

CWP-718-2017

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Decided on: January 27, 2017.

Jaspal Singh and another

.. Petitioner(s)

VERSUS

Sub Divisional Magistrate, Batala and others

.. Respondent(s)

*** * ***

CORAM: HON'BLE MR.JUSTICE M.M.S.BEDI

*** * ***

**PRESENT Mr.M.S.Sachdev, Advocate,
for the petitioners.**

M.M.S. BEDI, J. (ORAL)

Petitioners are sons of Jagir Singh. Respondent no.3 Amar Singh, grandfather of the petitioners, filed a petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, for voiding a transfer deed executed by respondent no.3 in favour of Jagir Singh father of the petitioners claiming that the father of the petitioners had failed to maintain and provide basic needs to respondent no.3. Vide order dated 29.11.2016, the Maintenance Tribunal has cancelled the transfer deed dated 24.7.2009, and fixed maintenance @ Rs.20,000/- per month.

The petitioners have approached this Court by filing the present writ petition on the ground that the petitioners were not impleaded as parties as their father had died on 25.9.2016 during pendency of the

proceedings before the Maintenance Tribunal.

I have heard the counsel for the petitioners and I am of the opinion that no transfer deed was ever executed in favour of the petitioners.

Counsel for the petitioners has submitted that no relief could be claimed against the petitioners as they were never impleaded as parties to the proceedings before the Maintenance Tribunal.

With the assistance of counsel for the petitioners, I have gone through the original application Annexure P3, which was filed by Amar Singh, respondent no.3 against Jagir Singh in which the petitioners have not been made a party but general allegations have been levelled against Jagir Singh that he and his family members had failed to fulfil their statutory obligation under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

Be as that it may, the order passed against Jagir Singh is an appealable order under Section 16 (1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. A Division Bench of this Court in **Paramjit Kumar Saroya Vs Union of India, 2014 AIR (Punjab) 121**, has specifically made the provision of appeal under Section 16 (1) of the Act available to any aggrieved person against the order passed by the Maintenance Tribunal.

It is held that since the petitioners seek right in the property which is subject matter of the transfer deed dated 24.7.2009, in the capacity as heirs of Jagir Singh, it will be debatable whether they could

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challenge the claim of Amar singh, during the lifetime of Jagir Singh. Since they claim that right, title and interest vested in them on account of opening of inheritance on death of Jagir Singh and they are aggrieved on account of the rights determined by the Maintenance Tribunal, it will always be open to them to either approach the Maintenance Tribunal claiming that they had not been heard as LR's of Jagir Singh who had died during pendency of the proceedings before the Maintenance Tribunal or they would be entitled to challenge the order passed by the Maintenance Tribunal by filing an appeal under Section 16 (1) in the capacity as legal heirs of Jagir Singh being aggrieved by the findings.

In view of above said observations, this petition is held not maintainable. It will be open to the petitioners to challenge the order of voiding of the transfer deed and order of maintenance passed against the petitioners without any opportunity of hearing having been afforded to them.

In case the petitioners avail any of the above said remedies within a period of 15 days, the claim of the petitioners would be considered by the appropriate forum in accordance with law.

Disposed of accordingly.

(M.M.S. BEDI)
JUDGE

January 27, 2017.

rka

Whether speaking / reasoned
Whether reportable:

Yes / No
Yes / No