

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.13121 of 2016 (O&M)
Date of decision: November 29, 2017

Gurdeep Singh & others

...Petitioners

Versus

Sub Divisional Magistrate-cum-Presiding
Officer, Maintenance Tribunal, Samana & Anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. P.S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate for the petitioners.
Mr. Vikas Mohan Gupta, Addl. Advocate General, Punjab.
Mr. Rajesh Nain, Advocate for
Mr. H.N.S. Gill, Advocate for respondent No.2.

Rajan Gupta, J.

Petitioners pose a challenge to order dated 03.06.2016, passed by Sub Divisional Magistrate-cum-Presiding Officer, Maintenance Tribunal, Samana, whereby petition under Maintenance and Welfare of Parents and Senior Citizen Act, 2007 filed by respondent No.2 (father) was accepted declaring transfer deed No.368 dated 07.05.2010 as null and void.

Learned senior counsel for the petitioners has urged before this court that order suffers from patent illegality. The Tribunal without affording opportunity of hearing to the petitioners, allowed the application filed by respondent No.2. According to him, the father has not been harassed by the petitioners in any manner. Respondent No.2 has filed instant application at the instance of his other sons namely, Hardeep Singh and Jagjit Singh.

Plea has been opposed by counsel appearing for respondent No.2. According to him, petitioners have been harassing and maltreating their father, who is more than 85 years of age. Thus, the authority below has rightly set-aside the transfer deed.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

Brief factual matrix of the case is that respondent No.2 had 565 Kanals 8 Marlas of land, situated in village Belu Majra @ Munda Kheri, Tehsil Samana, District Patiala. He distributed the said land to his sons and only 145 Kanals 16 Marlas was kept by him for his maintenance. Taking advantage of illiteracy of respondent No.2, Gurdeep Singh petitioner No.1 got transferred 65 Kanals 1½ Marla of land out of aforesaid 145 Kanals 16 Marlas by way of transfer deed in his favour, by assuring that he would maintain and serve his father. Petitioner No.1 is residing with his family at Samana City and he has transferred the land in the name of his wife and son by way of Deed No.2053 dated 8.10.2012. He refused to pay any expenses to his father. Ultimately, respondent No.2, who is senior citizen within the meaning of the Act, preferred application under the provisions of the Maintenance & Welfare of Parents and Senior Citizens Act, 2007 against the petitioners, seeking cancellation of transfer deed No.368 dated 7.5.2010. After considering entire material on record, the authority below allowed the application filed by respondent No.2.

I find no infirmity with the order. It appears, same was necessitated in the peculiar circumstances of the case. The authority below has acted in accordance with the provisions of special enactment and with a

view to achieve objectives thereof. In judgment reported as ***Promil Tomar and others vs State of Haryana and others, CWP No.20072 of 2013, decided on December 6, 2013***, this court held as under:-

“I have carefully considered the said contention of learned counsel for the petitioners and I am of the opinion that Section 23 (1) of the Maintenance 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 in first part of Section 23 (1) of the Maintenance 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 Maintenance Act by the legislation would include transfer of ownership, transfer of 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 Maintenance Act. The word “otherwise” cannot be ignored for the objective of Section 23 (1) of the Maintenance 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 Maintenance 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 transferee refused to do so, the transfer of property shall be deemed to have been made by 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 fraud and would be void.”

In view of above, I am of the considered view that Tribunal has not erred in allowing the petition preferred by respondent No.2 father. Transfer in favour of the ward is made with the pious hope that the transferee would continue to serve the parents as he was doing prior to execution of the document. Having failed to look after his parents and provide basic amenities to them in their old age, he makes himself liable for avoidance of the transfer-deed. Needless to say, in such situation a specific condition that the basic amenities would be provided to the parents, need not be incorporated in the transfer-deed. It is deemed to be read into it, as parents make such a transfer out of love and affection and have no reason to believe that after the transfer, the ward would turn his back on them and refuse to provide basic amenities and day-to-day facilities. Thus, pleas raised before this court are without any merit. Same are hereby rejected. Petition is dismissed.

(RAJAN GUPTA)
JUDGE

November 29, 2017
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No