

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

CWP No.17389 of 2016 (O&M)

Date of Decision:16.10.2019

Rajwant Kaur

... Petitioner

Versus

The Maintenance Tribunal and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Karanvir Nanda, Advocate for the petitioner

Mr.Vikas Bahl, Sr. Advocate with
Mr.Akshay Rawal, Advocate
for respondents No.5 to 7

Mr.Parvinder Singh, Advocate
for respondents No.3 & 4

RAJIV NARAIN RAINA, J.

1. Petitioner Rajwant Kaur filed a petition on in the Court of Sub Divisional Magistrate, Mohali-cum-Maintenance Tribunal seeking cancellation of Mutation No.1444 dated 28th November, 2014 sanctioned on the basis of a transfer deed dated 14th September, 2014 executed by her in favour of her daughter, Kiran Pal Kaur. On the petition, the SDM heard the petitioning party and issued an ex parte stay orders restraining her daughter from alienating the land admeasuring 26 Kanals 7 Marlas till further orders passed on first date of hearing 4th March, 2015 and issuing notice to the respondent daughter etc. On notice, Kiran Pal Kaur entered appearance and contested the petition and the interim order.

2. As per the interim directions of this Court dated 26th August, 2016 while issuing notice of motion for 20th September, 2016 the

upon to order an inquiry forthwith as to how despite the stay order granted by the competent authority and the fact having been recorded in the relevant revenue record, the sale deed came to be registered in favour of respondents 5 to 7 at the hands of respondents 3 and 4, thereby committing a serious fraud with the petitioner. The Superintendent of Police (Urban), District SAS Nagar, Mohali made an investigation

3. Respondent 3 Kiran Pal Kaur in the memo of parties is daughter of petitioner-Rajwant Kaur. Respondents 5 to 7 are third party vendees purchasers of the property from Kiran Pal Kaur. Respondent 4 is the husband of respondent No.3 Kiran Pal Kaur. Respondents.5 to 7 are represented by Mr.Vikas Bahl, Sr. Advocate. They claim protection of Section 53 of the Transfer of Property, Act to protect the sale as bona fide purchasers without notice for valuable consideration. They purchased the property from Kiran Pal Kaur by two registered sale deeds both dated 23rd April, 2015. They bought the property after inspecting the revenue record with due diligence for any encumbrance and searching for clear title finding from the record that the petitioner had transferred the property in the name of Kiran Pal Kaur through a transfer deed dated 14th November, 2014 making her the owner of the property. This was a transfer within the family from mother to daughter. The transfer deed is signed by Rajwant Kaur in the presence of the Sub Registrar, Mohali.

4. As per the averments in the petition, the petitioner claims that she has three children, out of whom one is a son Jasbir Singh and the two daughters are Kiran Pal Kaur, respondent 3 and Surinder Kaur. Petitioner is living with her son Jasbir Singh who looks after her and her husband Sh.Baldev Singh. The property is agricultural land falling

within the revenue estate of village Manakpur Kallar, Hadbast No.277,

Tehsil Mohali, District SAS Nagar. The land is described in the petition to comprise 66 Kanals 11 Marlas. Petitioner, Rajwant Kaur says that it was in the month of December, 2014 that she came to know of the transfer of the land in a fraudulent manner in favour of Kiran Pal Kaur.

5. The record reveals that she did not deny her presence in the Tehsil Office at the time of signing the transfer deed which bears her signatures. This fact the petitioner wants to avoid to set up a case of fraud played by her daughter and son-in-law to divest her of her property.

6. Alleging fraud committed on the petitioner by her daughter and son-in-law, she filed a petition on 31st March, 2015 before the Sub Divisional Magistrate-cum-Maintenance Tribunal, Mohali (for short “the Tribunal”) constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short “the Act of 2007”) for cancellation of the transfer deed and restoration of the property in her name pleading that Kiran Pal Kaur failed to provide the basic amenities and basic physical needs and neglected and refused to maintain her.

7. The Tribunal heard the parties and dismissed the petition returning a finding that the transfer was from mother to daughter and the land has been further sold to third parties. Consequently, third party rights have been created and on this ground the application was turned down with liberty to Rajwant Kaur to approach the Civil Court. Her prayer for retrieving the land in dispute from her daughter Kiran Pal Kaur failed in the Tribunal vide its order dated 30th July, 2015.

8. Feeling aggrieved by the order of the Tribunal, Rajwant Kaur preferred an appeal under Section 16 of the Act before the Deputy

Commissioner-cum-Appellate Tribunal, SAS Nagar constituted under

the Act of 2007. The appeal presented on 3rd September, 2015 has been decided by the Appellate Tribunal by order dated 22nd March, 2016.

9. To reiterate, the maintenance petition was filed in the Court of SDM-cum-Maintenance Tribunal on 31st March, 2015. In the maintenance petition, Rajwant Kaur filed an application dated 28th May, 2015 to restrain her daughter and son-in-law from alienating and transferring the land to any third party. The land had already been sold on 23rd April, 2015 after Rajwant Kaur had invoked the jurisdiction of the Tribunal. The Appellate Tribunal had recorded that it is nowhere mentioned in the transfer deed that the appellant is transferring the property because Kiran Pal Kaur or her son-in-law were obliged to look after her needs, which ingredient is missing. A fraud is alleged against respondents 3 and 4. This plea can be resolved only by the civil court and the Tribunal has no power to set aside the transfer deed on the alleged ground that fraud was practiced on the transferee. The right to recovery of possession under the Act of 2007 does not cover cases of fraud which allegations require evidence and evidence of this kind cannot be adduced before the Tribunal nor has it any jurisdiction to permit parties to do so. Assuming that fraud was not alleged, then Mr.Bahl, the Senior counsel for the subsequent purchasers concedes that the observation requiring a specific mention in the transfer/sale deed that the transferee would look after the parent is not required in view of the law declared that the condition is inherent in such transfer. It is, therefore, argued that even if it is taken that the finding that the condition is indispensable for setting aside the transfer deed may not be the correct position of law and he concedes that he does not press this point, except to make a twofold argument contending that respondents 5 to 7 are

subsequent purchasers for valuable consideration without notice to the purchasers and the amount involved in two sale deeds is considerable and therefore, his clients deserve the protection of Section 52 of the Transfer of Property Act, 1882 and the question of *lis pendens* does not apply in cases of petition filed under the Act of 2007. The first Appellate Tribunal has upheld the order of the Sub Divisional Magistrate-cum-Maintenance Tribunal, Mohali by the order dated 22nd March, 2016.

10. Against the interim order of this Court dated 26th August, 2016 directing making an inquiry to the Deputy Commissioner against the subsequent purchasers, Dalvir Kaur and others filed an appeal before this Court by way of LPA No.1958 of 2016 which was also accompanied by a cross appeal filed by Kiran Pal Kaur bearing LPA No.1979 of 2016 with a grievance that the interim order passed by the learned Single Judge mandating the Senior Superintendent of Police, SAS Nagar, Mohali to look into the matter and register an FIR against respondents 3 to 7 for the offence committed by them and ensure effective and early investigation amounts to pre-judging the issue and the culpability of the appellants.

11. The Division Bench decided both the appeals on 30th September, 2016 by an identical order. The Division Bench found merit in the contention of the appellants and accordingly clarified the order of the learned Single Judge dated 20th September, 2016 which was the order subsequent to the first motion order dated 26th August, 2016 in which a prima facie opinion has been formed that the petitioner Rajwant Kaur had been defrauded by respondents 3 to 7 after usurping her property and respondents 3 and 4 have connived with respondents 5 to 7 and sold the property in their favour despite knowing full well that neither were the

respondents 3 and 4 true owners of the disputed property nor are respondents 5 to 7 entitled to purchase the property. Learned Single Judge had directed the Senior Superintendent of Police, SAS Nagar, Mohali ex parte to look into the matter and register an FIR against respondents 3 to 7 for the offence committed by them and ensure effective and early investigation. The Division Bench clarified the order dated 20th September, 2016 and directed that the SSP, SAS Nagar, Mohali would certainly look into the matter, but would register the FIR, if need be and after apprising the writ court. The findings of the inquiry would also be brought to the notice of the learned Single Judge so as to enable him to pass appropriate orders in this regard. Thereafter the roster changed and after a series of dates of non-effective hearings, the matter has come up today for hearing before this Court.

12. I have heard learned counsel for the parties and have gone through the paper-book for final disposal of this case.

13. It is now time to turn to the report of the Senior Superintendent of Police, SAS Nagar, Mohali which has to be dealt with in the narration of relevant events. The Superintendent of Police (Urban), SAS Nagar conducted an elaborate inquiry and the inquiry report has been placed as Annex. R-3/T running from pages 77 to 109 of the paper-book dealing threadbare with the facts found in the investigation keeping in view the issues from the perspective whether any of the parties have committed criminal acts. I have perused the report. It has been found during investigation that at the time when the land was sold by Kiran Pal Kaur to the second party, at that time there was no stay etc. on the land by any court and as per the record of the revenue department. Kiran Pal Kaur was the owner. It was not found that Kiran Pal Kaur had got the

will and General Power of Attorney from her mother Rajwant Kaur by way of cheating and the transfer deed has been registered correctly in the revenue department. There was no irregularity found.

14. The factual position has been examined by the Additional Deputy Commissioner, SAS Nagar who has not discovered any fraud or cheating practiced upon the petitioner by her daughter. However, the Superintendent of Police (Urban), Mohali rightly placed a rider on the report the opinion of the District Attorney is required to be obtained. The District Attorney, SAS Nagar, Mohali has examined the issues and forwarded his Memo dated 28th November, 2016 (Annex. R-4), to the higher authorities. He records that he has gone through the complaint of Rajwant Kaur etc. and copies of the orders of this Court, statements of the witnesses and the inquiry report of the Inquiry Officer and agrees with the findings of the Inquiry Officer that Rajwant Kaur had executed all the documents in favour of Kiran Pal Kaur in her full senses knowing very well the contents thereof and its consequences. Kiran Pal Kaur has validly disposed of the property for valuable consideration. There was no stay or any other legal obstacle of any kind at the time of sale by Kiran Pal Kaur. There is total absence of mens rea in the disposal of the property, hence no action is called for from the police. However, the parties in dispute should be left to take their remedies before the Civil Court. This is also what the SDM and the Appellate Tribunal had concluded and I have no reason to disagree with this proper conclusion. The interim orders dated 26th August, 2016 and 20th September, 2016 have with respect generated an investigation report by the police in favour of respondents 3 and 4 finding nothing remiss in the conduct of daughter or her husband. It was too early for this Court at the first

motion stage to virtually conclude that a criminal case was made out. In this case, the Court is examining only the correctness of orders passed under the Act of 2007. I am absolutely in agreement with Mr.Bahl that to enter upon an allegation of fraud, the statutory tribunal constituted under the Act of 2007 has no jurisdiction whatsoever to go behind the sale deeds.

15. It is argued for the bona fide purchasers by Mr. Bahl that the Tribunal did not possess inherent jurisdiction to entertain the proceedings and decide the lis in the face of allegations of fraud by the petitioner practiced by her daughter. He relies on a decision of the Calcutta High Court in Mita Panda and others vs. Minati Chakrabarty and another, 2019(1) WBLR 668 which is a ruling pat on the point. He refers to paragraphs 30, 35 and 36 of the judgment which are reproduced below:-

“30.In the present case, the entire pleadings impugning the gift deed-in-question revolve around allegations of misrepresentation and fraud, which can only be the subject-matter of a civil suit. However liberal an interpretation is attributed to Section 23 of the 2007 Act, the same cannot confer jurisdiction on a magistrate or a sub-divisional officer to exercise the powers of a regular civil court as envisaged in the Code of Civil Procedure, 1908, particularly when the pre-conditions of Section 23 of the 2007 Act are not met.

XXX XXX XXX XXX

35. In any event, the scope of the present proceeding is confined by the pleadings to the question as to whether the gift deed-in-question was vitiated by misrepresentation and/or fraud, which is within the exclusive domain of the civil court and not covered by the 2007 Act.

36. Hence the petitioners are correct in submitting that the tribunal under the 2007 Act acted without jurisdiction in passing the impugned order.”

16. The view of the Calcutta High Court commends to this Court. This does not mean that the Tribunal cannot entertain and adjudicate a claim for maintenance under Section 4 of the Act of 2007. As far as maintenance is concerned, Kiran Pal Kaur had made a statement before the authorities that she is willing to maintain her mother. It is another matter that Rajwant Kaur prefers to live with her son, this litigation being the best testimony of breakdown of relationship.

17. As a result of the above discussion, no ground warranting interference with the impugned orders is made out. Hence, the writ petition is dismissed. The impugned orders dated 30th July, 2015 passed by the Sub Divisional Magistrate-cum-Maintenance Tribunal, Mohali and the order dated 22nd March, 2016 passed by the Deputy Commissioner-cum-Appellate Tribunal, SAS Nagar are upheld, for the reasons contained in those orders read with the reasons given in this order. However, the petitioner will be at liberty to approach the Civil Court, if so advised. No order as to costs.

(RAJIV NARAIN RAINA)
JUDGE

16.10.2019
MFK

Whether speaking/reasoned

Yes

Whether Reportable

Yes/No