

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

LPA-14-2022 (O&M)

Reserved on:17th January, 2022

Date of Pronouncement:25th February,2022.

NAVEEN KUMAR

.....APPELLANT

VERSUS

RAM RATI AND ANOTHER

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO.
HON'BLE MR. JUSTICE SANDEEP MOUDGIL.**

Present: Mr. Surender Saini, Advocate
for the appellant.

SANDEEP MOUDGIL, J.

The appellant approached this Court by way of present Intra Court Appeal against the judgment dt. 29th November, 2021 passed by a learned Single Judge of this Court vide which the Writ petition of the petitioner-appellant was dismissed upholding the order dt. 4th January, 2019 passed by learned Sub Divisional Magistrate-cum-Chairman, Maintenance Tribunal, Sonapat (hereinafter referred to as 'the Tribunal') in an application moved under the 'Maintenance and Welfare of Parents and Senior Citizens Act, 2007' (hereinafter referred to as 'Act of 2007').

The factual matrix leading to the present Intra Court Appeal is that respondent No.1-Ram Rati, wife of late Ram Mehar, preferred an application under the Act of 2007 for cancellation of Release Deed bearing No. 2979, dt.7th December, 2016, which was executed in favour of her grand

son namely Naveen Kumar (appellant). In that application, she sought for cancellation of Release Deed No 2979, dt. 7th December, 2016 and restore her ownership.

The said plot was allotted by the Gram Panchayat of Village Rai, District Sonapat to the respondent No.1 and she had transferred it in favour of the appellant vide Release Deed No. 2979, dt. 7th December, 2016 on assurance that the appellant would take care and maintain respondent No.1.

She alleged in her application that behavior of the appellant became in-different immediately after the transfer of the afore-said property, that he started misbehaving and fighting with her, and even went to the extent of giving beatings to her; and a complaint to that effect FIR No. 610, dt. 29th November, 2015 was also lodged by another son of respondent No.1 named Prem against the appellant with the Police Station Kundli under Sections 148, 149, 323, 325, 34, 452 and 506 of the Indian Penal Code, which is still pending. The extent of maltreatment and harassment alongwith physical torture advanced to respondent No.1 is apparent from the fact, as averred in the afore-said FIR that her legs got fractured due to beatings.

The Tribunal vide its order dt. 4th January, 2019 cancelled the afore-said Release Deed and directed the Joint Sub Registrar, Rai, to take note of it in its record.

Challenging the afore-said order passed by the Tribunal, the appellant preferred CWP No. 5553 of 2019 before this Court, which was dismissed by learned Single Judge vide order dt. 29th November, 2021 upholding the order of learned Tribunal.

Being aggrieved of the afore-said order passed by learned Single Judge, the appellant has approached this Court by way of present appeal.

Learned counsel for the appellant contends that learned Single Judge has committed grave error in law while ignoring the fact that the appellant and his entire family is owning no other house for their residence except the house in question. It has also been contended that learned Single Judge as well as the Tribunal failed to consider that it is the transferor/respondent No.1 herself, who had refused the maintenance due to her adamant behavior for which the appellant and his family member are being made to bear the brunt for her false ego.

Mr. Surender Saini, Advocate appearing for the appellant further vehemently argued that the intent of Act of 2007 is to maintain and assure welfare of the parents and senior citizens and the appellant has never ever refused to maintain his grand-mother/respondent No.1 and is still ready and willing to maintain her and also to pay any maintenance, apart from the price of the plot as per the rate fixed by the Collector. It has also been argued that the learned Single Judge has gone beyond the pleadings, while dismissing the writ petition, and side tracked the issue, while ignoring the following legal issues raised in the writ petition:-

- (i) *Whether Sub Divisional Magistrate-cum-Chairman, Maintenance Tribunal has jurisdiction to entertain the application of respondent No.1 for getting cancellation of the registered Release Deed dated 7th December, 2016?*
- (ii) *Whether respondent No.1 can approach the Maintenance Tribunal, Sonapat for the cancellation of Release Deed, which respondent No.1 has specifically refused to take the*

maintenance of Rs.5000/- per month as suggested by the learned Tribunal?

(iii) *Whether the action of the respondents is sustainable in the eyes of Law?*

(iv) *Whether a grave manifest injustice has been caused to the petitioner?*

Learned counsel for the appellant placed reliance on the decision passed by this Court in CWP-13505-2021, titled as **“Sudershan Kumar vs. State of Haryana and others”**, decided on 26th July, 2021. He contended that that neither the Tribunal nor the Appellate Authority under the Act of 2007 have jurisdiction to pass an order of eviction and the only power, which lies with them is to grant the maintenance by taking into consideration the facts of each and every case and also to set aside the transfer of property in case senior citizen is able to prove that a fraud was played by the children while the deed with regard to transfer of property was executed.

A reference has also been made to the same observation recorded in a judgment passed by the Apex Court in the case of **“Smt. S. Vanitha vs. The Deputy Commissioner, Bengaluru Urban District and Ors”**, in Civil Appeal No. 3822 of 2020.

We have heard learned counsel for the appellant as well as peruse the record available on file.

Admittedly the respondent No.1 is a widow and an aged senior citizen whereas the appellant is her grand son. The examination of Transfer Deed dt. 7th December, 2016 (Annexure P-4) as executed by respondent No.1 in favour of the appellant shows that it contains a stipulation in clause 1 that

the transferor can cancel the Transfer Deed, if the transferee did not maintain and take proper care of the transferor.

The case, in defence, set up by respondent No.1 before the Tribunal as well as this Court is specific to the effect that after execution of transfer deed, the appellant did not maintain and take care of transferor.

The appellant, taking protection of a joint ration card along-with respondent No.1, has averred that he had been living with her since long and paying all her ration bills and taking care of her other needs, and alleges that the present cancellation of transfer deed has been sought at the instigation of her other son named Prem.

There is no dispute with regard to the residing of respondent No.1 with the appellant and execution of the transfer deed in question with a hope that he will continue to maintain and take such care of her in future as well by respondent No.1.

It is the subsequent change in the behavior and conduct of the appellant which has been questioned by respondent No.1 and for that reason only the categoric recital from the transfer deed itself has been invoked.

Had the appellant been taking care of respondent No.1, there would have been no occasion for her to approach the Tribunal at Sonapat seeking cancellation of transfer deed dated 7th December, 2016 by invoking the afore-said Clause No.1.

We have gone through the affidavit (Annexure P-5), which is un-dated. The same does not inspire confidence because no details with

regard to the period for which it relates concerning the payment of groceries to respondent no.1 is mentioned. It is vague.

The appellant however insists that even after execution of transfer deed dt. 7th December, 2016 (Annexure P-4) he is standing tall and firm to his assurance and has been actually maintaining his grand mother-respondent No.1.

The Legislature has very consciously incorporated Section 23(1) in the Act of 2007 to take care of such subsequent change of events which may lead to harassment of senior citizens at the hands of such transferee. It would be **apposite** in the facts of the present case to reproduce Section 23(1) of the Act 2007, which reads as follows:-

“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 organization referred to in Explanation to sub-section (1) of [section 5](#).”

So Section 23(1) of the Act of 2007 makes it is crystal clear that where the transfer of property is accompanied by a specific condition to provide for the maintenance and needs of a senior citizen, and if the transferee fails to uphold the promise so made after accepting the said transfer of property, the transfer of such property is deemed to have been vitiated by fraud, coercion or undue influence and can be declared as void.

In ***Ramesh@ Pappi v. Ishwar Devi .. LPA No.483 of 2021 (O &M)***, a Division Bench of this Court held:

“Section 23(1) of the Act of 2007 explicitly stipulates that in case the children fail to take care of their parents after transfer of their parent's property in their favour, 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. The provision under Section 23(1) of the Act 2007 attempts to provide a dignified existence to the elderly people. It is often seen that after receiving the property from their parents, the children abandon them. In such situation, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is an enabling lifeline for such old aged parents and senior citizens who are not looked after by their children and become neglected lots. Section 23 of the Act of 2007 is a deterrent to this and hence is beneficial for the elderly old aged people who are incapable of taking care of themselves in their last phase of life. The children are expected to look after their elderly parents properly which is not only a value based

principle but a bounden duty as enshrined within the mandate of the Act of 2007.”

In **Smt. S. Vanitha’s case** (supra), a petition was filed by the parents-in-law against their son and his estranged wife for eviction from the residential house. The Tribunal and learned Single Judge as well as Division Bench of the High Court had accepted the petition whereas the Apex Court reversed the decision concluding that the question *whether claim of the appellant in the premises in question constituted a shared household within the meaning of Protection of Women from the Domestic Violence Act, 2005, would have to be determined by appropriate forum*, and she cannot be evicted in exercise of the summary powers entrusted by the Act of 2007. This is evident from para 16 of the said decision.

“16. ...

Sub-section (1) of [Section 23](#) covers a situation where property has been transferred after the enactment of the legislation by a senior citizen (by gift or otherwise) subject to the condition that the transferee must provide the basic amenities and physical needs to the transferor. In other words, Sub-section (1) deals with a situation where the transfer of the property is accompanied by a specific condition to provide for the maintenance and needs of a senior citizen. In such an event, if the transferee fails to provide the maintenance and physical needs, the transfer of the property is deemed to have been vitiated by fraud, coercion or under undue influence.

Sub-[section 1](#), in other words, creates a deeming fiction of the law where the transfer of the property is subject to a condition and the condition of providing for maintenance and the basic needs of a senior citizen is not fulfilled by the person upon

whom the obligation is imposed. Then, at the option of the transferor, the transfer can be declared as void by the Tribunal.

On the other hand, Sub-section (2) of [Section 23](#) envisages a situation where a senior citizen has a right to receive maintenance out of an estate. Where such a right exists, the right of maintenance can be enforced where the estate or a portion of it, is transferred against a transferor who has notice of the right; or if the transfer is gratuitous. The right however cannot be enforced against a transferee for consideration and without notice of the right.

Now, Sub-section (1) of [Section 23](#) envisages a situation where the transfer of property is by the senior citizen. This is evident from the language of sub-Section (1) namely “where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property...”.

On the other hand, sub-Section (2) of [Section 23](#) does not confine itself to a transfer by a senior citizen, unlike sub-Section (1). Sub- Section (2) uses the expression “such estate or part thereof is transferred”. Where a senior citizen has a right to receive maintenance out of the estate and any part of it is transferred, sub[section 2](#) permits the enforcement of the right to receive maintenance out of the estate against a transferee with notice or against a gratuitous transferee. Sub-Section (2), in other words, may cover a situation where the transfer of the estate (in which a senior citizen has a right to maintenance) is by a third party, in which event, the provision provides the right to enforce the claim of maintenance against such transferee (other than those transferees for consideration or without notice of the preexisting right).

Arguably, the language of sub-section (2) is broad enough to also cover a situation where the transfer is by the senior citizen, in which event the transferee with notice of the right; or a gratuitous transferee, can be made subject to the enforcement of the right against the transferred estate.

Another distinction between sub-Section (1) and sub-Section (2) of [Section 23](#) must also be noticed.

Under sub-Section (1), where a transfer has been made by a senior citizen subject to the condition that the transferee will provided for basic amenities or physical needs of the transferor and if there is a failure of the transferee to fulfil the condition, two consequences follow: (i) the transfer of property shall be deemed to have been made by fraud or coercion or under undue influence; and (ii) the transfer shall, at the option of the transferor, be declared to be void by the Tribunal.

The deeming consequence which is provided for in sub-Section (1) is not incorporated in sub- Section (2). Sub-Section (2), in contradistinction, stipulates that the right to receive maintenance can be enforced against a gratuitous transferee or a transferee with notice of the pre-existing right of a citizen to receive maintenance out of an estate notwithstanding who is the transferee of the estate.

In keeping with the salutary public purpose underlying the enactment of the legislation, the expression “transfer” would include not only the absolute transfer of property but also transfer of a right or interest in the property. This would also be in consonance with the provisions of [Section 2\(f\)](#) which defines the expression property to include “rights or interests in such property”. The expression “transfer” not having been defined specifically by the legislation, it must receive an interpretation which would advance the beneficent object and purpose of its provisions. Sub-section (2) of [section 23](#) speaks of the enforcement of the “right to receive maintenance” which is more comprehensive in its nature, than merely enforcing an order for maintenance passed under [Section 9](#) of the Act.”

Thus the decision in **Smt.S. Vanitha** cannot be of any assistance to the appellant as it dealt with a different fact situation and a different issue as to *whether claim of the appellant in the premises in question constituted a*

shared household within the meaning of Protection of Women from the Domestic Violence Act, 2005, would have to be determined by appropriate forum arose for consideration there, which does not arise in the instant case.

The decision in CWP-13505-2021, titled as **“Sudershan Kumar vs. State of Haryana and others”**, decided on 26th July, 2021 also has no application because no relief of delivery of possession was granted by the Tribunal in its order dt.4.1.2019.

The learned Single Judge has given cogent reasons for dismissing the Writ Petition. The issue with regard to amount spent by the appellant for raising construction over the plot in question has also been duly dealt by learned Single Judge in the impugned order and has been replied in negative.

In the light of the afore-said discussion and observations, we are convinced that the order dt. 29th November, 2021 passed by learned Single Judge, does not warrant any interference in exercise of jurisdiction under Clause X of the Letters Patent.

Accordingly, the present Letters Patent Appeal is dismissed, but without costs.

Since the main appeal has been dismissed, all the pending civil misc. applications shall also stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SANDEEP MOUDGIL)
JUDGE

25th February, 2022
Sham

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No