

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

CWP No.9053 of 2017

Date of Order: 31.10.2017

Sucha Singh Ladhar

....Petitioner

Versus

Avtar Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Shashank Sharma, Advocate for the petitioner.

Mr. Harish Goyal, Advocate for the respondent.

RAKESH KUMAR JAIN, J (ORAL)

The petitioner has unfortunately expired on 29.8.2017. He had filed a complaint under Sections 22(1) and 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short “the Act”) against Avtar Singh, one of his sons, qua annulment of Transfer Deed No.6611 dated 25.2.2016 by which he had transferred House No.562, Phase 2 Sector 54, Mohali to him allegedly under coercion and further praying that the possession of the same may be got delivered to him. Although from the record, it appears that the said complaint was made to the District Magistrate, Mohali but it was ultimately decided by the Maintenance Tribunal, Mohali on 05.7.2016 under the provisions of Section 23 of the Act and the transfer deed was set aside.

The respondent challenged that order by way of an appeal before the Maintenance Tribunal but his appeal was also dismissed on 12.10.2016.

Learned counsel for the respondent has submitted that the respondent had challenged the orders passed by the Tribunal and the Appellate Tribunal by way of writ petition No.7615 of 2017 which was dismissed on 18.4.2017. The petitioner thereafter filed an intra court appeal bearing LPA No.1359 of 2017 which is pending after notice.

Present petition has been filed by Sucha Singh Ladhar (since deceased) for seeking eviction of the respondent from the house in dispute, alleging that though the document by which he had transferred the property in dispute has been declared to be null and void but the possession is still with the respondent.

I have heard learned counsel for the parties and perused the record.

As per the scheme of the Act, the jurisdiction for passing the order of eviction and for declaring the document illegal, null and void, on the ground of coercion or under undue influence vests with the District Magistrate and the Maintenance Tribunal separately. Section 22(1) deals with the orders to be passed for seeking eviction that too by following the procedure prescribed in the action plan which is prepared by the State of Punjab in terms of Rule 23 of the Rules and solely the District Magistrate has been given the powers of passing the order of ejectment and no power has been given to the Maintenance Tribunal. The term 'Tribunal' given in Section 23 of the Act is conspicuous by its absence in Section 22 (1) of the Act as the District Magistrate is given the jurisdiction to pass the order of eviction.

Thus this petition is totally misconceived as the Tribunal has rightly passed the order, annulling the document of transfer of the property

executed in favour of the respondent but the remedy for seeking eviction is before the District Magistrate that too by filing a specific application under Section 22(2) of the Act but since the petitioner has expired and the right to seek eviction was only a personal right to him being senior citizen, therefore, the said right cannot be exercised by his legal heir. Hence the present petition is dismissed.

October 31, 2017
manoj

(RAKESH KUMAR JAIN)
JUDGE

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