

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

CWP No.33472 of 2018 (O&M)
Date of decision: December 19, 2018

Swaran Singh

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Saurabh Arora, Advocate for the petitioner.

Rajan Gupta, J.

Petitioner poses a challenge to order dated 15.10.2018, passed by the District Magistrate, Fatehgarh Sahib, whereby order dated 4.6.2018, passed by Maintenance Tribunal-cum-Sub Divisional Magistrate, Bassi Pathana has been set aside, by allowing application under Maintenance and Welfare of Parents & Senior Citizen Act, 2007 and declaring transfer deed No.701 dated 25.07.2014, executed by respondent No.4 in favour of the petitioner as cancelled being null and void.

Learned counsel for the petitioner has urged before this court that order suffers from patent illegality. The Appellate Tribunal without affording opportunity of hearing to the petitioner, set-aside a well reasoned order passed by the Tribunal. According to him, the mother 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.4, who is about 80 years of age, has three sons i.e. petitioner and respondents No.5 and 6. However, his son Swaran Singh (petitioner herein) had refused to maintain her in any manner. He got her land measuring 8 Kanals 6 Marlas transferred in his name fraudulently. Aggrieved, respondent No.4 approached the Tribunal under the Senior Citizen Act by filing application under sections 4, 5, 9 & 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007. The tribunal, vide order dated 4.6.2018 dismissed the petition. Against the said order, respondent No.4 preferred appeal. Vide order dated 15.10.2018, the Appellate Tribunal allowed the appeal by setting aside the order passed by the Tribunal and declared the sale deed No.701 dated 25.07.2014, executed by respondent No.4 in favour of the petitioner as cancelled being null and void.

I find no infirmity with the order passed by the Appellate Tribunal. It appears, same was necessitated in the peculiar circumstances of the case. The Appellate Tribunal has 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 Appellate Tribunal has not erred in allowing the appeal preferred by respondent No.4-mother. 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

December 19, 2018
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No