

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

**Civil Revision No.3995 of 2016
Date of Decision: 21.05.2018**

Amarjeet Singh

.....Petitioner

Vs

Deputy Commissioner-cum-Appellate Tribunal & Ors.

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Pankaj Jain, Advocate
for the petitioner.

Ms. Ambika Luthra, Sr. D.A.G., Punjab.

Mr. Karan Jund Mullanpur, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioner against the order dated 12.04.2016 passed by respondent No.1 dismissing the appeal filed by him and the order dated 30.10.2015 passed by respondent No.2.

[2]. Brief facts are that earlier the appeal filed by the petitioner before the Commissioner-cum-Appellate Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter to be referred as 'the Act') against the order dated 30.10.2015 passed by the SDM-cum-

Presiding Officer Maintenance Tribunal was dismissed by the Appellate Tribunal on 05.01.2016 on the ground that the appeal was not maintainable. A CWP No.4005 of 2016 was filed in the High Court by the petitioner. Vide order dated 29.02.2016 passed in the said writ petition, the appeal was held to be maintainable. The matter was remitted back to respondent No.1 to deal with the appeal on merits after affording opportunity of hearing to both the parties.

[3]. As per facts on record, respondent No.3 filed an application under Section 7 read with Section 23 of the Act before the Maintenance Tribunal-cum-SDM, Kharar. Respondent No.3 alleged that the petitioner does not take care and maintain her. Petitioner had committed fraud in getting the sale deed 17.09.2009 and gift deed dated 19.08.2009 executed from respondent No.3. The Maintenance Tribunal accepted the prayer. The gift deed No.2519 dated 19.08.2009 was declared as null and void. The sale deed No.3101 dated 17.09.2009 was not commented upon as the same was executed after receiving consideration of Rs.4,60,000/- by respondent No.3. The Maintenance Tribunal also recorded the fact that respondent No.3 was not happy with the petitioner and was very much upset and dissatisfied with him. She does not want to live with him. Even at that time she was without any shelter.

[4]. Before the present proceedings, a civil suit for declaration was filed by respondent No.3 challenging the gift deed and consequent mutation declaring to be null and void on the basis of fraud. Thereafter respondent No.3 made a statement in the Court on 23.10.2013 and withdrew the suit on the ground that matter has been compromised. Thereafter she filed the present complaint for setting aside the gift deed in favour of the petitioner.

[5]. Learned counsel for the petitioner vehemently submitted that respondent No.3 cannot maintain the present complaint as there was no condition mentioned in the gift deed in respect of maintaining respondent No.3 and providing the basic amenities and physical needs to the transferor. Petitioner was always ready and willing to provide basic amenities and physical needs to respondent No.3 and even as per orders of the Court, an amount of Rs.4000/- per month is being paid regularly to her.

[6]. Learned counsel by relying upon **Jagmeet Kaur Pannu vs. Ranjit Kaur Pannu, 2016(2) R.C.R. (Civil) 82; Gurdev Singh vs. State of Punjab and others, 2016(4) PLR 265** and **Sarabjit Singh vs. District Collector-cum-Deputy Commissioner, Barnala and others, 2016(3) PLR 486** contended that firstly Section 23 of the Act would apply to the

situation where Senior Citizen is present as defined under Section 2(h) of the Act and secondly he has transferred the property defined under Section 2(f) of the Act after commencement of the Act i.e. 29.12.2007. Thirdly, transfer is with the condition that the transferee would provide the basic amenities and physical needs to the transferor. Fourthly, the transferee refused or fails to provide such amenities and physical needs, then the transfer shall be deemed to be considered as fraudulent and having been made by fraud, coercion or undue influence. It would be at the option of transferor to get it declared void by the Tribunal.

[7]. Learned counsel further submitted that obligation to maintain the transferor could be a pious wish or would be a pre-condition. A person can make the gift under the belief that the donee will support and provide basic amenities to look after the physical needs. If such expectation is belied and the donor is betrayed by the donee's conduct, then the donor shall have an assured right under Section 23 of the Act to cancel gift deed. It was to ward off a prospect of donee to plead that the gift was not made on such a condition and that it was a pious wish that the express provision of Section 23 of the Act has been made. With or without the provision of Section 23 of the Act, the gift cannot be cancelled at the whims of transferor. In order to apply

Section 23 of the Act, the Tribunal has to examine whether the document contained any such condition and as to whether there had been any demand made by the donor on the donee.

[8]. At last learned counsel contended that the Tribunal has to give a finding that the transferee has refused to provide such amenities and basic needs to the transferor. In the absence of any such finding, provision of Section 23 of the Act cannot be resorted to.

[9]. On the other hand, learned counsel for respondent No.3 very vehemently submitted that respondent No.3 has indefeasible right to get back the land donated by her, if the transferee has failed to provide basic amenities and basic physical needs to respondent No.3. By relying upon **Promil Tomar and others vs. State of Haryana and others, 2014(1) R.C.R. (Civil) 403** and **Justice Shanti Sarup Dewan, Chief Justice (Retired) and another vs. Union Territory, Chandigarh and others, 2014(5) R.C.R. (Civil) 656** contended that the Act by virtue of Section 3 has overriding effect and shall have the effect notwithstanding anything inconsistent contained in any enactment other than the present Act. This Act is not restricted to any maintenance, but also an obligation on the person, who inherits the property of an old relative to maintain such old person.

[10]. Learned counsel by relying upon **Ramesh Chawla vs. Smt. Raj Rani @ Raj Karani, 2017(3) R.C.R. (Criminal) 515**

further submitted that the special enactment was made with a view to safeguard the interests of the senior citizen as increasing incidents of these senior citizen being deprived of basic amenities and physical needs in the dusk of their life were coming to fore. Besides acts of fraud and coercion of aforesaid senior citizens to part with their properties were also rampant. Section 23 of the Act thus contemplates that any citizen, who transfers his property by way of gift deed or otherwise can be tested on the parameters of Section 23 of the Act, if the transferee does not provide basic amenities to the transferor. Such alienation would be deemed to be the result of fraud, coercion and undue influence. In such eventuality, an option has been given to the senior citizen to get it annulled or declared void. Even as per Section 24 of the Act, punishment upto 3 months or fine which may extend to Rs.5000/- has been provided in case of abandonment of a senior citizen.

[11]. Having considered the submissions made by learned counsel for the parties, I am of the view that right of senior citizens in terms of Section 23 of the Act is well recognized. The Tribunal has noticed the factum of execution of gift deed being a conceded position. The submissions of respondent No.3 were

noticed wherein, she stated that sale deeds of the plots were executed in the month of August or September 2008. She has appended her account statement with the written arguments. The amount in her account was on account of sale of land made by her husband for a consideration of Rs.10 lakhs and sale of plot for Rs.2,90,000/-. Husband of respondent No.3 died in the year 2009. After that the amount came in her account. Petitioner intended to take out the amount forcibly. On refusal, petitioner shunted respondent No.3 out of the house after giving abuses. Even despite withdrawal of the suit from the civil Court, the petitioner did not stop harassing respondent No.3. The contention of respondent No.3 was also recorded to the effect that she was not happy with the petitioner. She was very much upset and dissatisfied with the petitioner. She was not willing to live with the petitioner despite the fact that she was without any shelter.

[12]. The gift deed in question was executed with the background that the donor was happy and satisfied with the services rendered by the petitioner. The donor wanted to reward the petitioner for services rendered to her. Therefore, gift deed was executed. Since the sale deed was also executed for a consideration, therefore, later part of the deed was related to the factum of sale. The factum of living of petitioner with the donor

and providing services to her by him was recited in the gift deed. It was also pleaded that the petitioner takes care of the donor in her old age. The recital denotes that taking care of the donor was a continuous feature. If Section 23 of the Act is read in the light of aforesaid recital of the gift deed, the same would make it abundantly clear that all the ingredients of Section 23 of the Act have been satisfied as the Senior Citizen is covered under Section 2(h) of the Act. Property is defined under Section 2(f) of the Act after commencement of the Act as on 29.12.2007.

[13]. Since taking care of the donor was a continuous feature and the donor was happy and satisfied with the services of the petitioner, therefore, the transfer by way of gift deed was with a view that the transferee would provide basic amenities and basic physical needs to the transferor in future. The refusal on the part of transferee in maintaining the transferor is writ large as per the allegations made by respondent No.3, where she has specifically alleged that she has no shelter to live in as on date and is not happy with the petitioner. Respondent No.3 is so upset and dissatisfied with the petitioner that she does not want to live with him.

[14]. In the light of aforesaid facts, it can safely be noticed that the basic amenities and basic physical needs have not been provided to respondent No.3 by the petitioner.

Consequently, no indulgence can be granted to the petitioner for setting aside the impugned orders as the same are not found to be illegal or suffered with any perversity. This revision petition is accordingly dismissed.

May 21, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No