

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

**Civil Revision No.7869 of 2016
Date of Decision: 28.08.2017**

Kuldip Kaur

.....Petitioner

Vs

Kabal Singh

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Satbir Rathore, Advocate
for the petitioner.

Mr. M.S. Viridi, Advocate
the the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has filed this revision petition against the order dated 04.08.2016 passed by the Sub-Divisional Magistrate-cum-Presiding Officer, Maintenance Tribunal, Mukerian (hereinafter to be referred as 'the Tribunal') vide which the application filed by the respondent under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter to be referred as 'the Act') was allowed.

[2]. Brief facts are that an application was filed by the respondent-Kabal Singh for the cancellation of sale deed dated

18.11.2013 under Section 23 of the Act. The respondent alleged that the petitioner is his daughter and she solemnized her marriage with her own choice with one Satish Kumar. In the year 2013, petitioner brought the respondent in her house at village Budhabar and after administering some intoxicant, petitioner got executed a registered sale deed in her favour on 18.11.2013 under the condition that she will provide all the basic amenities to the respondent. Since the petitioner was not providing the basic amenities and physical needs to the respondent and she did not allow the respondent to come in her house, therefore, the respondent being an old man of 82 years of age sought to get the sale deed dated 18.11.2013 cancelled.

[3]. The application was contested by the petitioner on the ground that the application was not maintainable. The son of the respondent i.e. Iqbal Singh used to beat and maltreat the respondent. Respondent disowned Iqbal Singh from his property on 15.11.2011 by way of publication in the news paper. On 02.11.2013, the petitioner and her husband went to meet the respondent and her mother Sumitter Kaur and sister-in-law Seema at house of the respondent in village Manjpur, Tehsil Mukeria, District Hoshiarpur. The petitioner came to know about the miserable condition of the respondent. Petitioner asked her mother Sumitter Kaur and sister-in-law Seema to stop

harassment meted to the respondent which annoyed the mother of the petitioner and sister-in-law. Mother and sister-in-law of the petitioner started beating the petitioner. When the respondent and husband of the petitioner tried to save the petitioner from the clutches of Sumitter Kaur and Seema then, they started abusing the respondent and husband of the petitioner. Thereafter Sumitter Kaur and Seema forcibly dispossessed the respondent from his house. In those circumstances, the petitioner took the respondent to her house at village Budhabar and started looking after him and provided all the basic amenities and physical needs of the respondent.

[4]. Thereafter the respondent filed a suit for possession under Section 6 of the Specific Relief Act in respect of his house against his wife Sumitter Kaur and daughter-in-law Seema and later on a compromise was effected. The respondent withdrew the said suit against his wife and daughter-in-law. Respondent as per his own will went to his house at village Manjpur and got the sale deed executed in favour of the petitioner on account of his free will and volition. At the time of marriage of the petitioner, the respondent did not give anything as the marriage was a love marriage. In the marriages of two other sisters of the petitioner namely Surinder Kaur and Raj Kaur, the respondent spent huge amount and also gave Rs.6/7 lacs each to them. In view of his

moral obligation, the respondent executed the transfer deed dated 18.11.2013 in favour of the petitioner. With this background, the application filed by the respondent was contested.

[5]. The Tribunal vide the impugned order, set aside the Vasika No.1887 dated 18.11.2013 and sent copy of its order to Tehsildar, Mukeria for further necessary action and compliance. The order was passed solely on the basis of Section 23 of the Act, which is reproduced here 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 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 transferrer and such transferee refused 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 transferrer be declared void by the Tribunal.”

[6]. Learned counsel for the petitioner submitted that the brother of the petitioner namely Iqbal Singh filed a suit for declaration challenging the aforesaid transfer deed on the ground that the property was a joint Hindu coparcenary property

and transfer deed could not be executed. Iqbal Singh could not prove the property to be a joint Hindu coparcenary property and the suit was dismissed vide judgment and decree dated 26.02.2011.

[7]. Learned counsel further submitted that there was no condition mentioned in the transfer deed that the transferee shall provide the basic amenities and physical needs to the transferor, but the petitioner always remained ready and willing to provide basic amenities and basic physical needs to her father in his old age.

[8]. Learned counsel by relying upon **Gurdev Singh vs. State of Punjab and others, 2016(4) PLR 265** and **Sarabjit Kaur vs. District Collector-cum-Deputy Commissioner, Barnala and others, 2016(3) PLR 486,** contended that Section 23 of the Act would apply to the situation where Senior Citizen is present as defined under Section 2(h) of the Act and he has transferred the property defined under Section 2(f) after commencement of the Act i.e. 29.12.2007 and the transfer is with the condition that the transferee would provide the basic amenities and basic physical needs to the transferor. If the transferee refuses or fails to provide such amenities and physical needs, then transfer of the property shall be deemed to have been made by the fraud or coercion or undue influence. It

would be at the option of the transferrer to get it declared void by the Tribunal.

[9]. Learned counsel further emphasized that the obligation to maintain the transferor could be a pious wish or could be a pre condition. A person, can make the gift under the belief that the donee will support and provide basic amenities to look after the physical needs. If the expectation of such person is belied and the donor is betrayed by the donee's conduct, then the donor shall have an assured right under Section 23 of the Act to cancel the gift deed. 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 of the Act has been made. With or without the provision of Section 23 of the Act, the gift cannot be cancelled or revoked at the whims of the transferor. In order to apply the Section 23 of the Act, the Tribunal has to examine whether the document contained any condition and as to whether there had been any demand made by the donor on the donee. The Tribunal has to give a finding that the transferee has refused to provide such amenities and basic needs to the transferor. In the absence of any such finding, the provision under Section 23 of the Act cannot be resorted to. Learned counsel relied upon **Jagmeet Kaur Pannu vs. Ranjit Kaur Pannu, 2016(2) R.C.R. (Civil) 82** in support of

his contention.

[10]. On the other hand, learned counsel for the respondent contended that a senior citizen transferring his property in favour of his son or daughter by way of gift deed or otherwise has a right to get back the same, if the transferee fails to provide basic amenities and basic physical needs to the senior citizen.

[11]. Learned counsel by relying upon **Promil Tomar and others vs. State of Haryana and others, 2014(1) R.C.R. (Civil) 403** and **Justice Shanti Sarup Dewan, Chief Justice (Retired) and another vs. Union Territory, Chandigarh and others, 2014(5) R.C.R. (Civil) 656** contended that the Act by virtue of Section 3 has overriding effect and shall have the effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act. The Act is not restricted to any maintenance, but also an obligation on the person, who inherits the property of the aged relative to maintain such aged relative.

[12]. I have heard learned counsel for the parties.

[13]. From the above legal position, it can be seen that the right of the senior citizen in terms of Section 23 of the Act is well recognized, however the Court is obligated to see the recital in

the transfer deed, if any. Violation of the terms and conditions of the transfer, is a question of fact and the same has to be determined by the Court before deciding the application under Section 23 of the Act. If, there was no stipulation in the transfer deed in respect of providing basic amenities and basic physical needs to the transferor, then the applicability of Section 23 of the Act would be on questionable note, rather the respondent may not get the transfer deed declared to be void in the event of failure on the part of the petitioner to provide the services.

[14]. It appears from the record i.e. the transfer deed dated 18.11.2013 that there is no express recital for providing amenities and physical needs of the senior citizen. The recital of the transfer deed reads as under:-

“I, Kabal Singh, age 78 years, S/o Santa Singh S/o Hakam Singh, am resident of Village Manjpur, Tehsil Mukerian, Distt. Hoshiarpur. I am co-owner of land measuring 1 K. 8 M. comprised in Khata No.185/222, Khasra No.186/223, 224, Khasra No.4//7/2/1(1-6), 7/2/1,(1-1) total 2 kittas, 2 K. 7 M., 16/47 share i.e. 16 Marlas, total 1 K 8 M., as per Jamabandi for the year 2011-12, situated in village Moujowal, H.B. 316, Tehsil Mukerian, the collector rate of which is Rs.3,15,000/-. Now I have transferred all my rights of ownership in the abovesaid land in favour of my daughter Kuldip Kaur D/o Kabal Singh S/o Santa Singh R/o Village Manjpur, Tehsil Mukerian, Distt. Hoshiarpur. Now I have no right in this. The possession of the

abovesaid land has been given to transferee today. Now she is owner in possession of this land. This ownership transfer deed has been written as per Punjab Govt. Notification issued by FCR and Secretary Govt. In case later on any stamp paper is demanded by the Govt., the transferee will be responsible for the same. I will be responsible for giving the share to my remaining heir. This Vasika has been read over to both the parties who after admitting the same as correct, put their signatures on this. Therefore, this transfer deed has been scribed so that it may serve as an authority. Dated: 18.11.2013.”

[15]. Perusal of the order reveals that the Tribunal while passing the impugned order has not adverted to the import of the provisions of the Act i.e. firstly it applies to the senior citizen as defined under Section 2(h) of the Act. Secondly, it applies to the transfer of property defined under Section 2(f) after the commencement of the Act i.e. 29.12.2007. Thirdly, it applies to the transfer which is with a condition that the transferee would provide the basic amenities and basic physical needs to the transferor. Fourthly, it applies in the situation where the transferee refused or fails to provide such amenities and basic needs to the transferrer and the transfer of the property was to be deemed to have been made by fraud or coercion. Fifthly, it would be at the option of the transferrer to get it declared void by the Tribunal.

[16]. Apparently, the Tribunal was required to advert to the

aforesaid import of the provision before passing the impugned order. The Tribunal has taken cognizance of Section 23 of the Act and passed the impugned order, which in my considered opinion does not stand to the requirement as envisaged by the provision and the precedents on the point.

[17]. At this stage, without embarking upon merits of the case of either side, the impugned order dated 04.08.2016 passed by the Tribunal is set aside. The case is remitted back to the Tribunal to adhere to the relevant provision of the Act and pass a fresh order in accordance with law preferably within a period of two months from the date of receipt of a certified copy of this order.

[18]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

[19]. Petitions stands disposed of.

August 28, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)

JUDGE

Yes/No

Yes/No