

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

**CWP No.21669 of 2019 (O&M)  
Date of Decision:22.10.2019**

Amarjit Singh

.....Petitioner

Versus

Deputy Commissioner Gurdaspur and others

.....Respondents

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

Present:- Mr. Ramesh Sharma, Advocate for the petitioner.

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**TEJINDER SINGH DHINDSA J.(Oral)**

Petitioner is the son of respondent No.3 who had executed the transfer deed dated 19.01.2018 (Annexure P-1) in favour of the petitioner pertaining to land measuring 24 kanals and 10 marlas fallen in the revenue estate of Village Jangla, Tehsil Batala, District Gurdaspur.

Respondent No.3 filed an application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 (hereinafter to be referred to 2007 Act) seeking cancellation of the transfer deed and the same was allowed by the Sub Divisional Magistrate-cum-Presiding Officer, Maintenance Tribunal, Batala vide order dated 06.02.2019 at Annexure P-3. Appeal preferred by the petitioner against the order dated 06.02.2019 has been dismissed vide order dated 13.06.2019 passed by the District Magistrate-cum-Appellate Tribunal, Gurdaspur (Annexure P-5).

The instant writ petition has been filed assailing the afore-

noticed two orders at Annexures P-3 and P-5.

Counsel for the petitioner submits that the petitioner all through has been looking after his own mother and has also been depositing certain amounts of money in her bank account. In support of such contention documents at Annexure P-6 (colly) have been adverted to. It is urged that under such circumstances, the impugned orders cancelling the transfer-deed dated 19.01.2018 cannot sustain. It has also been argued that the application moved by the mother seeking cancellation of transfer deed was not *bona fide* and was only upon the instigation of the elder married sister of the petitioner who had an eye on the property.

Yet another submission raised by counsel is that the date of birth of respondent No.3 is 04.09.1960 as per copy of Aadhar Card at Annexure P-7 and accordingly as per Section 2 (h) of the 2007 Act, respondent No.3 had not attained the age of 60 years as on the date of filing of her application under Section 23 and as such was not competent to even invoke the provisions of the Act.

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 deed in question.

Section 23 of the 2007 Act reproduced 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 respondent No.3 has filed an application on

the specific averments that she is the mother of three children i.e. one son and two daughters. Her husband was a cancer patient and expired in the year 2004. Prior to death of the husband, his property measuring 6 acres had been equally partitioned and in pursuance to which 3 acres of land came to the share of the son Amarjit Singh (present petitioner) and the balance 3 acres in the name of the mother. The 3 acres of land fallen to her share were transferred in the name of her son (present petitioner) on 19.01.2018. However since the date of execution of the transfer-deed son and daughter-in-law have physically abused her repeatedly as also her unmarried daughter. It was further averred that it is under such extreme circumstances that she has been forced to live alongwith her younger daughter namely Manpreet Kaur in the house of her married elder daughter namely Baljinder Kaur.

At the stage of filing of the application under Section 23 of the 2007 Act, the date of birth as recorded in the voter ID card had been relied upon. There would be no infirmity as such in the view taken by the authorities below in having accepted the age of petitioner to be 60 years or above as on the date of submitting her application.

No evidence has been led by the present petitioner before the Tribunal as regards providing basic amenities as also due care to his mother/respondent No.3 herein.

Suffice it to observe that transfer of immovable property had been made by respondent No.3 with the fond hope and expectation that she would be looked after by her son in an advanced stage. Petitioner having failed to discharge his obligations towards his mother, he has made himself liable for avoidance of the transfer deed.

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

Petition dismissed.

(TEJINDER SINGH DHINDSA)  
JUDGE

October 22, 2019  
*shweta*

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No