

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-16255-2019(O&M)

Date of decision : 07.12.2023

Anil Kumar

... Petitioner

Versus

Jagdish Rai and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHLPresent: Mr.Deepanshu Matya, Advocate
for the petitioner.Mr. Sherry K. Singla, Advocate
for respondent no.1.Mr.Kunal Muthreja, AAG, Punjab
for respondents no.2 and 3.**VIKAS BAHL, J.(ORAL)**

1. This is a civil writ petition filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the order dated 27.03.2019 (Annexure P-6) passed by respondent no.3 vide which the appeal preferred by respondent no.1 (senior citizen) against the order dated 26.10.2018 (Annexure P-4) passed by respondent no.2 has been allowed.

2. Brief facts of the present case are that respondent no.1, who is a senior citizen, had filed an application dated 12.06.2018 (Annexure P-2) before respondent no.2 for cancellation of the transfer deed dated 11.05.2016 executed by respondent no.1 in favour of the petitioner (son). It was stated in the said application that respondent no.1 had got registered half share of 63 square yards owned by him, measuring 31 ½ yard in the name of his son vide the said registered sale deed but the said petitioner was out of control and used to harass respondent no.1 and did not help

respondent no.1 in any manner. A perusal of the transfer deed dated 11.05.2016 (Annexure P-1) would show that it was specifically mentioned in the said transfer deed that the petitioner is duty bound to take care of and provide all the basic amenities to respondent no.1 and in case the petitioner fails to do so, then the deed would be liable to be treated as cancelled as per the provisions of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as "the 2007 Act"). Reply dated 24.09.2018 (Annexure P-3) to the said application was filed by the petitioner and in paragraph 2 of the said reply, it has been stated by the petitioner that his parents were residing with the younger brother Rakesh Kumar and the petitioner was not required to maintain them and that the petitioner had purchased his personal house at Tej Bagh Colony. In paragraph 4 of the reply, it has been stated that respondent no.1 had willed away all his properties vide registered Will dated 18.06.2010 and had given shop in dispute i.e. shop no.2439/2 situated at Chowk Kasera Patiala in favour of the petitioner and the other shop no.2438/2 in favour of Rakesh Kumar and third shop i.e., 2427/2 situated at Old Anaj Mandi, Sanauri Gate, Patiala in the name of Sushma Singla, widow of the third son of respondent no.1. The Maintenance Tribunal-cum-Sub Divisional Magistrate, Patiala vide order dated 26.10.2018 rejected the said application. An appeal was filed by respondent no.1 against the said order and the appellate authority vide order dated 27.03.2019 allowed the said appeal after specifically observing that the behaviour of the petitioner towards his father who had brought him up, married him and took care of him was not as is expected in a civilized society and that the petitioner was not taking care of respondent no.1(father).

has filed the present writ petition.

4. Learned counsel for the petitioner has challenged the impugned order on the following three grounds:-

i) The first ground raised by learned counsel for the petitioner is that the conduct of respondent no.1 himself is not good. It is submitted that respondent no.1 had thrown out his wife from the house in question and his wife (mother of the petitioner) was forced to reside with the petitioner until her death and for the said purpose, reference has been made to paragraph 2 of the reply dated 24.09.2018. Further reference has also been made to the death certificate dated 16.10.2017 (Annexure P-7) to show that the address of the mother of the petitioner mentioned in the death certificate was that of the petitioner's house.

ii) The second ground of challenge which has been raised by learned counsel for the petitioner is that respondent no.1 has sufficient sources to maintain himself and thus, the impugned order deserves to be set aside on the said ground also. It has been pointed out that respondent no.1 gets his pension of Rs.1000/- per month as he had stayed in jail during emergency and earlier he was also getting rent from ATM shop at the rate of Rs.10,200/- per month and he has also earned enough money since he was Ex-Senior Deputy Mayor of Municipal Corporation.

During the course of arguments, it has been stated by the learned counsel for the petitioner that the tenant in the said shop from whom the rent, at the rate of Rs.10,200/- per

month, was being received has been evicted and, thus, in case respondent no.1 is in need of a shop, he can take the said shop.

iii) The third ground of the challenge in the present case is that Rakesh, the brother of the petitioner, has also been given a shop and in case respondent no.1 is in need, then even he can take back the said shop from Rakesh.

5. Learned counsel appearing for respondent no.1, on the other hand, has opposed the present writ petition and has submitted that the writ petition being meritless, deserves to be dismissed. It is argued that in the present case it is not in dispute that respondent no.1 is the owner of the premises in question and is also a senior citizen and had transferred the property by virtue of the transfer deed dated 11.05.2016 (Annexure P-1). It is submitted that it is specifically stated in the transfer deed that in case the petitioner fails to take care of respondent no.1, then respondent no.1 would be entitled to get the same cancelled in accordance with the provisions of Section 23 of the 2007 Act. It is argued that the petitioner has never taken care of respondent no.1 and nothing has been produced before the authorities below to show that the petitioner had ever taken care of respondent no.1 rather the petitioner had harassed and fought with respondent no.1. It is submitted that in the present case, all the ingredients of Section 23 of the 2007 Act have been duly complied with and thus, the impugned order has been passed, in accordance with law and the same deserves to be upheld. The financial position of the respondent no.1 has been explained in detail in the impugned order dated 27.03.2019 to which there is no rebuttal and thus, on the said aspect also, the impugned order is well reasoned and deserves to be upheld. It is stated that the pleas raised by the petitioner even if taken on face value would not call for setting aside the

said order as it is a matter of settled law that once the ingredients of Section 23 of the 2007 Act are met, then the question as to whether respondent no.1 has other sources of income or not, would be irrelevant. It is further stated that at any rate, in the present case, respondent no.1 does not even have other sources as has been suggested by learned counsel for the petitioner. It is, thus, prayed that the present writ petition be dismissed.

6. This Court has heard learned counsel for the parties and has gone through the paper book.

7. It is not in dispute that respondent no.1 is a senior citizen and is the owner of the property in question measuring 31 ½ square yards. It is also not in dispute that vide transfer deed dated 11.05.2016 (Annexure P-1), the said property was transferred by respondent no.1 in favour of the petitioner. The relevant portion of the said transfer deed (Annexure P-1) is reproduced hereinbelow:-

“Anil Kumar shall be bound to take care and provide all basic amenities to his father Jagdish Raj. In case, Anil Kumar failed to do so then this Deed regarding change of ownership shall be treated as cancelled under Maintenance and Welfare of Parents and Senior Citizenship Act 23.”

A perusal of the above would show that it is specifically stated that the petitioner would be bound to take care and provide all the basic amenities to respondent no.1 and in case of the petitioner failing to do so, then the said deed was liable to be cancelled under Section 23 of the 2007 Act. The petitioner had not produced anything on record before the authorities to show that after the execution of the said transfer deed, the petitioner had taken care of the basic needs and amenities of respondent no.1. Rather it is the case of the petitioner in paragraph 2 of the reply dated 24.09.2018 (Annexure P-3) that respondent no.1 was residing with the other

on the maintenance of the parents. From the date of transfer deed upto the filing of the application dated 12.06.2018 to the passing of the impugned order, dated 27.03.2019, there is nothing to show that the petitioner was ever paying any monthly amount to respondent no.1 for taking care of respondent no.1. Thus, the plea of respondent no.1 and the observation in the impugned order dated 27.03.2019 to the effect that the petitioner has not been taking care of respondent no.1 (father), is apparently correct and does not call for any interference. Section 23(1) of the 2007 Act is reproduced hereinbelow:-

“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.”

A perusal of the above provision would show that once three ingredients i.e., respondent no.1 being a senior citizen, transfer being subject to the condition that the transferee shall provide the basic amenities and physical needs to the transferor and the said transferee refuses or fails to provide the said amenities and physical needs, are fulfilled, then the said transfer would be deemed to have been made by fraud, coercion or undue influence and shall at the option of transferor be declared void by the Tribunal. In the present case all the three conditions have been met and nothing has been shown that the said ingredients are not met.

8. All the three grounds raised by learned counsel for the petitioner are meritless and deserve to be rejected for the following

reasons:-

i) With respect to the first ground of learned counsel for the petitioner to the effect that the conduct of respondent no.1 is not good as he had thrown out his wife from the house where respondent no.1 was residing is contrary to the pleadings made by the petitioner in his reply dated 24.09.2018 (Annexure P-3) inasmuch as in paragraph 2 of the said reply, it has been stated that the petitioner's "parents" which would include respondent no.1 and his wife had been turned out from the house by Rakesh Kumar. The relevant portion of paragraph 2 of the reply is reproduced hereinbelow:-

"When I purchased my personal house at Tej Bagh Colony in the year 2003 then my parents have been turned out from the house by Rakesh Kumar."

There is no averment in the reply to the effect that respondent no.1 (father of the petitioner) had turned out his wife, although averments have been made in the reply with respect to the fact that the petitioner was taking care of his mother. In paragraph 4 of the reply it has rather been stated that respondent no.1 (father) had willed away his entire property including giving one of his shops to the petitioner. The said conduct further shows that the respondent no.1 is an affectionate father. Paragraph 4 of the reply is reproduced hereinbelow:-

"4) That my father with his own consent has executed the Will with regard to the his whole property duly registered vide wasika No.266 dated 18.06.2010 i.e. Shop No.2439/2 situated at Chowk Kasera Patiala in my favour and the other shop No.2438/2 in favour of my brother Rakesh Kumar and the third shop No.2427/2 situated at Old Anaj mandi, Sanauri Gate, Patiala is in the name of my Bharjai Sushma Singla wife of Late Sh. Roshan Lal. At present, I have been doing Paint work in the shop No.2439/2 situated at Kasera Chowk, Patiala which come to my share for the last about 31 years. My father with his own consent got transferred the ownership of the shop No.2439/2 come into my share vide wasika No.218 dated 11.05.2016."

Moreover, the first ground sought to be raised is contrary to the

pleadings of the petitioner in his own reply before the authorities.

ii) Even the second ground to the effect that respondent no.1 is self sufficient has been found to be false in the impugned order dated 27.03.2019 (Annexure P-6) and in the said order, it has been specifically observed that out of the three shops, which respondent no.1 owned, one shop has been transferred to Rakesh Kumar, one shop has been transferred to the petitioner which is the shop in question and the third shop has been transferred to widow (daughter-in-law) of his third son and the income derived from the said shop has been given to the said widow, who has to take care of her child and the said fact has been admitted by the widow who has filed an affidavit in support of the same. The factum of the third shop having been willed away to the said widow has also been admitted in paragraph 4 of the reply dated 24.09.2018, the relevant portion of which is reproduced hereinabove. The authorities had also taken into consideration the bank account statements of respondent no.1 and had found that the amount in the savings account of the respondent no.1 was Rs.48,000/- which by no means could be considered to be sufficient bank balance for respondent no.1 to take care of himself for all his basic needs and medical health. It was observed that respondent no.1 only received pension amounting to Rs.1000/- per month on account of being having gone to jail during the emergency period and the said earning cannot be considered to be sufficient. The said observation made in the impugned order are neither shown to be perverse nor illegal. Thus, the second ground raised by learned counsel for the petitioner is rejected.

iii) The third ground with respect to one shop having been

given to son Rakesh Kumar and the same not having been taken back even if taken on face value, prima-facie shows that respondent no.1 is an affectoinate father who had given his property to his sons and widow daughter-in-law. The application has been filed for cancellation of the transfer deed in favour of the petitioner on account of the fact that the petitioner has not taken care of respondent no.1 and has harassed respondent no.1 and has not provided the basic amenities to respondent no.1. The non-filing of the application by respondent no.1 against his other son is a point against the petitioner and does not further the case of the petitioner in any manner. It would be relevant to note that all the said three grounds which have been raised by learned counsel for the petitioner even if taken on face value would not call for setting aside the order dated 27.03.2019 or rejecting the application under Section 23 of the 2007 Act as the said submissions have been made de hors the ingredients which are required to be taken into consideration while considering an application under Section 23 of the 2007 Act. The necessary ingredients have been mentioned in Section 23 itself and once the said ingredients are met, as in the present case, then the necessary consequence(s) of allowing the application would follow. There is no illegality in the order dated 27.03.2019 and the present writ petition is meritless and thus, deserves to be dismissed and is, accordingly dismissed.

9. It would be also relevant to note that a coordinate Bench of this Court vide order dated 14.12.2022 had directed the petitioner to pay an amount of Rs.15,000/- per month to respondent no.1 and the interim order was made to continue subject to the payment of the said amount to

respondent no.1. The petitioner had moved an application i.e., CM-367-CWP-2023 dated 01.01.2023 under Section 151 CPC for recalling of the said order dated 14.12.2022 to the extent that the payment of Rs.15,000/- has been ordered to be paid to respondent no.1 by the petitioner. The same would also show that apart from the fact that no money has been paid by the petitioner to respondent no.1 upto the passing of the impugned order, the petitioner is even reluctant in complying with the order dated 14.12.2022 passed by the coordinate Bench of this Court and the application for recalling of the same has been drafted within a period of one month from the passing of the said order.

10. Pending miscellaneous application, if any, stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

December 07, 2023.
Davinder Kumar

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