

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

CWP-7471-2014 (O&M)

Date of decision: 17.05.2016

Gurdev Singh

...Petitioner

Versus

State of Punjab & Ors.

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

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

Present: Mr. Jasbir Singh, Advocate
for the petitioner.

Mr. Suresh Singla, Addl. A.G., Punjab.

None for respondent No.2.

Mr. S.S. Rangi, Advocate
for respondent No.3.

Rakesh Kumar Jain, J.(Oral)

This petition is filed in order to challenge the order dated 24.12.2012 passed by the Maintenance Tribunal, Mohali, order dated 21.01.2014 passed by Appellate Tribunal, S.A.S. Nagar (Mohali) and also transfer deed dated 23.05.2008 executed by the petitioner in respect of H. No. 1070, Phase-9, S.A.S. Nagar (Mohali) in favour of respondent No.3 (his daughter).

In short, the petitioner is, allegedly, 77 years of age and is a senior citizen. He was the owner of H. No. 1070, Phase-9, S.A.S. Nagar (Mohali) which was transferred by him in favour of his daughter/respondent No.3 by way of a transfer deed dated 23.05.2008. It is alleged that on 24.08.2008, respondent No.3 gave an undertaking that she would re-transfer

the house in question in the name of her father as and when he desires within next two years or so. Respondent No. 3 did not honour her undertaking and hence, the petitioner filed an application before the Sub Divisional Magistrate, Mohali under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act'). The said application was dismissed on 24.12.2012 on the ground that the petitioner has already filed a civil suit in respect of the property in dispute and, therefore, the application was not maintainable.

Aggrieved against the said order, petitioner filed an appeal before the Appellate Tribunal, which was also dismissed on the same ground on 21.1.2014. It is needless to mention that the application was filed by the petitioner after withdrawing the civil suit for declaration in which he had claimed that respondent No.3 was bound to re-transfer the house in view of her undertaking dated 23.05.2008 but it is contended that due to ill advice the said suit was withdrawn and the application was filed in the end.

After notice, the respondents have filed their respective replies.

Counsel for the petitioner while pressing this petition, referred to Section 23 of the Act to contend that since respondent No.3 is not providing the basic amenities and satisfying the basic physical needs of the petitioner, therefore, the transfer made by him shall be deemed to have been made by fraud or coercion or under undue influence and may be declared void.

On the other hand, learned counsel for respondent No.3 has submitted that Section 23 of the Act would not be applicable to this case because it is applicable if the transfer was conditional that the transferee shall provide basic amenities and basic physical needs to the transferor.

I have heard learned counsel for the parties and perused the record with their able assistance.

In order to appreciate the arguments, it would be appropriate to reproduce Section 23 of the Act, which reads as under :-

“23(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 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.”

Further reading of Section 2(h) along with Section 23 of the Act, it would emerge that in order to maintain application under Section 23 of the Act, the petitioner must be a senior citizen. Senior citizen is defined under Section 2(h) of the Act, according to which “senior citizens” means any person being a citizen of India, who has attained the age of sixty years or above.

The second condition is that the application would be maintainable if the transfer is made after the commencement of the Act. The

Act received the assent of the President on the 29th December, 2007 and was published for general information. Meaning thereby, the transfer by the petitioner was made after the enforcement of the Act. 3rd condition is that the transfer may be by way of gift or otherwise. Transfer of an immovable property by way of gift has to be registered as provided under Section 123 of the Transfer of Property Act, 1882 and if it is transfer otherwise than it does not require registration. 4th condition is that the “property” which is defined under Section 2(f) of the Act means property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property. 5th condition is that transfer by way of gift or otherwise, shall be, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor. The basic amenities and basic physical needs are not defined under the Act. However, it is clear from the language of the provision that if the transfer is made with a condition by the transferor to the transferee that in lieu of the transfer of the property the transferee shall provide the basic amenities and basic physical needs to the transferor then such a transfer shall not fall within the definition of Section 23 of the Act. It is further provided in Section 23(1) of the Act that the transfer of property shall be deemed to have been made by fraud or coercion or under influence and shall at the option of the transferor be declared void by the Tribunal. Meaning thereby, if the transfer is conditional by the transferor to the transferee for providing the basic amenities and basic physical needs to the transferor and transferee refuses or fails to provide such amenities and physical needs, the said transfer of property would be deemed to have been made by fraud or coercion or under influence and there would be no hitch with the Tribunal

to declare such transfer as void.

However, in the present case, no such condition was there at the time when the transfer was executed by the petitioner (father) to respondent No.3 (daughter). Transfer was out of love and affection and without the aforesaid conditions but one thing cannot be ignored that daughter/respondent No. 3 had given an undertaking on 24.08.2008 that she would re-transfer the house in question in the name of her father as and when he desires within next two years or so. It appears that respondent No.3 has not honoured the said undertaking to which she was morally bound. The petitioner filed the civil suit at the first instance for seeking declaration that the transfer deed by the transferor in favour of respondent No.3 was not binding on his rights and has also prayed to the Court that in view of the undertaking dated 23.05.2008 of respondent No.3, decree may be passed declaring right and title of the petitioner in the property in question and also sought mandatory injunction that respondent No.3 may be directed to hand over the vacant possession of the house in question. Withdrawal by the petitioner may be on account of ill-advice but in order to speed up his redressal of the grievance he took shelter of the Act but the provisions of the Act also do not help him. The petitioner is thus between the devil and the deep sea because he did not get any relief either from the civil Court or from the Maintenance Tribunal under the provisions of the Act.

At this stage, in view of the aforesaid discussion, no relief can be granted to the petitioner under the provisions of the Act but the petitioner may, if so advised, get the said civil suit revived by filing an application to avail his remedy because the said suit was not decided on merit rather it was withdrawn on wrong /ill-advice.

With these observations, the present petition is hereby disposed
of.

17.05.2016
sp

(Rakesh Kumar Jain)
Judge