

210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-18328-2021

Date of decision : 27.04.2023

Gurdeep Kaur

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Dhiraj Chawla, Advocate for the petitioner.

Ms. Jasleen Kaur Sidhu, DAG, Punjab.

None for respondent No.3.

MANOJ BAJAJ, J.

Petitioner has approached this Court under Article 226 Constitution of India for issuance of a writ in the nature of Certiorari setting aside the impugned order dated 19.08.2021 (Annexure P-5) passed by the appellate authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, whereby the order dated 12.01.2021 (Annexure P-4) passed by SDM, Ferozepur, cancelling the transfer deed dated 11.11.2004, (Annexure P-2) passed in favour of petitioner, was set aside. Further prayer is for issuance of a writ of mandamus directing the respondent No.2 to ensure the protection of the petitioner and restrain the respondent No.3 from entering the land of the petitioner.

Learned counsel submits that petitioner-Gurdeep Kaur has only five daughters, therefore, she informally adopted one of her grandsons, namely Pushpinder Singh-respondent No.3 as her son and transferred her immovable property in his favour vide transfer deed dated 11.11.2004 (Annexure P-2). He

submits that the grandson-respondent No.3 was residing with the petitioner, but after his marriage in the year 2005, he started neglecting the senior citizen and it compelled the petitioner to invoke the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 for cancellation of transfer deed, and vide order dated 04.07.2017 (Annexure P-3) passed by Sub Divisional Magistrate, Ferozepur, maintenance of Rs.10,000/- per month was awarded in favour of the petitioner. He further submits that even this amount of maintenance was not paid by the respondent No.3, therefore, the petitioner being a helpless lady again filed an application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, wherein the Sub Divisional Magistrate, Ferozepur vide order dated 12.01.2021 (Annexure P-4) accepted the application and cancelled the transfer deed bearing No. 5217 dated 11.11.2004, but the appellate tribunal vide impugned order dated 19.08.2021 (Annexure P-5) reversed the said decision and dismissed the petitioner's application. Learned counsel has argued that the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was enacted to protect the interest of the senior citizen, but despite the first order dated 04.07.2017, no maintenance was paid to the petitioner, therefore, the Sub Divisional Magistrate, Ferozepur had rightly passed the order dated 12.01.2021 (Annexure P-4) cancelling the transfer deed. According to him, the approach adopted by the appellate tribunal in reversing the said decision is bad in law and warrants interference.

On 15.09.2021, notice of motion was issued in this writ petition and respondent No.3 appeared through his counsel on 24.11.2021. Thereafter, the parties were sent before the Mediation and Conciliation Centre of this

Court to explore the possibility of settlement, however, the said attempt failed, and the case has been sent back to the High Court.

Today none has appeared on behalf of respondent No.3 and similar was the position on the last date of hearing.

After hearing the learned counsel and considering the material on record, this Court finds that the petitioner had previously filed a similar application seeking cancellation of the transfer deed on 11.11.2004, (Annexure P-2), but the Court of Sub Divisional Magistrate, Ferozepur vide order dated 04.07.2017 (Annexure P-3) declined the cancellation of instrument, and alternatively awarded monthly maintenance of Rs.10,000/- in favour of the senior citizen, and the same was to be deposited in her account.

During the course of hearing, it has not been disputed by the learned counsel that the said order was further challenged by the petitioner as well as by respondent No.3 before the appellate authority and both the appeals were dismissed vide order dated 23.11.2017. Thus, with this decision, the order granting maintenance in favour of the senior citizen attained finality and the same is still operative. Besides, there is nothing on record to indicate that the petitioner ever prayed for execution of the orders of the maintenance in her favour, however she filed another application seeking cancellation of the transfer deed, which was allowed by Sub Divisional Magistrate, Ferozepur vide order dated 12.01.2021 (Annexure P-4). A perusal of this order shows that it has not given any cogent reasons while setting aside the transfer deed, therefore, the appellate Court is justified in interfering with the said decision, as the issue of cancellation of transfer deed had attained finality in the previous round of litigation between the parties. Apart from it, the transfer deed was

executed in the year 2004, whereas Maintenance Act was promulgated in the year 2007 and Section 23 specifically applies to the transfers made by way of gift or otherwise after the commencement of this Act. Thus, the claim of senior citizen seeking cancellation of transfer deed dated 11.11.2004 (Annexure P-2) cannot be maintained.

In view of the above, the writ petition is dismissed.

(MANOJ BAJAJ)
JUDGE

27.04.2023
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No