

CWP No.20156 of 2016

[1]

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

CWP No.20156 of 2016
Date of decision: January 22, 2018

Smt. Kaushalya Devi ...Petitioner
Versus
State of Punjab and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

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

Mr. H.S.Sitta, AAG, Punjab.

Mr. Baljinder Singh, Advocate, and
Mr. Bikramjit Arora, Advocate, for respondent no.4.

Mr. Amit Kundra, Advocate,
for respondent no.5.

Rakesh Kumar Jain, J. (Oral)

The petitioner has challenged the order passed by the Maintenance Tribunal dated 30.09.2015, by which application filed by the petitioner under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "Act") has been dismissed and the order dated 07.06.2016/08.09.2016 passed by the Appellate Tribunal whereby the appeal filed by the petitioner has been dismissed.

In short, the petitioner was stated to be the owner of House No.101-C, Phase-I, Sector 55, SAS Nagar Mohali. However, she transferred half share of the aforesaid house by way of registered transfer deed to her son Jatinder Kumar Gaur on 13.01.2009. Unfortunately, her son Jatinder Kumar

Gaur died on 19.01.2013 and the ownership of half share of the property vested in his widow Gita Gaur on account of a Will executed by her husband in her favour. The petitioner, who is stated to be 83 years of age is a Canadian citizen. She has got possession of half share of the aforesaid house and the other half share was in possession of her daughter-in-law, who has also now settled in Canada.

It is submitted by counsel for the petitioner that the half portion of her daughter-in-law is in possession of one Kiran, sister of the daughter-in-law, who is causing lot of inconvenience to the petitioner whenever she visits India and has even broken the lock of her portion and removed her belongings.

The petitioner has filed an application under the provisions of the Act before the Maintenance Tribunal, where it was submitted on her behalf that she has been receiving rent from Kiran who is occupying the other half portion. It is further submitted that Kiran had stopped paying the rent since September, 2014. The application was dismissed by the Maintenance Tribunal, *inter alia*, on the ground that the petitioner is self-dependent being a pensioner from the Canadian Government and Kiran is in possession of the portion which has come to the share of her sister Gita Gaur on account of having become the owner thereof by virtue of the Will executed in her favour by her husband.

Dissatisfied with the order of the Maintenance Tribunal, the petitioner preferred an appeal before the Appellate Tribunal but it met with the same fate on the same reasonings.

Learned counsel for the petitioner has submitted that respondent no.4 Gita Gaur has caused lot of inconvenience and harassment to the petitioner, therefore, the document executed by her in favour of his son on

13.01.2009 deserves to be set aside.

On the other hand, counsel appearing on behalf of respondent no.4-Gita Gaur has submitted that the petitioner does not have any case against respondent no.4 because she is living in Canada like the petitioner and, therefore, there is no occasion for her to cause any kind of inconvenience or harassment to the petitioner in India. It is further submitted that the property in question is in possession of her sister Kiran, who is not the tenant of the petitioner rather she is the tenant of respondent no.4. It is further submitted that in case the petitioner has any grievance against Kiran, she should have taken recourse to the provisions of some other law but the application filed under Section 23 of the Act is neither maintainable against respondent no.4 nor against Kiran.

Counsel for respondent no.4 further submits that the petitioner cannot blow hot and cold in the same breath as in the Civil Suit filed by her, she has claimed only 1/3rd share of the property in question but before this Court, she has claimed half share. However, the said suit was withdrawn by the petitioner, with liberty to file it again with better particulars, but it has not been filed again despite availing permission of the Court.

Be that as it may, after hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the application filed by the petitioner against respondent no.4 on the aforesaid allegations is totally misconceived because Section 23 of the Act provides that where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to

the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal. In this case, the petitioner is no doubt a transferor and the transferee was her son Jatinder Kumar Gaur. The petitioner had no dispute so long as her son was alive. Unfortunately, her son died on 19.01.2013 and because of the Will, the property in question was devolved upon his widow, namely, Gita Gaur who also shifted to Canada and gave possession of half share of the property in question to her sister as a tenant. The question as to whether Kiran, sister of respondent no.4, is the tenant of the petitioner or respondent no.4 is a question of fact which cannot be adjudicated upon in these proceedings. However, the facts remains that the petitioner cannot seek avoidance of the document dated 13.01.2009 by making allegations against Kiran, who is stranger to the transfer and the allegations made against Gita Gaur have not been established because she is already living in Canada and has not caused any kind of inconvenience or harassment to the petitioner.

In view of the aforesaid facts and circumstances, I do not find any merit in the present petition and hence, the same is hereby dismissed and as a result thereof, all interim orders passed in this petition have also come to an end.

January 22, 2018
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned	:	Yes/No
Whether reportable	:	Yes/No