

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.19166 of 2018
Date of Decision:03.08.2018

Jaswant Singh

..... Petitioner

Vs.

Harjeet Kaur and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.R.K. Singla, Advocate, for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is filed against the order dated 10.5.2018 passed by the Maintenance Appellate Tribunal by which the appeal filed by respondent No.1 against the order dated 21.8.2017 passed by the Maintenance Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [for short 'the Act'] has been allowed.

Shorn of unnecessary details, the petitioner is the father of respondent No.1, who had executed a transfer deed bearing Vasika No.176 dated 16.4.2004 in favour of respondent No.1. He filed an application before the Maintenance Tribunal under Section 23 of the Act for annulling the document on the ground that respondent No.1 is not providing any basic amenities to him. The said application was though allowed by the Maintenance Tribunal but the order of the Maintenance Tribunal was reversed by the Maintenance Appellate Tribunal by the impugned order.

Learned counsel for the petitioner has submitted that even if the provision of Section 23 of the Act would apply to the document executed after the commencement of the Act yet it is the pious duty of respondent

No.1, to serve the petitioner, who had executed the said document of transfer of land.

I have heard learned counsel for the petitioner and perused the record with his able assistance.

The issue involved in this case is as to whether the transfer document, purported to have been executed by the petitioner, in favour of respondent No.1 on 16.4.2004, can be set aside or be declared void in terms of Section 23 of the Act? In order to answer this question, Section 23 of the Act is required to be noticed, which is reproduced as under: -

“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 bare perusal of the aforesaid provision shows that if the senior citizen, who after the commencement of the Act, transfer his property by way of a gift deed subject to the condition that the basic amenities will be given by the transferee and in case such transferee refuse to provide such amenities to the transferor then it would be deemed that the transfer has been obtained by playing a fraud or undue influence and can be declared void by the Tribunal.

Admittedly, the Act came into being w.e.f. 29.12.2007 when it received the assent of the President of India and published in the Gazette of India whereas the transfer was effected in the year 2004. Therefore, the application was not maintainable under Section 23 and has rightly been dismissed by the appellate authority.

Dismissed.

(RAKESH KUMAR JAIN)
JUDGE

03.08.2018

Vivek

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