

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

CWP No.14740 of 2019

Date of Decision : 20.08.2019

Parmeshwari Devi and another

....Petitioners

Versus

Appellate Authority-cum-District Collector,
Fazilka and others

...Respondents

CORAM : HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

...

Present : Mr.Suresh Kumar Aneja, Advocate
for the petitioners.

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TEJINDER SINGH DHINDSA, J.(ORAL)

Petitioners herein are the daughters of respondent No.3, who had executed a transfer deed dated 03.03.2010 pertaining to land measuring 13 Kanals 12 Marlas situated in District Fazilka, in favour of the petitioners. Respondent No.3 filed an application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter the '2007 Act') for annulment of the afore-noticed transfer deed. Such application was partly allowed vide order dated 30.11.2018 passed by the Sub Divisional Magistrate, Fazilka and a maintenance amount of Rs.2,000/- per month each on the petitioners was fastened. Appeal preferred by respondent No.3 against the order dated 30.11.2018 has been accepted vide order dated 30.04.2019 (Annexure P-10) passed by the Appellate Authority-cum-District Collector, Fazilka and in terms of which the transfer deed in question has been cancelled.

The instant writ petition has been filed assailing the order dated 30.04.2019 (Annexure P-10) passed by the Appellate Authority.

Counsel for the petitioners would submit that the assertions made by the mother/senior citizen as regards maltreatment are false and fabricated. Further submitted that certain other property had even been transferred by the senior citizen in favour of her son. Reliance has been placed upon three judgments passed by Coordinate Benches of this Court in *Sarabjit Kaur v. District Collector-cum-Deputy Commissioner, Barnala and others*, **2016(3) PLR 486**, *Jagmeet Kaur Pannu v. Ranjit Kaur Pannu*, **2016(2) R.C.R.(Civil) 82** and *Gurdev Singh v. State of Punjab and others*, **2016(4) PLR 265** to contend that since in the transfer deed there was no stipulation that the daughters would continue to provide service and maintenance to the senior citizen, therefore the senior citizen cannot get the transfer deed declared void even if the daughters had failed to provide any service and care. Yet another submission raised by the counsel is that even the maintenance amount of Rs.2,000/- per month each that the petitioners had been made liable to pay was duly deposited and as such the view taken by the Appellate Authority in cancelling the transfer deed cannot sustain.

Having heard counsel for the petitioners at length, this Court is of the considered view that there is no infirmity in the impugned order and the decision taken in cancelling the transfer deed is the correct view.

Section 23 of the 2007 Act 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 v. State of Haryana and others*, **2014(1) RCR (Civil) 403**, this Court observed as under :

“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 had filed the application seeking cancellation of the transfer deed by making specific averments that both her daughters (petitioners herein) were residents of District Sri Ganganagar (Rajasthan) as also Fazilka and prior to execution of the transfer deed both the daughters used to visit her frequently and also used to give money for her maintenance as also towards medical aid. However, subsequent to the transfer deed, the daughters have neglected her and that she now has no source of income. As per pleadings on record the petitioners herein claim to be 65 years and 73 years of age, respectively. It goes without saying that respondent No.3 i.e. their mother would be more than 90 years of age as of date. No evidence had been led by the petitioners before the Maintenance Tribunal or the Appellate Authority as having provided basic amenities and due care to their mother.

Suffice it to observe that transfer of the land that had been made by respondent No.3 was with the fond hope and expectation that she would be looked after in the twilight of her life. The petitioners having failed to discharge their obligation towards their mother have made themselves liable for avoidance of the transfer deed. Even the reliance placed by counsel on the judgments in *Sarabjit Kaur's case*,

Jagmeet Kaur Pannu's case and Gurdev Singh's case (supra) is misplaced. Section 23 of the 2007 Act has been considered by a Division Bench of this Court in *Smt. Raksha Devi v. Deputy Commissioner-cum-District Magistrate, Hoshiarpur and others*, **2018 (4) R.C.R.(Civil) 218** and a view has been taken that the condition as regards transferee to provide basic amenities and basic physical needs to the transferor need not be required to be made in express terms in the document by virtue of which the transfer had been effected. The same would be read into the document by way of a deeming fiction keeping in view the objective of the 2007 Act.

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

Petition is dismissed.

20.08.2019
dss

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes