

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

**CWP-13417-2017 (O & M)
Date of decision: 29.09.2017**

Harbans Kaur

....Petitioner(s)

V/s

District Magistrate-cu.m-Appellate Tribunal and ors.

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: None for the petitioner.

Mr. Vikas Mohan Gupta, Addl.A.G., Punjab.

Rajan Gupta, J. (Oral)

Petitioner has posed a challenged to the orders dated 11.01.2016 and 02.03.2017 passed by the authorities under the Act whereby her application under Section 23 of the Act, has been dismissed.

A perusal of the order passed by the appellate authority shows that plea of the petitioner has been rejected on the ground that sale deed contained no recital to the effect that it would be incumbent upon respondent No.3 to provide basic amenities to the petitioner and to look after her basic needs. It appears the authority was not able to examine the controversy in right perspective. In the judgment reported as 'Sumesh Anand versus Smt. Vinod Anand and others, 2016(5) RCR (Civil) 297,' it has been held as follows:-

“7. Section 23 of the Act comes into play if any property is transferred by a senior citizen 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 undue influence.

8. The transfer was affected in lieu of services of the appellant and love and affection. The mother has executed transfer deed in lieu of the love and affection and the services

rendered. Such reason is not one time factor but continued hope that the appellant would continue same love and affection even after the property is transferred. The services rendered or the love and affection is not a completed action. The transfer was with a pious hope that son will continue to serve the parents as was being done prior to the execution of the document. Having failed to take care of physical needs and basic amenities of the parents in their old age, the appellant has made himself liable for avoidance of the transfer documents in terms of Section 22 of the Act. Such is the finding recorded by learned Single Bench.

9. Since a categorical finding was recorded by learned Appellate Authority that the gift deed is not vitiated, the learned Single Bench was perfectly justified to reverse the findings recorded in a writ of certiorari. Having returned that finding, the learned Single Bench has left the question as to what relief the parents would be entitled from the Maintenance Tribunal. The issue of legality and validity of the gift deed stands settled and cannot be permitted to be re-opened by the Maintenance Tribunal or the Appellate Authority.”

It is evident that the aforesaid judgment was either not cited before the appellate Tribunal or it escaped its notice. In view of same, impugned order is hereby set aside. The appellate authority shall be at liberty to decide the matter afresh after affording an opportunity of hearing to the parties and considering the law laid down in *Sumesh Anand's case (supra)*.

Petition is allowed in these terms.

September 29, 2017
sukhpreet

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No