

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

**Civil Writ Petition No. 6188 of 2016 (O&M)
Date of Decision: 18.09.2018**

Nirmal Singh

..... Petitioner

Versus

Financial Commissioner/Principal Secretary, Department of
Social Securities, Chandigarh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Harsh Bunger, Advocate
for the petitioner.

Mrs. Sudeepti Sharma, Additional Advocate General, Punjab.

Mr. Bharat Kumar, Advocate for
Mr. Amit Kashyap, Advocate
for respondent Nos. 3 to 5/Mother and two daughters.

Mr. Mukesh Kumar Bhatnagar, Advocate
for respondent No. 6/Harjinder Singh.

JASWANT SINGH, J. (ORAL)

Petitioner (Nirmal Singh) and respondent No. 6 (Harjinder Singh) are the sons of Smt. Kuldeep Kaur (respondent No. 3). Respondent No. 4 (Rajwinder Kaur) and respondent No. 5 (Rubinder Kaur) are the sisters of petitioner-Nirmal Singh and Harjinder Singh (respondent No. 6).

Smt. Kuldeep Kaur is stated to have purchased 190 *Kanals* (19 acres) of agricultural land situated at village Feteyabad, Tehsil Khadoor Sahib, District Tarn Taran in the year 1992 on payment of the sale consideration by her husband late Sh. Kartar Singh. She, being the absolute owner, executed a Transfer/Gift Deed dated 03.10.2002 (**Annexure P-1**) of land measuring 127 *Kanals* in equal shares in favour of her two aforesaid sons, namely, Nirmal Singh and Harjinder Singh. She alongwith her husband, thereafter, are stated

to have estranged their relationship with their two sons, leading them to shift their residence with the daughters.

She (Smt. Kuldip Kaur) filed an application under Section 23 of **the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the 2007 Act')** before the Sub Divisional Magistrate-cum-Tribunal, Tarn Taran, for declaring the deed to be void as the sons had refused to maintain her.

The Tribunal vide order dated 15.01.2016 (**Annexure P-10**) set aside the Transfer Deed dated 03.10.2002 (**P-1**), while directing the payment of Rs. 5,000/- (Five Thousand only) monthly each by both the sons to their mother as maintenance. Hence, the present writ petition filed by one of the sons, namely, Nirmal Singh.

This Court, while issuing notice of motion on 01.04.2016, stayed operation of the impugned order dated 15.01.2016 (**P-10**) passed by the Tribunal.

Counsel for the parties are heard at length.

It is not in dispute that the provisions of 'the 2007 Act' (Supra) were enforced in the State of Punjab w.e.f. 26.10.2012 in view of the Notification issued under sub-Section (3) of Section 1 of 'the 2007 Act'. The Transfer/Gift Deed dated 03.10.2002 (**P-1**) having been executed much before the enforcement of 'the 2007 Act', is, thus, not covered within the scope of sub-Section (1) of Section 23 of 'the 2007 Act', which **provides** that “*any senior citizen who, after the commencement of the Act, has transferred any property, the same is liable to revert back in case the transferee refused to maintain him/her*”. The matter is squarely covered by the decision of this

Court in **Harvinder Kaur Bajwa Versus The Appellate Tribunal, Panchkula,**

15.01.2016 (P-10) passed by the Tribunal is set aside to the extent that the Transfer/Gift Deed dated 03.10.2002 (P-1) has been wrongly set aside because the alleged gift deed was executed prior to the passing 'Act 2007' (supra). However, it is made clear that any opinion expressed by this Court with regard to the holding of validity of Gift Deed under question (P-1) be not considered as a bar to preclude any of interested party to challenge the same before a competent Court of law in accordance with the law on the grounds as available in law. In this manner, the Gift Deed under question (P-1) is a valid document, *qua* the present *lis*, being executed before passing of the 'Act 2007', as the 'Act 2007' has no retrospective effect to declare the validity or invalidity of transaction entered into by senior citizen.

Now, it is to be seen as to whether respondent No.3, Smt. Kuldip Kaur, has right to claim maintenance.

Section 9 of the Act is reproduced as under for facility:-

- “(1) If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.**
- (2) The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.”**

As such, the above referred provision is plain and clear in itself

claim maintenance from his children or relatives.

Here maintenance includes provisions for food, clothing, residence, medical attendance and treatment. The necessities of life constitute maintenance. Thus respondent No. 3 has right to claim maintenance from her sons, namely, **Nirmal Singh, petitioner and Harjinder Singh, respondent No.6**. She is held entitled to claim maintenance from the already referred parties in the following manner from today i.e. from the date of passing of order:-

- I. Petitioner-Nirmal Singh shall pay a sum of Rs. 7000/- (Seven Thousand) per month and respondent No.6, Harjinder Singh shall pay amount of Rs. 3000/- (Three Thousand only) per month till the natural life of their mother.
- II. Respondent No. 6-Harjinder Singh, shall further pay Rs. 2000/- (Two Thousand) per month as medical expenses and attendant expenses.

Further, the petitioner-Nirmal Singh has also given an undertaking to bear all the indoor medical expenses of his mother, respondent No.3 (Smt. Kuldeep Kaur), in future as and when required. Payment as awarded in favour of respondent No.3 (Smt. Kuldeep Kaur) shall be deposited by the petitioner and respondent No.6 regularly in the Bank account of their mother by any of the mode as recognized by the RBI Rules i.e. RTGS, cheque and draft etc.

In the light of the above discussion, the instant petition is **disposed of** accordingly in the terms, referred above.

September 18, 2018

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**(JASWANT SINGH)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>