

CWP No.21665 of 2017 (O&M)

[1]

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

**CWP No.21665 of 2017 (O&M)
Date of decision:14.11.2017**

Sukhjit Kaur

...Petitioner

Versus

Appellate Authority-cum-District Magistrate, Mansa & ors.

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. H.S.Deol, Advocate,
for the petitioner.

Mr. Sanjiv Gupta, Advocate,
for respondents no.3 to 5.

Mr. Rakesh Gupta, Advocate,
for respondents no.6 to 9.

Rakesh Kumar Jain, J. (Oral)

CM No.16323-CWP of 2017

This application is filed under Order 9 Rule 7 of the Code of Civil Procedure, 1908, for setting aside the *ex-parte* proceedings dated 07.11.2017 and to allow the applicant-respondent no.3 to participate in the present proceedings.

After hearing learned counsel for the parties, the application is allowed, order dated 07.11.2017 is set aside and the applicant-respondent no.3 is allowed to join the proceedings from today.

CM No.16324-CWP of 2017

Application is allowed, as prayed for.

Written statement on behalf of respondents no.3 to 5 is taken on record.

CWP No.21665 of 2017

The petitioner is the widow of Sema Singh who died on 27.09.2009. She adopted respondent no.3 as her son, who happens to be the nephew (sister's son) of her husband. She has filed an application before the Tribunal for seeking maintenance as well as for setting aside the documents of title (sale deeds) executed in favour of the private respondents in respect of 8- ½ acres of land, about which she had pleaded fraud. The said application was allowed by the Tribunal vide order dated 11.04.2017, setting aside all the sale deeds in favour of the private respondents and also directing respondent no.3 to pay a sum of ₹2,500/- per month to the petitioner. The said order dated 11.07.2017 was challenged by one of purchasers, namely, Mohan Singh, before the Appellate Tribunal by way of an appeal. The said appeal was allowed on 12.07.2017, order of the Tribunal dated 11.04.2017 was set aside and the matter was remanded back to the Tribunal, after framing four issues, to decide it afresh.

The petitioner has approached this Court by way of this petition, in which the following order was passed on 03.10.2017:-

“Counsel for the petitioner, *inter alia*, contends that the petitioner is a widow who, after the death of her husband, adopted Gurjiwan Singh, son of her step-sister. The allegation against Gurjiwan Singh is that he had fraudulently sold 8- ½ acres land of the petitioner. The application filed by the petitioner for seeking maintenance under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, was allowed by the Tribunal, asking Gurjiwan Singh to pay ₹2,500/- per month as compensation to her, besides cancellation of the documents of transfer, much-less the sale deeds etc. On appeal, the Appellate Authority, vide the impugned order dated 12.07.2017, set aside the order of the Tribunal dated 11.04.2017 and remanded the case back on four issues.

Counsel for the petitioner submits that the Appellate

Authority has lost sight of the fact that the petitioner is a widow and penniless and because of setting aside the order of the Tribunal dated 11.04.2017, she would not be in a position to get the maintenance of ₹2,500/- per month, which otherwise deserves to be enhanced.

Notice of motion only on the issue of payment of maintenance by respondent no.3 to the petitioner for 24.10.2017.

Dasti only.

To be shown in the urgent list.”

Counsel for respondent no.3 has submitted that since the sale deeds were executed after payment of consideration before the Sub Registrar, therefore, it cannot be set aside on the ground of fraud until and unless the fraud is established. However, he has submitted that as per his instructions, respondent no.3 is ready to pay the maintenance of ₹2,500/- per month to the petitioner till the matter is finally decided by the Tribunal.

After hearing learned counsel for the parties and keeping in view the facts and circumstances, the present petition is disposed of with a direction that respondent no.3 shall keep on paying maintenance of ₹2,500/- per month to the petitioner, without prejudice to his rights. The Tribunal may increase the amount of maintenance if a case is made out before it on behalf of the petitioner and shall also take into consideration all the aspects in terms of the issues framed by the Appellate Tribunal to decide as to whether the sale deeds executed at the instance of the petitioner in favour of the private respondents deserve to be set aside or not?

November 14, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No