

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.7615 of 2017
Date of Decision: April 18, 2017

Avtar Singh

...Petitioner

Versus

The Appellate Maintenance Tribunal, Mohali & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Ms.Baljeet Kaur Bhullar, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the order dated 5.7.2016 rendered by the Sub-Divisional Magistrate-cum-Maintenance Tribunal, Mohali whereby the application moved by the private respondent, i.e., father of the petitioner seeking cancellation of the transfer deed dated 25.2.2016, has been allowed and the appeal preferred before the Deputy Commissioner has also met with the same fate.

Ms.Baljeet Kaur Bhullar, learned counsel representing the petitioner submits that no doubt the petitioner has already filed a civil suit dated 5.9.2016 during the pendency of the proceedings initiated under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (for short “2007 Act”), claiming declaration on the basis of the transfer deed, which is pending in the Court. The contents of the transfer deed do not reveal that it was done with an intention to maintain the private respondent, thus, the authorities did not have any jurisdiction to try and entertain the petition.

The petitioner was not afforded opportunity to contest the case, which is reflected from the order of the Sub-Divisional Magistrate. Even before the Deputy Commissioner, the services of the lawyers were not allowed to be availed in view of the embargo under Section 17 of 2007 Act and, thus, urges this Court for remanding the matter back by setting-aside the orders under challenge.

I have heard the learned counsel for the petitioner, appraised the paper book and of the view that the findings rendered by the Court below for cancellation of the transfer deed would not come in the way of the petitioner in the pending suit. It is only for the purpose of maintenance of the parent. Even if the transfer deed does not envisage any of the conditions of maintaining the senior citizen, the intention behind can be considered. There can be an implied intention. The petitioner is at liberty to lead evidence in support of the averments in the suit by leading direct and cogent evidence and the trial court, which is seized of the matter, shall decide the matter uninfluenced of the findings rendered by this Court.

Accordingly, the impugned orders are upheld and the writ petition stands disposed of.

April 18, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No