amount of Rs.1,50,00,000/- in addition to the amount to be paid to respondent no.3 and when the petitioners showed their inability and helplessness to pay such a big amount, respondent no.3 filed a civil suit for declaration to the effect that the transfer deed dated 04.05.2011 is null and void. Along with the said suit, an application under Order 39 Rules 1&2 read with Section 151 CPC was also filed. Vide order dated 12.03.2012 (Annexure P/6), the civil Court had restrained the petitioners from interfering into the peaceful possession

of respondent no.3 over H.No. 4, Phase-7, Mohali, illegally, forcibly except in due course of law. Against order dated 12.03.2012, petitioners preferred an appeal before the learned District & Sessions Judge, SAS Nagar, which is pending. Thereafter, respondent no.3 preferred an application under the provisions of the Act before Sub Divisional Magistrate-cum-Controller, SAS Nagar for cancellation of transfer deed. Vide order dated 21.06.2013 (Annexure P/13), the Sub Divisional Magistrate cancelled the transfer deed and reverted the property in question back to respondent No.3. Against order dated 21.06.2013, petitioners preferred an appeal before the Appellate Authority. After hearing the parties, the appellate Authority vide order dated 12.11.2013 (Annexure P/15) disposed of the appeal holding that 1/3rd share in the property in question will be the ownership of respondent no.3, whereas 2/3rd share will be the ownership of petitioner no.1. Hence, this writ petition.

I have heard learned counsel for the parties.

Learned counsel for the petitioners vehemently contended that the impugned orders passed by respondents no. 1 and 2 are sketchy and cryptic and are not sustainable in the eyes of law.

On the other hand, learned counsel for respondent no.3 vehemently contended that the orders have been legally passed by respondents no.1 and 2.

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

The Sub Divisional Magistrate, after considering the evidence on record, has held as under:-

“After going through the pleadings of the parties and the

record, it transpires that Kothi No. 4, Phase 7, SAS Nagar, Mohali, was transferred by Sh. Sucha Singh Sandhu s/o Sh. Dhara Singh Sandhu to his son Khushwant Singh vide transfer deed dated 04.05.2011. The transferred dated 04.05.2011 was executed by Sucha Singh Sandhu to Somila Sandhu who is the G.P.A. holder for Khushwant Singh Sandhu along with a statement. According to the statement Somila Singh Sandhu promised to take care of Sucha Singh Sandhu and his wife Smt. Kartar Kaur till the evening of their life. On the basis of this statement, the petitioner executed the transfer deed. According to Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 – where any senior citizen who, after the commencement, of this Act transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical need to the transferor and such transferee refuses or fail to provide such amenities and physical need, the said transfer of property shall be deemed to have been made by fraud or coercion or undue influence and shall at the option of the transferor be declared void by the Tribunal. It was also accepted by Somila Singh Sandhu to pay to Sh. Sucha Singh Sandhu a sum of Rs. 1.5 crores vide this statement. According to the transfer deed dated 04.05.2011 it was clearly mentioned that no transaction of money will be conducted. The statement made by respondent no.2 on behalf of respondent no.1 on dated 04.05.2011 is as under:-

“I declare that my father-in-law Sh. Sucha Singh Sandhu s/o Dhara Singh mother-in-law Mrs. Kartar Kaur wife of Sh. Sucha Singh Sandhu are resident of Kothi No.4, Phase 7, SAS Nagar Mohali, Punjab and live with us. I undertake and declare that we shall look after them in every respect during their life time. I further declare that they have the right to live at the above address throughout their life without any hindrance from our

side.”

The two statements made by Somila Singh, G.P.A. holder for Khushwant Singh Sandhu on dated 04.05.2011 come under the ambit of the Maintenance and Welfare of Parents and Senior Citizens Act 2007, and those statement will have to be regarded as the part and parcel of the transfer deed. Neither the respondents no.1 and 2 are staying with the petitioner nor they are looking after them. For that reason under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 the transfer of Kothi No.4, Phase 7, SAS Nagar Mohali is cancelled and property is reverted back to Sucha Singh Sandhu. The copy of the order shall be given to the Registrar to the Chief Registrar.”

This Court in the case of **Vinod Anand vs. Deputy Commissioner-cum-Appellate Tribunal and others, 2016(1) R.C.R. (Civil) 278** has observed as under:-

*“11. 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.

12. *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.*

13. *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.

14. 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.”

Admittedly, the property in dispute was transferred by respondent no.3 to petitioner no.1 vide transfer deed dated 04.05.2011. The transfer deed dated 04.05.2011 was executed by respondent no.3 in favour of petitioner no.2, who is the GPA holder for petitioner no.1, along with a statement of petitioner no.2. According to the statement, she promised to take care of respondent no.3 and his wife – Smt. Kartar Kaur during their life time. Perusal of the file shows that neither the petitioners are staying with respondent no.3 nor they are looking after them. Thus, the Sub Divisional Magistrate has rightly passed the order dated 21.06.2013 (Annexure P/13).

Learned counsel for the petitioners has failed to indicate any illegality or perversity in the impugned orders. Even on the basis of equity, petitioners do not deserve any indulgence by this Court.

In view of above, I do not find any merit in the instant writ petition, hence is dismissed.

April 27, 2016

vk

[Paramjeet Singh Dhaliwal]
Judge