

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

CWP No.2759 of 2019

Date of decision:-01.02.2019

Ramandeep Kaur

.....Petitioner

versus

District Magistrate & others

.....Respondents

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

Present:- Mr. K.S. Dadwal, Advocate for the petitioner.

TEJINDER SINGH DHINDSA, J.

Respondent No.3 herein, Ajmel Singh filed an application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizen, Act 2007 (hereinafter the '2007 Act') before the Sub Divisional Magistrate, Hoshiarpur, seeking the cancellation of the Tabdeel Malkeetnama dated 15.12.2014 in respect of land measuring 24 kanals that he had executed in favour of the present petitioner, Ramandeep Kaur. Such application was dismissed on 22.09.2017. The prayer for cancellation of the Tabdeel Malkeetnama was declined but maintenance to the tune of Rs.2500/- per month was awarded in favour of the applicant/respondent No.3. The senior citizen then preferred an appeal before the District Magistrate-cum-Appellate Tribunal, Hoshiarpur, and which has been accepted vide order dated 20.12.2018 and thereby cancelling the transfer deed bearing Vasika No.5752 of 15.12.2014 that had been registered by the Sub Registrar, Hoshiarpur.

Instant writ petition is directed against the order dated 20.12.2018 (Annexure P-4) passed by the District Magistrate-cum-Appellate Tribunal,

Hoshiarpur.

Learned counsel representing the petitioner submits that respondents no.3 was married with Gurmeet Kaur and from this wedlock three daughters were born namely Inderjit Kaur, Paramjit Kaur and Rajwinder Kaur. Since there was no male issue, respondent No.3 brought one Balbir Kaur to live with him. From such relationship Ramandeep Kaur, i.e.the present petitioner was born. In the year 1999, Balbir Kaur left the company of respondent No.3 and Ramandeep Kaur was brought up by respondent No.3 as his fourth daughter. Counsel has argued that the property in question had been transferred in the name of the petitioner not in view of any services to be rendered but it was a share that had been given to the petitioner. Further urged that the application that had been moved by respondent No.3 is not of his own volition but under pressure exercised by the other three daughters of respondent no.3 from the first marriage. It has also been contended that the other three daughters of respondent No.3 had already initiated civil proceedings raising a challenge to the Tabdeel Malkeetnama that had been made in favour of the petitioner herein and in which not only the present petitioner but even respondent No.3 had been arrayed as party defendants. It is argued that the Appellate Authority has erred in reversing the well-reasoned order passed by the SDM, Hoshiarpur, whereby the application filed by respondent No.3 under Section 23 of the 2007 Act, had been dismissed and maintenance to the extent of Rs.2500/- per month had been granted.

In the considered view of this Court, there is no infirmity in the impugned order dated 20.12.2018 (Annexure P-4) passed by the District Magistrate-cum-Appellate Tribunal, Hoshiarpur.

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.

It may be noticed that the Appellate Authority has observed that after the transfer deed dated 15.12.2014 in favour of the present petitioner, in respect of land situated in Village Ajram, District Hoshiarpur, respondent no.3 was taken away by the petitioner as also her husband to village Bhawa, Tehsil Budlada, District Mansa and whereupon they had started misbehaving with him. Respondent No.3 could return back to his Village Ajram only with the interference of the police authorities. That apart it has also been noticed by the Appellate Authority that a sum of rupees nine lakhs had been given by the senior citizen to the husband of the present petitioner and which was reflected from the Bank statements. The ordeal of respondent No.3 did not end there as even the amount of Rs.2500/- that had been awarded as maintenance per month had not been paid by the petitioner. Counsel has not adverted to any evidence to rebut such observation made by the Appellate Authority.

Suffice it to observe that transfer of property by the parents/senior citizen in favour of the wards is made with the fond hope that he would be looked after in the twilight of his life. Respondent No.3 Ajmel Singh is stated to be 75 years approximately. Having failed to look after the father and to provide basic amenities to him in his old age, the petitioner has made herself liable for avoidance of the transfer deed. Under such a situation a specific condition that the basic amenities would be provided to the parents/father need not be incorporated in the transfer deed. The same would be deemed to be read into the transfer deed.

The Sub Divisional Magistrate, Hoshiarpur, dismissed the application of respondent No.3 under Section 23 of the 2007 Act, seeking cancellation of the transfer deed only on the observations that there is a

family dispute between the parties with regard to the property and it would not be fruitful if the transfer deed in question is cancelled. Such reasoning would be against the objects and reasons of enactment of the 2007 Act.

The impugned order dated 20.12.2018 (Annexure P-4) passed by the Appellate Authority cancelling the transfer deed dated 15.12.2014 is founded on cogent and valid reasoning.

No interference is warranted.

Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

01.02.2019

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No