

CWP No.9912 of 2018

[1]

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

**CWP No.9912 of 2018
Date of decision:24.04.2018**

Shimla Devi

...Petitioner

Versus

State of Punjab and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ramesh Goyal, Advocate,
for the petitioner.

Mr. Hitesh Verma, Advocate,
for respondents no.4 and 5.

Rakesh Kumar Jain, J.

The petitioner has challenged the order dated 17.07.2017 passed by the Maintenance Tribunal, order dated 14.12.2017 passed by the Maintenance Appellate Tribunal, dismissing her application filed under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "Act"), and the transfer deed dated 30.01.2013 by which she has transferred 16 Kanals 00 Marlas of land in favour of respondent no.4.

In brief, the petitioner and her husband Dhani Ram had three sons, namely, Vivek Kumar, Rajinder Kumar and Dharamvir. Dharamvir sacrificed his life in the Kargir War on 04.05.2001. After his death, the Government of India awarded certain cash amount to the petitioner, out of which the petitioner along with her husband purchased the land in question vide sale deed dated 06.05.2002. It is alleged that her son Rajinder Kumar get the said land transferred in his name vide transfer deed dated 30.01.2013. The

petitioner has alleged that the said act of respondent no.4 was fraudulent as she is an illiterate lady and respondent no.4 had taken her to the Court on the pretext of executing a Will in favour of her grandsons, namely, Ishwar Singh, Surinder Mohan Singh and Ashish Singh sons of Vivek Kumar but instead of Will, he got the transfer deed executed in his favour. The petitioner has, thus, filed an application under Section 23 of the Act. The Maintenance Tribunal had observed that the petitioner is getting monthly pension of ₹29,300/- and also the lease amount from the petrol pump. Insofar as the transfer deed is concerned, it is observed in the order that the transfer was not made in lieu of the services to be rendered to the transferor by the transferee rather it was executed without any undue influence. Therefore, the allegation made by the petitioner that respondent no.4 has played a fraud in execution of the transfer deed was not accepted. The appeal filed by the petitioner was also dismissed on the ground that the petitioner had filed Civil Suit No.295 of 2014 to challenge the aforesaid transfer deed but the said suit was withdrawn by her on the ground of a compromise effected between the parties.

Counsel for the petitioner has submitted that it is not necessary that it should be mentioned in the transfer deed that the property is being transferred in lieu of the services rendered by the transferee, whereas counsel for respondent no.4-caveator has submitted that the allegation of the petitioner is of fraud and not that the respondent no.4 is not rendering any service to her. For the purpose of proving the factum of fraud, the petitioner has filed the Civil Suit for declaration, which was withdrawn by her on the ground that it has been compromised. It is further submitted that the fraud cannot be established or proved in the summary proceedings. It is also submitted that moreover, if the matter has been compromised and the suit has been withdrawn, the

petitioner cannot maintain the present petition.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that there is no error in the impugned orders because the entire allegation of the petitioner is that she, being an illiterate lady, has been defrauded by her son Rajinder Kumar (respondent no.4 herein) who had got the documents of transfer executed in his favour on the pretext that she would execute the Will in favour of her grandsons, who are the sons of his other son Vivek Kumar. The petitioner, in order to challenge the aforesaid alleged fraudulent transfer had filed the Civil Suit but the said suit was withdrawn on account of a compromise entered into between the parties. The question, thus, would arise that if the compromise has been effected on the basis of which the Civil Suit has been withdrawn, then on what basis the same allegations have been made by the petitioner by filing the application under Section 23 of the Act. The answer to this question would be in negative, otherwise it would run contrary to the order passed by the Civil Court dated 09.11.2016, which would stand in the way of the petitioner for all times to come until and unless the said order is recalled in case no such compromise was effected or the defendant therein is acting against the compromise between the parties.

In view of the above, there is hardly any reason for this Court to interfere in the present petition and hence, the same is hereby dismissed, though without any order as to costs.

April 24, 2018
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No