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2023:PHHC:166556

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-9125-2023 (O&M)
DECIDED ON: 17th OCTOBER, 2023

BARFI DEVI

PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Rohit Nagpal, Advocate,
Mr. Sushant Kareer, Advocate and
Mr. Harsh Vansh Gupta, Advocate
for the petitioner.

Mr. Sandeep Singh Mann, Addl. AG, Haryana.

Mr. Aashish Chopra, Sr. Advocate with
Mr. Anand Kumar Bishnoi, Advocate and
Mr. Meher Nagpal, Advocate
for respondent No.2 (Caveator).

Mr. Vineet Chaudhary, Advocate
for respondents No.3 and 4.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked seeking a writ in the nature of *Certiorari* to quash the decision of learned District Magistrate-cum-Appellate Tribunal, Gurugram dated 22.03.2023 (Annexure P-1).

2. The factual matrix leading to the present petition is that the

petitioner-Barfi Devi wife of Shri Badle Ram, preferred an application under the 'Maintenance and Welfare of Parents and Senior Citizens Act, 2007' (hereinafter referred to as 'Act of 2007') for cancellation of transfer deeds No. 2770 dated 23.06.2017 and 4331 dated 06.11.2018, which was executed in favour of respondents No.2 to 4 (sons of the petitioner). In that ownership, she sought for cancellation of transfer deeds No. 2770 dated 23.06.2017 and 4331 dated 06.11.2018 and restore her ownership.

3. The petitioner is absolute owner in possession of land comprised in Khewat No. 287, Khata No. 292, Rect. No. 59, Killa No. 17 (6-16), 24 (6-13) Rect. No. 66, Killa No. 4/1 (3-7), 14/1 (19-11), 14/2 (4-13), total area 23 kanals 0 marla being 2/23 shares, land measuring 2 kanal 0 marlas, khewat No. 496, khata No. 503, Rect. No. 26, Killa No. 13/3 (1-9), 19 (8-0) land measuring 9 kanals 9 marlas, situated in village Bandhwari, Tehsil Wazirabad, and khewat No. 91, Khata No. 102, Rect. No. 56, Killa No. 21/2 (0-9), Rect. No. 59, Killa No. 1/1/1 (8-12), situated in village Harchandpur, Tehsil Sohna, District Gurugram. She had transferred the afore-said land in favour of respondents No.2 to 4 vide transfer deeds No. 2770 dated 23.06.2017 and 4331 dated 06.11.2018, on assurance that they would take care and maintain her.

4. She alleged in her application that after execution of the afore-said transfer deeds, respondents No.2 to 4 stopped all services to the petitioner and besides shunted her out of the house. At present she is residing alone. She has further averred that respondents No.2 to 4 are not even providing her food and clothes and children of respondent No.2 misbehaved with the petitioner and her husband is also not residing with

her.

5. The Tribunal vide its order dated 21.01.2021 (Annexure P-6) cancelled the afore-said transfer deeds and directed the respondents No.2 to 4 to handover the vacant peaceful possession of the land in question to the petitioner.

6. Challenging the afore-said order passed by the Tribunal, the appellant-Shish Pal preferred an appeal before learned Appellate Tribunal-cum-District Magistrate, Gurugram, which was allowed vide order dated 22.03.2023 and an amount of Rs.3000/- per month was fixed as maintenance allowance, which shall be paid by the appellant and respondents No.2 and 3-Jagdish and Braham Singh(sons of Barfi Devi) was directed to pay an amount of Rs.10,000/- each to Barfi Devi. Shish Pal, Jagdish and Braham Singh were also directed to take proper care of Barfi Devi and make proper arrangements for the accommodation and food etc. for her.

7. Being aggrieved of the afore-said order passed by learned Appellate Tribunal, the petitioner-Barfi Devi has approached this Court by way of present petition.

8. Mr. Akshay Bhan, learned Senior Counsel for the petitioner has contended that the Appellate Tribunal had erred in setting aside the order dated 21.01.2021 passed by the Sub-Divisional Magistrate, whereby the application of the petitioner under the Act of 2007 was allowed and transfer deeds transfer deeds No. 2770 dated 23.06.2017 and 4331 dated 06.11.2018 were set aside. He further contends that the Appellate Tribunal went beyond the scope of the Act of 2007 and gave a finding upon the fact

that the petitioner had other land whereby she could maintain herself, further it also held that there was apparent collusion between the petitioner & respondent 3 & 4. These findings are clearly beyond the scope of the jurisdiction of the Appellate Tribunal, as the only mandate as provided under Section 23 of the Act of 2007 is to see whether there was any condition subject to which the transfer deeds had been executed by the senior citizen.

9. It is submitted on behalf of the petitioner that the Appellate Tribunal, without returning any finding on the same has set aside the well-reasoned dated 21.01.2018. The petitioner in the application filed under the Act of 2007 clearly averred that the transfer was out of love and affection and on the promise of the sons to take care of her. She also appeared in person before the Tribunal which is duly recorded in the order dated 21.01.2021 and adduced evidence as to the factum of transfer deeds being conditional upon the promise of providing love, affection & basic amenities.

10. Learned Senior Counsel has placed reliance upon the judgment rendered by a Division Bench of this Court in the case of **“Naveen Kumar vs. Ram Ratti and another” (LPA-14-2022, decided on 25.02.2022).**

11. Mr. Aashish Chopra, learned Senior Counsel for respondent No.2 has contended that the petitioner who is completely under the influence of respondents No.3 and 4, who are brother of respondent No.2, has filed the present petition as well as the application under the Act of 2007 at their behest only as they have now become greedy and want to

grab the share of respondent No.2 by getting the transfer deeds cancelled. The contention is that the application under the Act of 2007 is not maintainable as there is no recital of any condition in the said transfer deeds. Further a perusal of the application (Annexure P-4) would reveal that there are vague pleadings as it was not been specified as to what kind of amenities were not provided to the petitioner and respondent No.2 has never mal-treated or misbehaved with the petitioner at any point of time, as no specific date/incident with regard to the ill-treatment of the petitioner in has been mentioned in the application. It is submitted on behalf of respondent No.2 that at the time of purchase of land in question, the petitioner was not having any income and the sale consideration was paid by respondents No.2 to 4 from their bank account.

12. Learned counsel for respondents No.3 and 4 has contended that they had given a statement before the Tribunal on 13.10.2021 that they had no objection qua the cancellation of transfer deeds and restoration of possession of land to their mother.

13. Heard learned counsel for the respective parties.

14. Admittedly, the petitioner is an aged senior citizen whereas, respondents No.2 to 4 are her sons and the defece, set up by the petitioner before the Tribunal, Appellate Tribunal as well as before this Court is specific to the effect that after execution of transfer deeds, respondents No.2 to 4 did not maintain and taken care of transferor. There is no dispute with regard to the residing of the petitioner with her elder son and execution of transfer deeds in question with a hope that they will continue to maintain and take such are of her in future.

15. It is the subsequent change in the behaviour and conduct of the respondents No.2 to 4, which has been question by the petitioner and for that reason only the categoric recital from the transfer deeds itself has been invoked.

16. Had the respondents No.2 to 4 been taking care of the petitioner, there would have been no occasion for her to approach the Tribunal at Gurugram seeking cancellation of transfer deeds dated 23.06.2017 and 06.11.2018.

17. Respondents No.2 to 4, however, insists that even after execution of transfer deeds dated 23.06.2017 and 06.11.2018, they are standing tall and firm to their assurance and have been actually maintaining their mother.

18. The petitioner as required under the law has successfully established the fact that the condition for providing basic amenities formed part of the transfer deed by way of application, through oral evidence and in the form of pleadings in the application. Once the said condition stood established, there arose no occasion before the Appellate Authority to take into consideration any other factor. The only purpose and intent of establishing the Tribunal is to verify as to whether the transfer deeds had made subject to the condition as provided under the Act of 2007. Once, it is established, the Tribunal under the Act is mandated to cancel the transfer so made by the Senior Citizen.

19. It is settled law that there is no requirement under law that there should be a written stipulation in the deed to the effect that the transferee would maintain the transferor. The condition referred in Section

23 of the Act of 2007 must be understood based on the conduct of the transferee prior to and after execution of the deed of transfer. If love and affection was the circumstances for executing such deed, any failure on the part of the transferee to provide amenities and physical needs to the transferor would attract the grounds for revocation under Section 23 of the Act of 2007.

20. Moreover, the petitioner had a legally definable right in the property before it was transferred by her to the private respondents. As admitted by respondent no.2, the property in question was the source of income of the petitioner. The petitioner is not raising an imaginary claim over the properties of the respondents and rather seeks to recover her own legally enforceable civil right over the property which has been determined. The respondents had no right over the land in question to begin with. Section 4 of the Act of 2007 provides for eviction of a person with no right in the property in order to protect the interests and welfare of a senior citizen. This necessarily means that the right to order a removal of a claimant exists in the statute itself. In the application, the petitioner had categorically pointed out that she was continuously mistreated by the private respondents and was subjected to all kinds of harassment. After getting the properties transferred in their names, the respondents did not spare even a thought to the mental or physical health well-being of the petitioner. The fact that a 76 years old woman is filing the present petition in continuance of formal proceedings under the Act of 2007 is enough to show that the petitioner has been suffering in the twilight years of her life.

21. In view of the discussions made hereinabove, it is apparent that the petitioner had duly established the presence of the condition, as provided under the Act of 2007, thus, once it is established, there remains no further scope of interference, hence, the impugned order dated 22.03.2023 is set aside and the order dated 21.01.2021 passed by the Tribunal is upheld.

22. The present petition stands allowed.

(SANDEEP MOUDGIL)
JUDGE

17th OCTOBER, 2023
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| 1. Whether speaking/ reasoned : | Yes / No |
| 2. Whether reportable : | Yes / No |