

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

(108)

CWP-18026-2023**Date of decision: - 21.08.2023****Pushminder Kumar****....Petitioner****Versus****Saroj Bala and others****.....Respondents****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Arvind Kashyap, Advocate,
for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned order dated 16.09.2022 (Annexure P-1) passed by the Deputy Commissioner-cum-Appellate Authority, Khanna, District Ludhiana under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred as 'Act of 2007').

2. Learned counsel for the petitioner has submitted that the order dated 16.09.2022 (P-1) suffers from two infirmities. It is stated that the first infirmity in the impugned order is that the transfer deed in the present case was executed by Saroj Bala, who is a senior citizen as well as by the sisters of the present petitioner, namely, Anjana Kumari and Monika, who both are not senior citizens and thus, the said transfer deed even to the extent of the share of Saroj Bala could not have been set aside.

It is contended that the second infirmity in the impugned order is to the

effect that respondent No.1 along with her two daughters had filed a suit for permanent injunction (Annexure P-5) restraining the present petitioner from alienating the property in question and respondent No.1 could not have initiated two proceedings at the same time. It is further contended that the civil suit is still pending and has prayed that on the said two grounds, the impugned order dated 16.09.2022 deserves to be set aside.

3. This Court has heard learned counsel for the petitioner and has perused the paper-book.

4. Respondent No.1-Saroj Bala, who is the widow of Vijay Kumar, is admittedly the mother of the present petitioner. The said Saroj Bala had filed an application dated 18.02.2021 (Annexure P-3) under Section 23 of the Act of 2007 for setting aside the transfer deed i.e Vasika No.121 dated 12.04.2017 executed by her along with Anjana Kumari and Monika in favour of the present petitioner. In the said application, it was averred that at the time of execution of the said transfer deed, the petitioner had assured her that he would take care of her and would help her at the time of need and would respect her, but immediately after the execution of the said transfer deed, the petitioner had started threatening her and stopped taking care of her and he did not serve her and had thrown her out from the house on account of which respondent No.1 had to live with her daughter Monika. On the basis of the said averments, the said transfer deed was challenged. A reply (Annexure P-4) was filed by the petitioner to the said application. In the averments made in the said reply (at page 32 of the paper-book), it was admitted by the petitioner that a small portion of the plot in question was in the name of respondent No.1

and also in the name of Anjana Kumari and Monika and that they had transferred the same out of their free will. Thus, the ownership of the property in question prior to the execution of the transfer deed dated 12.04.2017 was not disputed by the present petitioner. In the said reply, the fact that respondent No.1 was a senior citizen has also not been disputed. The Sub-Divisional Magistrate, Khanna/Maintenance Tribunal, vide order dated 15.03.2022 even after noticing that respondent No.1 is a senior citizen and a widow, illegally rejected the application filed by the respondent No.1. The appeal filed by respondent No.1 was allowed, vide order dated 16.09.2022 by the Additional Deputy Commissioner-cum-Appellate Authority, Khanna and while allowing the said appeal, it was specifically noticed that respondent No.1 is a senior citizen and that the transfer deed was executed by respondent No.1 and her daughters in favour of the present petitioner on the condition that the petitioner will be bound to fulfill the basic requirements of respondent No.1 and in case of not fulfilling the said requirements, respondent No.1 would have a right to get the transfer deed set aside. It was also observed that the SDM had ignored the provisions of Section 23 of the Act of 2007 and had wrongly dismissed the application of respondent No.1 by making observations beyond the provisions of the Act and by being wrongly influenced by the fact that a civil suit is pending between the parties. The appellate authority set aside the transfer deed to the extent of the share of the senior citizen (respondent No.1) only. The petitioner aggrieved by the order passed by the appellate authority, has filed the present writ petition in the year 2023 and the same has been listed today and thus, there is an

unexplained delay of more than 11 months in challenging the impugned order.

5. The argument of learned counsel for the petitioner to the effect that since the transfer deed was executed by three persons, out of which two persons were not senior citizens, thus, the same could not be set aside even qua the share of respondent No.1, who admittedly was a senior citizen, is misconceived and deserves to be rejected. No law has been cited by the petitioner in support of his said submission. It is a matter of settled law that in case there are three executants of a transfer deed, it is open to any one of the executants to challenge the transfer deed on any ground available in law to the said executant and in case the Court comes to the conclusion that the pleas raised by the said executant, challenging the said transfer deed are as per law, then the said Court/authority has every right to set aside the transfer deed, at least, to the extent that the same pertains to the transfer of the share of the said executant. The same has been done by the appellate authority in the present case and thus it cannot be said that the impugned order has been passed illegally.

6. Even the argument raised by learned counsel for the petitioner to the effect that since the civil suit filed by respondent No.1 along with Anjana Kumari and Monika against the present petitioner was pending, thus, respondent No.1 could not have instituted parallel proceedings and the impugned order deserves to be set aside on the said ground, also deserves to be rejected. A perusal of the suit (Annexure P-5) would show that the said suit was only a suit for permanent injunction

praying for restraining the present petitioner from selling/alienating the share of respondent No.1 and her daughters. In the said suit in para No.4 (at page 40 of the paper-book), it was specifically mentioned that respondent No.1 (plaintiff No.1 in the civil suit) had moved an application dated 18.02.2021 before the Sub-Divisional Magistrate, Khanna, with a prayer to cancel the above-said transfer deed. It is thus apparent that the suit was filed with a prayer for injunction during the pendency of the proceedings before the SDM so as to restrain the present petitioner from alienating the land or creating third party right in the property in question. The filing of the said suit cannot in any way be taken to be a bar for the respondent No.1 to pursue the proceedings under the Act of 2007. The Act of 2007 is a Special Act giving special rights to the Senior Citizens including the right under Section 23 of the Act of 2007 to get the transfer executed by a Senior Citizen after the commencement of the Act to be declared as void by the Tribunal. Since in the present case, the ingredients of Section 23 have been met with, thus, the said right of respondent No.1 cannot be denied merely because a civil suit for permanent injunction has been filed by said respondent No.1 along with her two daughters. Moreover, in the said suit, there is no prayer for cancellation of the transfer deed in question. The fact that respondent No.1 is a senior citizen and was owner of the share in the property regarding which the transfer deed has been set aside and that the property was transferred, subject to the condition that the petitioner shall provide basic amenities and fulfill needs of respondent No.1 has not been disputed before this Court and thus, the ingredients of Section 23 of the

Act of 2007 have been met with and the order dated 16.09.2022 (Annexure P-1) has been rightly passed and is in accordance with law and thus, deserves to be upheld.

6. In view of the above, the present writ petition being meritless deserves to be dismissed and is accordingly dismissed.

August 21, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes