

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

CWP No.2457 of 2019
Date of decision:-01.02.2019

Dharminder Singh

.....Petitioner

versus

District Magistrate & others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Atam Prakash Setia, Advocate for the petitioner.

TEJINDER SINGH DHINDSA, J.

Petitioner is the grandson of respondent No.3, who had executed two transfer deeds on 01.02.2016 and 10.06.2016, pertaining to two residential properties in favour of the petitioner. Respondent No.3 filed an application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizen, Act 2007 (hereinafter the '2007 Act') for annulment of the afore-noticed transfer deeds. Such application was allowed vide order dated 18.01.2018 passed by the Sub Divisional Magistrate-cum-Tribunal, Jalandhar (Annexure P-6). Appeal preferred by the petitioner against the order dated 18.01.2018 has been dismissed vide order dated 05.12.2018 passed by the District Magistrate-cum-Appellate Tribunal, Jalandhar (Annexure P-9).

The instant writ petition has been filed assailing the afore-noticed two orders at Annexures P-6 and P-9.

Counsel for the petitioner submits that respondent No.3 had earlier executed a registered will of the residential properties in question in

favour of his younger daughter Rani under the impression that she will look after him in his old age. Since respondent No. 3 came to realize that he would not be looked after by his daughter Rani who was busy with her own family, the will was cancelled. Respondent No.3 had been living with his elder son Bhagwan Dass and was being looked after by the present petitioner i.e. the grandson. It was on account of love, affection and services provided by the petitioner that respondent No.3 decided to transfer the two residential properties in favour of the petitioner. Accordingly transfer deeds dated 01.02.2016 and 10.06.2016 were got registered with the Sub Registrar, Jalandhar by respondent No.3 in favour of the petitioner. It is argued that respondent No.3 has come under the influence of his daughter Rani and who virtually forced him to file an application for cancellation of the transfer deeds under the provisions of the 2007 Act. Further urged that at best the Tribunal could have directed payment of maintenance in favour of respondent No.3 but there was no basis for the transfer deeds to be cancelled.

Having heard counsel for the petitioner at length, this Court is of the considered view that there is no infirmity in the impugned orders and the decision taken in cancelling the transfer deeds in question.

Section 23 of the 2007 reads as under:-

*“23. Transfer of property to be void in certain circumstances
: (1) Where any senior citizen who, after the commencement
of this Act, has transferred by way of gift or otherwise, his
property, subject to the condition that the transferee shall
provide the basic amenities and basic physical needs to the
transferor and such transferee refuses or fails to provide such*

amenities and physical needs, the said transfer of 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.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

*(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to **sub-section (1) of section 5.**”*

In the case of **Promil Tomar and others vs. State of Haryana and others, 2014(1) RCR (Civil) 403**, this Court has examined the provision elaborately and ratio of law laid down is applicable in the present case. Perusal of **Section 23 (1)** of the 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 referred to in first part of **Section 23 (1)** of the **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 **Act** by the legislation would include transfer of ownership and 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 **Act**. The word “otherwise” cannot be ignored from the objective of **Section 23 (1)** of the **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 **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 if transferee refuses to do so, the transfer of property would be deemed to be the result of 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 result of fraud, coercion or undue influence and would be void.

In the present case respondent No.3 has filed an application on the specific averments that after the transfer deeds having been registered, the grand son i.e. present petitioner quarrels and fights with him and he has been thrown out of the property and is now forced to stay with his

daughter. Respondent No.3 is 95 years old. No evidence have been led by the present petitioner before the Tribunal as regards providing basic amenities as also due care to his grand father/respondent No.3 herein. Suffice it to observe that transfer of the residential properties had been made by respondent No.3 with the fond hope and expectation that he would be looked after in the twilight of his life. The petitioner having failed to discharge his obligations towards his grand father, he has made himself liable for avoidance of the transfer deeds.

The submissions advanced by counsel are found to be without any merit.

Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

01.02.2019

shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No