

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

CWP-19959-2017 (O&M)
Date of decision : 14.08.2018

Jagpal Singh

...Petitioner(s)

Versus

Sub Divisional Magistrate/Tribunal/Authority and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ramandeep, Advocate for the petitioner.

Ms. Deepali Puri, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J.

The petitioner seeks issuance of a writ in the nature of Certiorari for quashing of order dated 02.08.2017 (Annexure P-3) passed by respondent No.1, whereby, the transfer deed executed by respondent No.1 in favour of the petitioner as well as respondent No.3 has been cancelled.

It is contended that the impugned order is illegal and perverse as the same has been passed without affording any opportunity of hearing to the petitioner as also in contravention of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the Act'). There was no condition in the transfer deed dated 30.10.2007, calling upon the petitioner to maintain his respondent-Aunt. Cites *Sarabjit Kaur Vs. District Collector-cum-Deputy Commissioner, Barnala, 2016(4) R.C.R. (Civil) 433*.

On the other hand, learned State counsel submits that the dispute is inter se the private parties and no interest of the State is involved

therein.

Heard.

Respondent No.2-paternal aunt of the petitioner as well as respondent No.3, executed a transfer deed in their favour on 30.10.2007, pertaining to land measuring 44 kanals 6-1/2 marlas situated at village Bujrak, Tehsil Samana, District Patiala. She is an issueless widow. In the year 2017, respondent No.2 filed a petition under the Act for declaring the transfer deed as void. The petition was allowed by respondent No.1 vide impugned order Annexure P-3. Hence, the instant petition.

Section 23 of the Act, reads thus:-

“23 Transfer of property to be void in certain circumstances.

(1)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.

(2)Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and

without notice of right.

(3)If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.”

A careful perusal of the provisions of Section 23 of the Act would reveal that it does not contemplate that the condition should form part as recital in the deed of transfer. It only refers that there should be a condition for such transfer, either express or implied. In the absence of any express condition, the determining factor would be the circumstances in which the donor has sought to revoke the gift deed. In such cases, the transfer itself is out of love and affection. The transferee, therefore, cannot disown his own action of love and affection once the transfer comes into effect. Thus, in the absence of any other circumstances to dispel, it must be presumed that the transferor expects the transferee to extend love and care even after the execution of the deed, in the same manner as he/she was taken care of prior to its execution.

In the instant case, the transferor is a widow having no issue, whereas, the petitioner-transferee is her nephew. The circumstances lead to the presumption that the transfer in question was a result of anticipation of receiving love and care from the transferee. The petitioner cannot claim any benefit on account of absence of any express condition in the transfer deed to the effect that he shall be liable to take care of her aunt who is a widow and issueless.

In the circumstances, no fault could be found in the impugned order (Annexure P-3) and the same is hereby affirmed.

Consequently, the instant petition is hereby dismissed.

14.08.2018
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(JITENDRA CHAUHAN)
JUDGE

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