

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

CWP No.1985 of 2017 (O&M)
Date of decision: November 29, 2017

Swaran Singh

...Petitioner

Versus

Sub Divisional Magistrate-cum-Maintenance
Tribunal, SAS Nagar, Mohali & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Mandeep Kumar Dhot, Advocate for the petitioner.

Mr. Guurcharan Dass, Advocate for respondent No.2.

Rajan Gupta, J.

Petitioner poses a challenge to order dated 20.12.2016, passed by Sub Divisional Magistrate-cum-Maintenance Tribunal, Mohali, whereby application under section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 filed by respondent No.2 (mother) was accepted declaring Deed No.3769 dated 7.9.2016 along with subsequent Deed No.5978 dated 17.01.2017, as null and void.

Learned counsel for the petitioner has urged before this court that order suffers from patent illegality. The Tribunal without affording opportunity of hearing to the petitioner, allowed the application filed by respondent No.2, who is his mother. According to him, the mother has not been harassed by the petitioner, rather petitioner is being harassed by respondent No.2. He has relied upon judgment reported as ***Gurdev Singh vs. State of Punjab and others, 2016 (4) R.C.R. (Civil) 945*** and ***Jagmeet Kaur***

Pannu vs. Ranjit Kaur Pannu, 2016 (2) R.C.R. (Civil) 82, to contend that in the absence of any condition in the transfer-deed that he would maintain the parents, Tribunal cannot interfere and set-aside the transfer-deed.

Plea has been opposed by counsel appearing for respondent No.2. According to him, petitioner has been harassing and maltreating his mother, who is 80 years old, by using abusive language. 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 purchased 9 Marlas land/plot in village Balongi in the year 1994, vide sale deed No.122 dated 8.4.1994. She constructed a house and three shops on it. After death of husband of respondent No.2, the house situated at Dhanas (Chandigarh), which was in the name of her husband, was inherited by respondent No.2 and her four children including the petitioner. In a family settlement, it was decided that petitioner would leave his share in the house at Dhanas in favour of respondent No.2 and in lieu thereof, the house situated in village Balongi would be transferred in his name. He also assured that he would maintain his mother. In view of settlement, 9 Marla plot was transferred in the name of petitioner vide Deed No.3769 dated 7.9.2016. However, later on petitioner refused to leave his share in the house at Dhanas and started harassing his mother. Ultimately, respondent No.2, who is a senior citizen within the meaning of the Act, preferred an application under Sections 23 of the Maintenance & Welfare of Parents and Senior Citizens Act, 2007 against her son, seeking cancellation of transfer

deed No.3769 dated 7.9.2016 and subsequent deed No.5978 dated 17.01.2017. 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 my considered view, judgments in *Gurdev Singh's case (supra)* and *Jagmeet Kaur's case (supra)* are not applicable to the facts of the case. Petitioner is a licensee in the property and was permitted to enjoy usufruct thereof. Respondent No.2 alleged that petitioner started misbehaving and quarrelling with her. She was subjected to mental harassment by the petitioner due to greed for property. The transfer-deed was executed without any consideration, but petitioner had refused to maintain his mother. 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 mother. 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