

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

CWP No.4666 of 2018 (O&M)

Date of decision: May 16, 2018

Kulwant Singh

...Petitioners

Versus

Appellate Tribunal-cum-Deputy
Commissioner Patiala & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Sukhdeep Parmar, Advocate for the petitioner.

Rajan Gupta, J.

Petitioner poses a challenge to order dated 22.02.2017, passed by Tribunal, Senior Citizen & Maintenance Act-cum-Sub Divisional Magistrate, Nabha, whereby petition under Maintenance and Welfare of Parents and Senior Citizen Act, 2007 filed by respondent No.3 (father) was accepted declaring sale-deeds No.190 and 191 dated 29.05.2009, executed by respondent No.3 in favour of the petitioner, as null and void, as well as order dated 14.11.2017, passed by Appellate Tribunal-cum-Deputy Commissioner, Patiala, dismissing the appeal filed by the petitioner.

Learned counsel for the petitioner has urged before this court that order suffers from patent illegality. The Tribunal without affording opportunity of hearing to the petitioner, allowed the application filed by respondent No.3. According to him, the father has not been harassed by the petitioner in any manner.

I have heard learned counsel for the petitioner and given careful thought to the facts of the case.

Brief factual matrix of the case is that respondent No.3, who is about 90 years of age, has been living alongwith his wife aged about 80. He has two sons namely, Harpal Singh and Kulwant Singh (petitioner herein). Both of them have been living separately alongwith their families. Respondent No.3 alongwith his wife had been living with the petitioner. It is stated that in lieu of services rendered by the petitioner, his son Kulwant Singh and his wife got transferred 2½ Acres of his land in their names. Thereafter, they completely stopped maintaining their parents. Aggrieved, respondent No.3 approached the Tribunal under the Senior Citizen Act. The tribunal directed the petitioner to pay Rs.3000/- per month on account of maintenance etc. to respondent No.3. After said order was passed, petitioner physically harassed his parents and threw them out of the house. DDR No.35 dated 11.10.2015 was also registered in Police Station Bhadson in this regard. Even then, petitioner did not pay any maintenance. Ultimately, respondent No.3 approached the authority, seeking cancellation of sale deeds No.190 and 191 dated 29.5.2009. After considering entire material on record, the Sub Divisional Magistrate, Nabha, vide order dated 22.2.2017, allowed the application filed by respondent No.3 by cancelling the aforesaid sale deeds and approved mutation of the land in question in favour of respondent No.3. Aggrieved, petitioner preferred appeal, but remained unsuccessful. Appeal was dismissed by District Magistrate, Patiala, vide order dated 14.11.2017.

I find no infirmity with the orders passed. It appears, same was necessitated in the peculiar circumstances of the case. The authorities below have acted in accordance with the provisions of special enactment and with a

view to achieve objectives thereof. In judgment reported as ***Promil Tomar and others vs State of Haryana and others, CWP No.20072 of 2013, decided on December 6, 2013***, this court held as under:-

“I have carefully considered the said contention of learned counsel for the petitioners and I am of the opinion that Section 23 (1) of the Maintenance Act provides that “where any senior citizen has transferred by way of gift or otherwise, his property, and the transferee refuses or fails to provide amenities and physical needs, the said transfer of the 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.” The transfer by a senior citizen in first part of Section 23 (1) of the Maintenance Act could be a gift or otherwise. The property transferred by gift or otherwise would include the transfer of the possession of a property or part of it by a senior citizen. The word “otherwise” used under Section 23 (1) of the Maintenance Act by the legislation would include transfer of ownership, transfer of possession by way of a lease deed, mortgage, gift or sale deed. Even a transfer of possession to a licensee by a senior citizen will also fall under the ambit of Section 23 (1) of the Maintenance Act. The word “otherwise” cannot be ignored for the objective of Section 23 (1) of the Maintenance Act. In context to the objectives of the Act, “transfer” would mean that transfer of property by senior citizen need not be a gift only but it could be any transfer within the meaning of Transfer of Property Act or would even include transferring of any right of the nature of title or possession. Section 23 (1) of the Maintenance Act further provides that if the transfer is subject to a condition that transferee shall provide basic amenities and basic physical needs to the transferor and transferee refused to do so, the transfer of property shall be deemed to have been made by fraud, coercion or undue influence and would be declared so by the Maintenance Tribunal on the option of transferor. A senior citizen who had transferred his

right, title or interest to any other person by gift or otherwise (which would include transfer of possession by lease, mortgage or licence) would become void in the event of transferee refusing to provide amenities and physical needs. The said transfer in such circumstances would be termed as fraud and would be void.”

In view of above, I am of the considered view that Tribunal has not erred in allowing the petition preferred by respondent No.3-father. Transfer in favour of the ward is made with the pious hope that the transferee would continue to serve the parents as he was doing prior to execution of the document. Having failed to look after his parents and provide basic amenities to them in their old age, he makes himself liable for avoidance of the transfer-deed. Needless to say, in such situation a specific condition that the basic amenities would be provided to the parents, need not be incorporated in the transfer-deed. It is deemed to be read into it, as parents make such a transfer out of love and affection and have no reason to believe that after the transfer, the ward would turn his back on them and refuse to provide basic amenities and day-to-day facilities. Thus, pleas raised before this court are without any merit. Same are hereby rejected. Petition is dismissed.

(RAJAN GUPTA)
JUDGE

May 16, 2018
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No