

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

**CWP-3724-2019 (O&M)
Date of Decision:26.02.2019**

Gurmeet Kaur

... Petitioner

Versus

State of Punjab & others

... Respondents

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

Present:- Mr. Rakesh Gupta, Advocate for the petitioner.

....

TEJINDER SINGH DHINDSA, J. (ORAL)

Petitioner is the daughter of respondent No.4, who had executed two transfer deeds on 15.07.2015 and 06.03.2017 pertaining to two parcels of land in favour of the petitioner. Respondent No.4 filed an application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter to be referred to as 'the 2007 Act') for annulment of the afore noticed transfer deeds. Such application was allowed vide order dated 11.09.2018 passed by the Maintenance Tribunal Cum-Sub Divisional Magistrate, Rajpura (Annexure P-2). Appeal preferred by the petitioner against the order dated 11.09.2018 has been dismissed vide order dated 16.01.2019 passed by the Additional District Magistrate, Patiala (Annexure P-4).

The instant writ petition has been filed assailing the afore noticed two orders at Annexures P-2 and P-4.

Counsel for the petitioner submits that application moved under

Section 23 by the mother/respondent No.4 was at the instance of her son, namely, Reshampal Singh. It is urged that respondent No.4 had come under the influence of her son and was virtually forced to file application for cancellation of the transfer deeds. Further contended that all the essential and basic amenities were being provided by the daughter and as such there was no occasion for the transfer deeds to have been cancelled.

Yet another submission raised is that there was no condition incorporated in the transfer deeds with regard to providing the basic amenities and basic physical needs to the transferor as per Section 23 of the Act and in the absence of such a stipulation, the impugned orders could not have been passed. Counsel further contends that at best, the authorities could have directed payment of maintenance in favour of respondent No.4 but the transfer deeds ought not 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, the impugned orders would reveal that after the transfer deeds having been executed, respondent No.4 i.e. the mother was left with no option but to leave the village and to stay with her son, namely, Reshampal Singh. In the application moved by respondent No.4, there were specific averments of the daughter/present petitioner as also her husband misbehaving with her and not even providing medical treatment. The factum of the mother/Raj Kaur residing at Patiala with Reshampal Singh for the last few months is not even controverted by the counsel during the course of hearing. Respondent No.4 is aged 80 years. No evidence has been led by the present petitioner before Tribunal as regards providing basic amenities as also due care to her mother/respondent No.4. Suffice it to observe that transfer of the two parcels of land had been made by respondent

No.4 with the fond hope and expectation that she would be looked after in the twilight of her life. The petitioner having failed to discharge her obligations towards her mother, she has made herself liable for avoidance of the transfer deeds.

Needless to say in such a situation a specific condition that the basic amenities would be provided to the parent, need not be incorporated in the transfer deed(s). 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/her back on them and refuse to provide basic amenities and day to day facilities.

The submission raised by counsel before this Court are without merit.

No intervention in the matter is called for.

Petition is dismissed.

Pending applications, if any, shall also stand disposed of.

26.02.2019*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |