

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

**CRM-M-47864-2017 (O&M)
Date of Decision: 1.3.2019**

Anmol Chopra and another

.....PETITIONER(s).

VERSUS

Jaswant Kaur @ Radhika and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. H.S. Saggu, Advocate
for the petitioners.

Mr. Ashok Bhardwaj, Advocate,
for respondent No.1.

Mr. K.S.Sidhu, Advocate,
for respondent No.2.

RAJ SHEKHAR ATTRI, J.

This is a petition filed under Section 482 of the Code of Criminal Procedure for quashing impugned order dated 17.10.2017 passed by learned Additional Sessions Judge whereby the revision petition filed against the order dated 13.2.2017 passed by Judicial Magistrate, 1st Class, Sangrur has been dismissed.

The facts of the case in hand discloses a woeful tale of a destitute lady who has been neglected and disowned by her husband in connivance with his own sons i.e. petitioners herein.

Earlier respondent No.2-Shiv Kumar was married with Smt.

Poonam. From this wedlock, he has two sons namely Anmol Chopra and Kartik Chopra (petitioners herein) as well as one daughter namely Smt. Krishma Chopra. Respondent-Shiv Kumar obtained divorce from his first wife in the year 2012 and contracted a second marriage with respondent-Jaswant Kaur @ Radhika on 29.4.2013.

There are allegations of maltreating and neglecting by her husband, therefore, she preferred an application under Section 125 of the Code of Criminal Procedure. She was granted interim maintenance by learned Judicial Magistrate, 1st Class, Sangrur on 20.2.2015. Shiv Kumar-respondent No.2 did not make the payment of arrears of maintenance. As he was well aware of the fact that his property may be attached for payment of arrears of maintenance, therefore, he transferred his property in the name of his sons i.e. the petitioners vide transfer deed vide Annexures P-2 to P-4 all are dated 20.11.2015 i.e. during the pendency of the application for grant of maintenance and also in a gratuitous manner.

In the execution petition, learned Magistrate ordered to attach the property of the husband-Shiv Kumar. The present petitioners have submitted objections against the attachment solely on the ground that the property has been transferred in their name vide transfer deeds Annexures P-2 to P-4. The objections were dismissed vide order dated 13.2.2017. They preferred a revision petition which has also been dismissed by the revisional court vide order dated 17.10.2017 on the ground that the transfer is made fraudulently and with the sole motive to defeat the rights of Jaswant Kaur @ Radhika.

I have heard learned counsel for the parties and gone through the record.

Counsel for the petitioner further argues that the petitioners have no knowledge if their father had any litigation with their step mother Smt. Jaswant Kaur @ Radhika.

The factum of second marriage by Shiv Kumar with Jaswant Kaur @ Radhika has been admitted by the petitioners. Undisputedly, the petitioners as well as Shiv Kumar-respondent No.2 are residing together. A bare perusal of the transfer deed Annexures P-2 to P-4 transpires that the petitioners are residing in the same house i.e. House No.42, Ward No.19, Near Sham Lal Chowk, Ahaata Badan Singh, Moga. Thus, they are members of the same family. Jaswant Kaur @ Radhika had resided in the same house being the step mother of the petitioners. It cannot be *prima facie* assumed that the petitioners had no knowledge with regard to the litigation between their father and their step mother. It seems that transaction vide transfer deeds Annexures P-2 to P-4 are sham and fraudulent and those have been executed with sole motive to deprive Jaswant Kaur @ Radhika of her right to maintenance.

In view of the above, right of maintenance is charge on the property in question under the provisions of Section 39 of the Transfer of Property Act which reads as under : -

“39. Transfer where third person is entitled to maintenance.

—Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred,

the right may be enforced against the transferee, if he has notice thereof or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.”

The transfer deeds Annexures P-2 to P-4 are without consideration and are gratuitous.

After going through the material available on the record, this Court is of the view that no interference in the impugned order is called for by this Court and this Court is of the view that the present petition is an abuse of the process of law and has been filed just to deprive Jaswant Kaur @ Radhika of her maintenance right. Accordingly, the present petition is dismissed with costs of ₹ 50,000/-.

March 1, 2019
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No