

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

**CWP No.11578 OF 2020 (O&M)
DATE OF DECISION : 27.05.2021**

Paramjeet Singh @ Paramjit Singh

...Petitioner

versus

Rajinder Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Keshav Pratap Singh, Advocate,
for the petitioner.

Ms. Akshita Chauhan, AAG, Punjab.

Mr. H. S. Oberoi, Advocate,
for respondent No.2.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

1. Yet another senior citizen (respondent no.1), a 93-year-old nonagenarian this time, is pitted against his own son (the petitioner herein) to protect his property and dignity of life. He had to invoke the Maintenance and Welfare of Parents and Senior Citizen Act, 2007. Petitioner, a sexagenarian senior citizen himself, has assailed an order dated 23.06.2020 passed by the Appellate Authority under the Act, *ibid*, whereby Maintenance Tribunal's order dated 04.12.2019 annulling gift deeds of 06 acres of agricultural land (having a built up house) executed by his father in his favour, has been upheld.

2. Facts in brief. Respondent No. 1 moved an application before the Maintenance Tribunal for annulment of transfer deeds of his land to his two sons-Paramjit Singh (petitioner herein) and Harinder Singh (proforma

respondent No.2). He alleged that after transfer of land to them, they were not maintaining and taking care of him. Three transfer deeds all dated 18.12.2013 (forming part of Annexure P-15) for land measuring 24 kanals 2 marlas, 2 kanals 8 marlas and 22 kanals 4 marlas in the area of village Gokhuwal (District Gurdaspur) are in favour of the petitioner. The other transfer deeds are in favour of the second son (proforma respondent No. 2). The petitioner contested the application while the second son did not contest the case. Maintenance Tribunal, vide impugned order dated 04.12.2019 (Annexure P-16), allowed the application in entirety. Petitioner's appeal was dismissed vide order dated 23.06.2020 (Annexure P-14) passed by the learned Appellate Tribunal. The petitioner has filed the instant writ petition for quashing both these orders.

3. Given their age and relationship [son 63 years and father 93 years], this Court made multiple endeavours to bring about an amicable settlement. Being mindful that, no matter whatever the decision of this Court on merits, the same would be perceived as adversarial and they would continue to litigate, which would be really most unfortunate and highly detrimental to the family. While the time is not on the side of father/respondent no.1. However, having interacted with parties in person, I get the impression that they are trapped in a cobweb of a serious trust deficit. Resultantly, they are taking all their disagreements to litigation, be it civil or criminal proceedings, instead of resolving them across the table.

4. No doubt, either of them will win one case or the other or may win all. But viewed differently, when it comes to bringing peace in the family, it shall still be an absolute failure of law in the end. What the father

son duo needs is not the judicial pronouncements from the court, but intimate discussions with each other.

5. As noted above, this Bench tried to provide a platform to the parties with able assistance of learned counsels to have an amicable settlement in the matter after entering into dialogue, but it turned out to be an exercise in futility. It seems that between father and son lies an oceanful void of disturbed past and hurt feelings. Neither of them seems to be willing to even try and cross the stream for fear of getting drowned. Instead of going across to reach out to each other, they would rather return halfway each time. The only way to step on the other shore across is to have a strong resolve to do so, which seems to be lacking on both sides, as they are unable to overcome their mutual distrust. Matters of this kind, where emotions run so high, the court can only give a roadmap and in the end it is for the parties to find either their own ways or mutually agree to have a joint way. In the case in hand, the mistrust of the parties, of not believing in the other side to be an ideal partner for peace, continues. They seem to have cut each other really deep. Be that as it may, whatever are mistakes of either side and whatever unintended events have unleashed, I am still of the opinion that father and son must sit together and have a dialogue. For, if they cannot sit together across the table, hear and see each other as father and son, then what would become of the society?

6. With the aforesaid mindset, this court was of the view that what a harmonious decision arrived at by mutual consent can do to make the father and son at this stage of their life to live happily, a contested verdict cannot. High priority was thus given to arrive at a mutual settlement rather than rendering a judgment of this Court on the merits of allegations and

counter-allegations. At one stage it seemed that the hurt feelings had thawed a little and a hope of an amicable outcome indeed kindled. In the end, it did not materialize into reality.

7. It would also not be out of place to record that in the course of personal interaction before this Court, the petitioner, on his part, offered to deposit Rs.40,000/- p.m by way of direct bank remittance every month in the account of his father along with providing him an independent house of equal status and size as the one already existing on the gifted land in question. While on the other hand, respondent No.1-father made a counter offer that he is willing to give 03 acres of agricultural land to his son out of the 06 acres gifted to him, provided at the first instance he surrenders the title and possession of entire land. Respondent no.1/father also made an offer that for the sake of peaceful quietus, he shall also bear the cost of another new house for his son (petitioner). New house can be constructed by the petitioner on the 03 acres to be given to him. He also assured that the house to be built shall be of the same size and would not be of any less in quality and will be constructed keeping in mind that it meets the same square footage in which the petitioner is currently residing along with his family. Needless to say, aforesaid offers and counter offers were not accepted by either side.

8. Before proceeding further, this Court would foremost like to record its appreciation of Ms. Akshita Chauhan, learned Assistant Advocate General, Punjab, for undertaking the onerous task of acting as Mediator. She is though representing the State, but since state had no contesting role, on the asking of the Court she accepted to rather act as a Mediator between the private parties. Few mediation meetings were held between father, son as

well as daughter with whom father is currently staying. At one stage, the learned Mediator and equally this Court were equally sanguine that the parties will arrive at a harmonious outcome. When efforts for an amicable settlement did not succeed, the court proceeded with hearing of the case on merits for a judicial adjudication.

9. Learned counsel for the petitioner vehemently argues that vide impugned orders, the transfer deeds executed in favour of the petitioner have been summarily annulled without making proper inquiries qua the allegations of respondent No.1/father with regard to his failure of the petitioner to discharge his obligation to maintain him. He submits that not only there was no inquiry, but even the petitioner was not given proper opportunity to adduce any evidence qua the same. On the other hand, even respondent No.1 (father of the petitioner), apart from making verbal allegations in his application before the Maintenance Tribunal, did not adduce any additional and/or corroborative evidence to show that the petitioner did not discharge his obligation expected of him both in law and even otherwise being morally bound to do so.

10. Learned counsel also emphatically argues that proceedings before the Maintenance Tribunal have in fact been filed at the instance of respondent No.2, who is younger brother of the petitioner (the other son of respondent No.1) as a proxy litigation through father. That is why said younger brother, currently residing in Canada has intentionally chosen not to appear before the Maintenance Tribunal or the Appellate Authority or even in this Court. The collusiveness between the younger brother and the father seems to be, at the first instance, to get the transfer deed set-aside and

thereafter, the entire land of 12 acres in all likelihood would be transferred to the younger son alone, is the contention.

11. Another contention of the learned counsel for the petitioner is that the property transferred to him, in any case, is ancestral. Thus, even if the same is not transferred to him, respondent No.1 is not entitled to the whole of it. Respondent No.1 can claim to be owner only qua his share, that too, as per his rights yet to be determined according to the law of inheritance.

12. On a Court query, learned counsel informs that in order to maintain the family harmony and peace, the petitioner-son has chosen not to file any proceedings for partition and staking his claim by way of inheritance, since he was throughout sanguine of better sense prevailing in the family and the matter will be sorted out amicably. He submits that looking at the conduct of the grandfather, much against the wishes of the petitioner, his son, on the other hand, has already chosen to file a Civil Suit, *inter alia* seeking declaration that the property in question is ancestral in nature. Grandson has consequently sought partition thereof, after determination of the shares of the respective family members. Said pending Civil Suit No.549 of 2020 titled as ***Gurteshwar Singh SandhuvsRajinder Singh and others*** is now slated for hearing on 10.08.2021.

13. Learned counsel for the petitioner relies on Apex Court in ***Smt. S. Vanithavs The Deputy Commissioner, Bengaluru Urban District and others (Civil Appeal No.3822 of 2020)*** decided on 15.12.2020 as well as ***judgment of Kerala High Court in Sreenivasanvs District Collector, Civil Station, Palakkad 2018(4) ILR (KER) 566***. He submits that it is, *inter alia*, held therein that it is only where transfer of property is accompanied by a

specific condition to provide for maintenance of a senior citizen, then only the transfer of property is deemed to be vitiated by fraud in case of failure of the transferee to provide for the maintenance. It is also held that a gift/transfer deed cannot be set aside under Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (here-in-after referred to as 'the Act') as it is a summary procedure under Section 23 of the Act and cannot be resorted to without there being a finding and/or recital in the gift deed qua the condition of providing basic amenities/maintenance to the senior citizens.

14. Relying upon the judgments aforesaid, learned counsel for the petitioner strenuously argues that in the ordinary course, Courts should interpret the statutes in the literal sense when the words used in the statute are plain and unambiguous. Deviation from the literal rule of interpretation should only be made when there is any inconsistency or ambiguity in the wordings of the statute.

15. Per contra, learned counsel for respondent No.1 submits that the orders by the Maintenance Tribunal as well as the Appellate Tribunal have been passed in consonance of the objective and the purpose for which the Maintenance and Welfare of Parents of Senior Citizens Act, 2007 has been enacted. He submits that the proceedings under the said statute are not akin to the ones instituted before a Civil Court and therefore, the very purpose of the proceedings would be frustrated if the same are to be conducted by way of adducing threadbare evidence in support of the contentions. Maintenance Tribunal proceedings are to be conducted to arrive at a prima facie opinion based on the pleadings as well as the preliminary enquiries made by the Tribunal. He submits that as long as it is established that the properties were

indeed gifted and/or transferred by the father to his son with the expectation that he would be looked after in the evening of his life and the said expectation is later defied, he is well within his rights to invoke the said gift and/or the transfer deed, as the case may be.

16. Learned counsel for respondent No.1 relies upon the judgments of this Court in cases titled as *Swaran Singh vs Sub-Divisional Magistrate-cum-Maintenance Tribunal, SAS Nagar and others (CWP No.1985 of 2017 decided on 29.11.2017)*, *Raksha Devi vs Deputy Commissioner-cum-District Magistrate, Hoshiarpur and others (CWP No.5086 of 2016 decided on 03.05.2018)*, *Balwant Singh vs State of Punjab and others (CWP No.32388 of 2018, decided on 08.01.2019)*, *Promil Tomar and others vs State of Haryana and others (CWP No.20072 of 2013, decided on 06.12.2013)*, *Mamta Sharma vs Additional Commissioner, Maintenance Tribunal and others (CWP No.38040 of 2018, decided on 05.11.2020)* and judgment of Delhi High Court in case *Sunny Paul and others vs State NCT of Delhi and others (W.P. (C) 10463/2015 decided on 15.03.2017)*, in support of his contentions.

17. Having heard the rival arguments, I shall now proceed to render my opinion with discussion and reasons thereof.

18. As regards the argument of learned counsel for the petitioner that a gift/transfer deed cannot be set aside under Section 23 of the Act, I have had an earlier occasion in Mamta Sharma's case (supra) to reflect my mind while holding to the contrary, that jurisdiction of the Maintenance Tribunal includes the enforcement of protection qua senior citizen's property. The relevant extract of my judgment *ibid* is here under :-

*“47. Now let us look at the picture from another angle. Section 23(1) of the Act mandates that 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 undue influence and shall at the option of the transferor be declared void by the Tribunal. By necessary implication, the power of the Tribunal to declare the transfer as void and restore ownership includes the power to restore possession of the property to the senior citizen. It would be against logic and common sense to say that while the Tribunal has the larger power under the Act to restore ownership and possession of the property but it does not have the power only to evict the senior citizens’ child or relative in illegal occupation of his property and restore its possession to the senior citizen, which is just a part of larger power to declare the transfer as void and restore ownership including possession of the property to the senior citizen. In my opinion, the statutory protection/provision under the Act *ibid* would be meaningless, if thereunder, a senior citizen cannot peacefully possess and enjoy his property and protect it from illegal occupation or trespass by a child or relative.”*

19. There is no substance in the other arguments canvassed by the learned counsel for the petitioner that since the transfer/gift deed could not be annulled as the same was not contingent on any condition precedent that it was being executed with the expectation of providing maintenance to the senior citizen and there is not even any pleadings qua the same. A perusal of the application of senior citizen herein before the Maintenance Tribunal reflects otherwise, in as much as, in para 4 thereof, it is stated by the senior citizen *“that I have got two sons namely Paramjit Singh and Harinder Singh, in whose favour, I have got transferred my above noted land but thereafter, they have started misbehaving with me. They are not maintaining me, nor paying money for medicine etc. or giving me meals etc. and ask me to leave the house.”*

20. There not being any specific clause in the transfer deed with respect to the maintenance is equally insignificant, as it is but natural that a

father would gift his property to his son out of natural love and affection, hoping that someone who owes him his birth and existence, being his own blood, would look after him in his old age, in the same manner as the father looked after his ward until he became a self dependent adult. Reference may also be had to Division Bench Judgment of this Court in **RakshaDevi's** case (supra). Speaking for the Division Bench, S.J. Vazifdar (Chief Justice of this Court as he then was), held as below :-

“6. The plain language of Section 23 does not require the condition referred to therein namely the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor, to be stated in writing in the document that transfers the property or in any other document. Considering the nature of the Act we do not consider it necessary or appropriate to read such a requirement into Section 23 of the Senior Citizens Act. It is neither expressly provided nor required by necessary intendments. Our attention has not been invited to any fact or aspect that warrants a Court reading the same into the Section as an additional requirement. The Preamble to the Act and the Statement of Objects and Reasons militate against reading such a requirement into Section 23.

x-x-x-x-x-x

9. It is in fact not even necessary to read Section 23 liberally to reject the contention that the condition stipulated therein must be in writing in the document of transfer or any other connected document. Such a condition is absent. To accept the respondents' contention would require our reading Section 23 liberally and in fact redrafting it contrary to its plain meaning in favour of the transferees and against the rights and interests of the senior citizens. This would be contrary to and in fact destructive of the provisions of the Senior Citizens Act.”

20.(A) There are allegations and counter allegations between father and the son, as elaborated in their respective pleadings, which are not very relevant for the purposes of adjudicating the present petition. But the same indeed reflect the sordid state of affairs between the two of them, in as much as, owing to their differences, there are criminal proceedings going on vide FIR No.42 dated 10.03.2019 registered under Sections 420, 467, 468, 471 IPC at Police Station Lalkuan, District Nainital. It is though alleged by the

petitioner that the said FIR is directed against respondent No.2, brother of the petitioner (other son of respondent No.1). While on the other hand, respondent No.1 maintains that the petitioner has specifically named him as an accused in the FIR. Pursuant thereto, police officials from Nainital had come to the Police Station, Civil Lines Batala, looking for him in order to arrest him. He relies on the general diary details recorded by the police as contained Annexure R-2. The respondent no.2 states that when the police officials found him to be too old and weak, they let him off on humanitarian grounds and did not arrest him and returned back to Nainital. Notwithstanding, the petitioner continuously keeps exerting pressure on the police officials to pursue the said FIR through his political connections. These allegations/counter allegations are being noted only as an illustration to show that respondent No.1 perhaps took a call in the galling, much against his wishes, to institute proceedings before the Maintenance Tribunal in order to protect his property and be totally self dependent qua his maintenance. This only goes to show that both the sides despite being fairly prosperous, if not opulent, have led themselves to an unsavoury situation of litigation, which was otherwise avoidable, had they respected the mutual sanguinity of a father-son relationship.

21. In the end, opining at the cost of repetition, an amicable outcome is the most desirable approach which both sides need to adopt, as the same shall go a long way in mitigating their agony as well as other family members. They must not forget that improving their relationships *inter-se* shall also lead to amicability amongst their next generation in maintaining future good relations. There is no gainsay in reiterating that in matters of this kind, ultimately over all interest of all concerned is family

happiness, rather than financial gains. With this mindset, this Court hopes and expects that the petitioner and respondent No.1 would take the directions given by this Court in the right spirit of mutual cooperation to mitigate further emotional agony to each other and their families and with the mutual spirit of give and take and endeavour to strike a certain bonhomie.

22. Adverting to the proceedings conducted by the Maintenance Tribunal below, Section 8 (1) of The Act, 2008 lays down that in holding any inquiry under section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.

23. In the instant case, petitioner filed a detailed reply Annexure P-5 to the application of his father (respondent No. 1) for annulment the transfer of his land to the petitioner. With the reply, the petitioner had also filed documents in support of his version. A rejoinder was then filed by respondent No. 1. Impugned order dated 04.12.2019 Annexure P-6 of the Tribunal shows that written submissions had also been filed besides addressing of oral arguments on behalf of the petitioner before the Maintenance Tribunal. In the circumstances, I find force in the argument of the learned counsel for respondent No. 1 that the Maintenance Tribunal had followed a fair, reasonable and lawful summary procedure while passing its order Annexure P-6. The contrary contention of the learned counsel for the petitioner is, therefore, rejected.

24. The gist of the reasoning in the impugned order Annexure P-6 passed by the Maintenance Tribunal is that from the arguments of the counsel for parties and perusal of record, it was found that Paramjit Singh

(son) had asserted in his reply that there was no condition attached to the transfer of land that he would serve, maintain, provide for medical care and look after the transferor. He did not even claim that he was actually serving, maintaining, providing for medical care and looking after his father; and that the relations of Rajinder Singh with his son Paramjit Singh were not cordial; his second son was living in Canada that Rajinder Singh was then aged 90-92 years, his wife had died and he was living with his daughter, who was serving and looking after him; that it was not necessary that there was no legal requirement for any specific clause in transfer deed for the obligation of the transferee to maintain and look after the transferor.

25. While affirming the said order in appeal, the Appellate Tribunal, observed in its order dated 23.06.2020 Annexure P-14, inter alia that simply providing meals to parents is not sufficient and that they also expect due care and respect from children and held the appellant (petitioner herein) had not maintained his father and that the order under appeal was correctly passed and thus dismissed the petitioner's appeal.

26. In my opinion, the consistent view taken and conclusion drawn by the Maintenance Tribunal are based on appreciation/evaluation of the record, are correct and in accordance with law and that the case of respondent No. 2 is covered under section 23 (1) of the Act *ibid*.

27. Once it is found that that the case of respondent No. 2 for protection and restoration of his property is justified and covered under section 23(1) of the Act *ibid*, it is not necessary in present proceedings to adjudicate upon the petitioner's allegations that respondent No. 1 has resorted to litigation at the behest of respondent No. 2 to pressurise the

petitioner in connection with the criminal case got registered by the petitioner's wife against respondent No.2 and his wife or that upon restoration of property, respondent No. 1 would transfer the whole of it to respondent No.2 alone.

28. Having given my views as above, in the peculiar facts and circumstances of the case I am, however, not inclined to outrightly dismiss the petition in its entirety, for the reasons recorded per succeeding paras.

29. Taking a wholistic view, while the interest of respondent No.1-father has to be secured until the final outcome of the pending civil suit, so that he can live peacefully in the evening of his life, and yet at the same time a balance has to also be struck as far as possible, in the larger interest of family peace.

30. It is not disputed that respondent No. 1 also owns two acres land other than the land gifted to his sons.

31. As noted above, during the course of hearing, respondent No.1-father made an offer that he is willing to give 03 acres of agricultural land to his son (the petitioner) out of the 06 acres gifted to him, provided at the first instance he surrenders the title and possession of entire land. Respondent no.1/father also made an offer that for the sake of peaceful quietus, he shall also bear the cost of another house, which can be constructed by the petitioner on the 03 acres to be given to him. He also assured that the house to be built shall be of the same size and would not be of any less in quality and will be constructed keeping in mind that it meets the same square footage in which the petitioner is currently residing along with his family.

32. To me, aforesaid offer seems quite fair and reasonable. No doubt, this offer was not accepted by the petitioner. Yet, I am of the opinion that an appropriate order grounded on this offer, if passed, may help in narrowing down, if not eliminating the differences and disputes between the father and son, softening their hurt and hardened feelings and ameliorating their agony which would be in the larger interest of the family.

33. Accordingly, exercising powers under Article 226 of the Constitution of India and to secure the intent, objective and purpose of the maintenance of respondent No.1 and protection of his property, as envisaged under the Act, the order dated 04.12.2019 Annexure P-6 passed by the Maintenance Tribunal affirmed vide Appellate order dated 23.06.2020 Annexure P-14 are modified to the following extent:

(a) That 03 (three) acres of land out of the land gifted to the petitioner and adjoining the rest of the disputed land /property on which house has been built, shall be allowed to be retained by the petitioner till and subject to the final outcome of the pending civil suit between the parties instituted by the son of petitioner seeking declaration with regard to the inheritance rights qua the land, in question.

(b) Since, petitioner is being divested of the house in which he is currently residing, respondent No.1 shall ensure that in case the petitioner chooses to carry out construction on the piece of land given to him, he (respondent No.1) shall reimburse the cost of construction as per the estimate to be certified by illaqa Executive Engineer of the Department of Public Works. . The estimate shall be prepared after measuring the square footage of the existing construction so as to arrive at the figure of the cost of construction of building the equal square footage. Money shall be paid by respondent No. 1 in construction linked instalments on the

disbursement pattern of house building advances by Punjab Government to its employees.

(c) Needless to say that this order shall operate in the interregnum and will ultimately be subject to the final outcome of the pending civil suit and none of the parties shall alienate the property in question during their life time, of course, with liberty to them to bequeath the same by way of Will, which shall also be qua their rights which are to be finally determined by the Civil Court.

34. The Maintenance Tribunal shall ensure the compliance of the instant order.

35. With these directions and modifications in the impugned orders, the writ petition is disposed of. Pending applications, if any, also stand disposed of.

MAY 27, 2021
Shalini/gurpreet

(ARUN MONGA)
JUDGE

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