

CWP No.3604 of 2018

[1]

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

CWP No.3604 of 2018
Date of decision: March 20, 2018

Balwinder Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. R.V.S.Chugh, Advocate,
for the petitioner.

Rakesh Kumar Jain, J. (Oral)

The petitioner has challenged the order passed by the Appellate Maintenance Tribunal dated 28.11.2017 by which appeal filed by respondent no.4 has been allowed and the order passed by the Maintenance Tribunal dated 31.08.2017 has been set aside.

In brief, the petitioner was the owner of the land in question which was transferred by him in favour of his daughter Mandeep Kaur vide transfer deed dated 18.06.2004 in lieu of the services rendered to him. It is alleged that his daughter Mandeep Kaur had unfortunately expired and the property owned by her was inherited by her husband (respondent no.4 herein). It is further alleged that since respondent no.4 had thrown out the petitioner from his house, therefore, he has filed an application under Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "Act") for annulling the deed of transfer of the property in question in favour of Mandeep Kaur, from whom respondent no.4

has inherited the said property. The Maintenance Tribunal had allowed the application vide order dated 31.08.2017 but the appeal filed by respondent no.4 has been allowed by the Appellate Maintenance Tribunal on the ground that since the property was transferred on 18.06.2004, much before coming into force of the Act, therefore, the application filed under Section 23(1) of the Act is not maintainable.

Learned counsel for the petitioner has submitted that the petitioner is a senior citizen who had transferred the property in question in favour of his daughter in lieu of the services rendered by her and after the death of her daughter, he would succeed to her property being Class-I heir in terms of the Hindu Succession Act, 1956 and the entire property could not be inherited by her husband.

Be that as it may, the fact remains that the application filed by the petitioner has been dismissed by the Appellate Maintenance Tribunal on the ground that it was not maintainable because Section 23(1) of the Act provides that if the transfer of the property is made by a senior citizen or a parent after coming into force of the Act and the services are not rendered by the said person, then the said transfer can be set aside on the ground that the transfer was made under duress, coercion or undue influence.

Thus, the *sine qua non* is the date of transfer, meaning thereby if the transfer is made after the commencement of the Act, i.e. 29.12.2007, then Section 23 of the Act would come into play, otherwise not.

In the present case, admittedly the transfer was made on 18.06.2004, therefore, the said transfer cannot be challenged by way of an application filed under Section 23(1) of the Act. However, the petitioner may,

if so advised, avail his other remedy(ies), in accordance with law, with regard to his objection that the property left by her daughter cannot be solely inherited by her husband (respondent no.4).

Consequently, the present petition is hereby dismissed being denuded of any merit, though without any order as to costs.

March 20, 2018
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(Rakesh Kumar Jain)
Judge

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