

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 31181 of 2019

Date of Decision: February 23, 2021

Jagdish Kaur and another

.....Petitioners

versus

Sub Divisional Magistrate-cum-President Tribunal and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunl Mulwani, Advocate and
Mr. Sehaj Sandhawalia, Advocate
for the petitioners

Mr. Narender S. Behgal, AAG Haryana

Mr. Akshay Bhan, Sr. Advocate with
Mr. Rajat Mor, Advocate and
Mr. Sushant Kareer, Advocate
for respondent No. 2

Sudhir Mittal, J. (Oral)

This petition has been preferred against order dated 20.08.2019 (Annexure P-5) whereby the Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Senior Citizens Act') has rejected the petition filed under Sections 22 and 23 of the aforementioned Act.

Learned senior counsel for the petitioners has submitted that two residential houses and a piece of land were transferred in favour of respondent No. 2 by the petitioners vide three separate transfer deeds dated 12.08.2014, 12.09.2014 and third deed also of 12.09.2014. House No. 76, Model Town, Karnal was one of the residential houses included in the transfer. The petitioners were residing with respondent No. 2 in the said house. Their elder son resides at Faridabad. In the

thereafter they were not permitted by respondent No. 2 to come back to their house necessitating the filing of petition under Sections 22 and 23 of the Senior Citizens Act, a copy of which is on record as part of Annexure P-2 (colly). The said petition had been dismissed vide impugned order dated 20.08.2019 on the ground that there was no stipulation in the transfer deeds that the transferee would look after the needs of the transferor. The merits of the petition have not been taken into consideration. The decision is patently contrary to Division Bench judgment of this Court in *Smt. Raksha Devi vs. Deputy Commissioner-cum-District Magistrate, Hoshiarpur and others, 2018(4) RCR(Civil) 218* and, thus, the impugned order deserves to be set aside. The matter may be remanded for a fresh decision in accordance with law and on the merits of the controversy.

Learned senior counsel for respondent No. 2 has pleaded that the petition filed at Faridabad was not maintainable as the property in dispute is situated at Karnal. Thus, the Tribunal at Faridabad had no jurisdiction in the matter. That apart, perusal of various complaints placed on record as Annexure P-2 shows that the transfer was for consideration of Rs. 1 crore. For this reason also the petition was rendered not maintainable. Apart from these submissions, it has been argued that on merits also the petition dated August 2018 under Sections 22, 23 of the Senior Citizens Act deserves to be dismissed.

The facts are not in dispute. A perusal of the impugned order shows that the only point that weighed with the Tribunal was that the transfer deeds did not contain any stipulation that transfer was being effected subject to the condition of maintenance. This finding of the Tribunal is patently contrary to the Division Bench judgment passed in *Raksha Devi (supra)* wherein the question that was posed and decided was -

“Whether Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is applicable only where the conditions

stipulated therein viz. that the transferee shall provide the basic amenities and basic physical needs to the transferor is in writing or a part of the document of transfer?”

After examining the statutory provisions and the law on the subject, the finding returned by the Division Bench is as under :-

“The reference is accordingly answered as follows:-

Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is applicable even if the conditions stipulated therein viz. that the transferee shall provide the basic amenities and basic physical needs to the transferor, is stipulated only orally and is not in writing or is not a part of the document of transfer.”

Thus, for a petition under Section 23 of the Senior Citizens Act to be maintainable, there is no requirement in law that the transfer deed should contain a stipulation in writing that the transfer was subject to condition of maintenance. Under the circumstances the impugned order has to be set aside.

The writ petition is allowed and order dated 20.08.2019 (Annexure P-5) is set aside. The matter is remitted for a fresh decision in accordance with law. The second respondent shall be at liberty to raise all other issues before the Tribunal. Despite the impugned order having been set aside the order pertaining to payment of maintenance shall continue to operate.

February 23, 2021
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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No