

CWP-20024-2015 (O&M)

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

CWP-20024-2015 (O&M)
Date of Decision: March 05, 2019

Surinder Singh

... Petitioner

vs.

Daljit Singh & Ors.

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Tribhawan Singla, Advocate
for the petitioner.

Mr. T.P.S.Tung, Advocate
for respondent No.1.

Ms. Ambika Sood, Deputy Advocate General, Punjab.

ARUN MONGA, J

The present petition has been filed, *inter alia*, for issuance of a writ in the nature of *certiorari* to quash the order dated 30.07.2014 (Annexure P3) passed by the Tribunal-cum-Sub Divisional Magistrate, exercising powers under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act'). Whereby, the prayer of the petitioner to cancel the transfer deed, executed by him in favour of his son, was declined on the ground that he is owner of 14 acres of land and a residential house at Village Chauhan Ke Kalan Besides that, the petitioner was also held to be getting Rs. 15,000/- per month as pension, having retired from military service. Therefore, it was held that the petitioner does not require any maintenance as envisaged under the Act, *ibid*.

2. The order passed by the Tribunal-cum-Sub Divisional Magistrate, was challenged before the Appellate Authority (Commissioner) and the same was upheld vide impugned order dated 12.02.2015 (Annexure P4) on the same

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very ground that the petitioner is owner of 14 acres of land and a residential house and also getting his monthly pension.

3. Learned counsel for the petitioner has vehemently argued that both the impugned orders have been passed on the wrong premise that the petitioner is owner of 14 acres of land. He further contends that the petitioner was owner of 75 kanals of self acquired land out of which 56 kanals were transferred vide transfer deed dated 23.11.2010 out of his love and affection for his son (respondent No.1). He further contends that the Tribunal-cum-Sub Divisional Magistrate as also Appellate Authority without any evidence or any record being produced in the hearing before them, have wrongly recorded that the petitioner is owner of 14 acres of land. He has drawn my attention to the following portion of the Appellate Tribunal' order:-

“On the other hand, counsel for the respondent in his written argument has stated that the appellant is owner of 14 acres of land and a residential house at Village Chauhan Ke Kalan.”

4. Learned counsel for the petitioner states that even in the present proceedings, respondent No.1/son has not produced any record whatsoever to establish his claim that the petitioner is owner of 14 acres of land. He further states the petitioner would be out of Court if the said contention is found to be correct and would give up his claim for cancellation of the transfer deed, if he is found to be owner of 14 acres of land.

5. I have gone through the pleadings and the record appended thereto and after hearing the counsels for the parties, I am of the opinion that the reasoning for holding that the petitioner is owner of 14 acres of land, as recorded, both by the Tribunal and the Appellate Tribunal in the impugned orders is not valid and untenable.

6 The relevant parts of orders passed by the Tribunal and Appellate Tribunal are as under:

Tribunal's order dated 30.07.2014 (Annexure P3)

“XXX....On the other hand, counsel for the respondent had argued that after the death of first wife of applicant, he has solemnized the second marriage and therefore, there is a dispute between the applicant and the respondent. The applicant is owner of 14 acres of land and a residential house at Village Chauhan Ke Kalan. XXX...”

Appellate Tribunal's order dated 12.02.2015 (Annexure P4)

“ XXX....The counsel for the respondent in his written argument has stated that the applicant had solemnized the second marriage after the death of first wife and therefore, there is enmity between the applicant and the respondent. The appellant is owner of 14 acres of land at residential house at Village Chauhan Ke. XXX...”

XXX... On the other hand, counsel for the respondent in his written argument has stated that the appellant is owner of 14 acres of land and a residential house at Village Chauhan Ke Kalan. XXX....”.

7. It would be seen that the findings/conclusions as above, are not based on any tangible evidence/document. Both the Tribunals below have simply accepted what was submitted in the written arguments of the counsel for respondents. Their finding on the disputed fact, without any supporting evidence and/or tangible material, is based merely on written arguments and is therefore not valid and is untenable in law. Such a contested fact ought not to have been dealt in this manner by both the Tribunals.

8. Accordingly, the Appellate Tribunal's order dated 12.02.2015 (Annexure P4) is set aside. The petition is disposed of with a direction to respondent No. 2 to pass a fresh order by looking into the appropriate material

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on record of ownership of 14 acres of land in favour of the petitioner, as
contended by respondent No.1/son.

9. Let needful be done within a period of 06 months from the date of
receipt of certified copy of this order.

March 05, 2019
smriti

(ARUN MONGA)
JUDGE

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