

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-20642-2022(O&M)

Date of decision : 16.08.2023

Harjyot Singh

... Petitioner

Versus

District Magistrate-cum-Appellate Tribunal and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Vishal Sharma, Advocate for the petitioner.

Mr.Rohit Bansal, Sr.DAG, Punjab for respondents no.1 and 2.

Mr. Deepak Verma, Advocate for respondent no.3.

VIKAS BAHL, J.(ORAL)**CM-7378-CWP-2023**

1. This is an application under Section 151 CPC for placing on record written reply along with Annexures R-3/1 to R-3/4.

2. The application is allowed. Written reply along with Annexures R-3/1 to R-3/4 are taken on record.

CWP-20642-2022

1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari to set aside the order dated 22.07.2019 (Annexure P-1) passed by respondent no.2 i.e., the Sub Divisional Magistrate-cum-Maintenance Tribunal, Garshankar vide which the transfer deeds dated 06.09.2018 and 08.10.2018 executed by respondent no.3 in favour of the petitioner have been set aside and also the order dated 01.10.2019 passed by respondent no.1 i.e., the District

Parents and Senior Citizen Act, 2007 (hereinafter referred to as 'Act of 2007') Hoshiarpur, vide which the appeal filed by the petitioner against the order dated 22.07.2019 has been dismissed.

2. Learned counsel for the petitioner has challenged the impugned orders primarily on two grounds. Firstly it is submitted that after the transfer was made by respondent no.3, who is the grandfather of the petitioner, in favour of the petitioner through transfer deeds dated 06.09.2018 and 08.10.2018, the petitioner had further sold the same on 16.10.2018 to respondent no.4 Daljit Kaur Sangha, who is the maternal aunt (Mami) of the petitioner and the said sale was done with the consent of the present petitioner and thus, the application filed by respondent no.3 under the Act of 2007 was not maintainable. The second submission of the learned counsel for the petitioner is that the petitioner, after the execution of transfer deed by respondent no.3 in favour of the petitioner, had gone to Australia and from there, he had sent Rs.10,000/- on 14.09.2019 for which postal receipt dated 14.09.2019 (Annexure P-5) has been relied upon to prima facie show that the petitioner had been taking care of respondent no.3. It is submitted that on the basis of said two grounds, the impugned orders deserve to be set aside and the transfer deeds dated 06.09.2018 and 08.10.2018 deserve to be upheld.

3. Learned counsel for respondent no.3, on the other hand, has opposed the present petition and has submitted that in the present case, a perusal of the application (Annexure R-3/1) would show that the same was filed on 25.10.2018 and in the said application, it was stated that the present petitioner had assured that he would provide meals and daily necessities of life to respondent no.3 and also serve him in his old age and thereafter,

respondent no.3 transferred 13 kanal 6 marla of land through the said two transfer deeds. It is further submitted that it has been averred in paragraph 9 of the application that one week prior to 25.10.2018, the petitioner had turned out respondent no.3 from his house after giving beatings to him and had refused to maintain respondent no.3 and without his consent, had transferred the property in favour of respondent no.4 on 16.10.2018 which was within a period of 9 days from the date of the second transfer deed i.e., 08.10.2018. It is stated that since the ingredients of Section 23 of the Act of 2007 were fully met, thus, the impugned orders have been rightly passed. With respect to the argument raised by learned counsel for the petitioner to the effect that the transfer made by the petitioner in favour of respondent no.4 was with the consent of the respondent no.3, it is submitted that there are specific averments in the application filed by respondent no.3 with respect to no consent having been given by him. Further reference has been made to the reply (Annexure R-3/2) moreso, paragraph 9, filed by the petitioner before the Sub Divisional Magistrate to show that a contradictory plea has been taken by the petitioner on the said aspect inasmuch as, at one stage it has been stated that no consent of respondent no.3 was required for transferring the property to respondent no.4 although in the latter part of said paragraph, it has been stated that the consent was given by respondent no.3. It is stated that there is no evidence to show that any consent was ever given. Even with respect to the second argument of learned counsel for the petitioner, it is submitted that a postal receipt dated 14.09.2019 has apparently been made in order to create evidence inasmuch as in the present case the order was passed by the Sub Divisional Magistrate-cum-Maintenance Tribunal on 22.07.2019 and the said postal order/receipt is

subsequent to the same. It is further submitted that the application in the present case was dated 25.10.2018 which was filed by respondent no.3 and in the said application, it has been specifically averred that the petitioner had turned out respondent no.3 one week prior to the filing of the said application and thus, for all these months, the petitioner, who was duty bound to take care of respondent no.3, has not been taking care of him and thus, any isolated payment made on one date which was also subsequent to the passing of the order, does not substantiate that the petitioner was taking care of respondent no.3. It is submitted that respondent no.3 has never received the said postal order dated 14.09.2019 (Annexure P-5) and the said postal receipt does not prove that the amount was actually sent. It is further submitted that as far as respondent no.4 is concerned, said respondent no.4 had earlier filed a writ petition i.e., CWP-2056-2020 (Annexure P-3) which was withdrawn vide order dated 09.08.2022. It is stated that thus, the impugned order qua respondent no.4 has attained finality and the petitioner, thus, is estopped from raising the plea that the respondent no.4 is a bonafide purchaser and the sale in her favour needs to be protected. It is prayed that the impugned orders are legal and in accordance with law and thus, deserve to be upheld.

4. This Court has heard learned counsel for the parties and perused the paper book.

5. A perusal of the memo of parties would show that respondent no.3 who is the grandfather of the petitioner, is shown to be 86 years of age. It is not in dispute that even at the time when the application was filed by respondent no.3 for declaring transfer deed dated 06.09.2018 as well as transfer deed dated 08.10.2018 as illegal, null and void, respondent no.3

was a senior citizen. The fact that respondent no.3 was the owner of the property in question is also not in dispute. In paragraph 2 of the application (Annexure R-3/1) filed by respondent no.3, it has been specifically stated that respondent no.3 is the owner of land measuring 13 kanal 6 marla which was the subject matter of the said two transfer deeds and in response (Annexure R-3/2) to paragraph 2 of the said application, it had been admitted by the petitioner that respondent no.3 was the owner of land in dispute measuring 13 kanal 6 marla, although it was further averred that it had been transferred by the respondent no.3 to the petitioner. Thus, the ownership of respondent no.3 prior to the said transfer deed is not disputed. It is the specific case of respondent no.3 in the application (Annexure R-3/1) moreso, in paragraph 7 of the said application that the petitioner had assured him that he would provide meals and daily necessities of life to respondent no.3 and also serve him in his old age and that the petitioner had asked respondent no.3 to transfer his land in his name on the said assurance and also on the assurance that the petitioner would cultivate the land himself and would not waste the land and would not alienate or transfer the same in favour of anybody and also keep respondent no.3 in the house at village Kallewal. It had been further averred in paragraph 8 of the application that on the said condition, the transfer deed was executed but immediately after the execution of the said transfer deed, the petitioner had turned out respondent no.3 from his house after giving beatings and had refused to maintain respondent no.3 and that respondent no.3 is residing with his daughter Sarabjit Kaur at village Rahana Jattan, Tehsil and District Hoshiarpur. It was further averred that the petitioner had got the said land transferred in favour of respondent no.4 without the consent of respondent

no.3 and was also not providing meals and other daily necessities of life to respondent no.3 and he had no independent source of income. In paragraph 7 of the reply (Annexure R-3/2), it has been admitted by the petitioner that he had agreed and assured to keep respondent no.3 in the house at village Kallewal. It was further averred in paragraph 9 that the petitioner is now in Australia. On a pointed query raised by this Court, learned counsel for the petitioner has very fairly submitted that the petitioner is even now residing in Australia and has filed the present petition through special power of attorney holder and is thus, not cultivating the land in dispute himself and is not personally present to take care of respondent no.3. The Sub Divisional Magistrate-cum-Maintenance Tribunal vide order dated 22.07.2019 had come to the conclusion that the transfer deeds were executed by respondent no.3 in favour of the petitioner in lieu of maintenance and the petitioner taking care of respondent no.3, which had not been done by the petitioner and the hurried manner, in which the petitioner had transferred the property in favour of respondent no.4 within a period of few days, inasmuch as the second transfer deed by respondent no.3 in favour of the petitioner is dated 08.10.2018 and further transfer by the petitioner in favour of respondent no.4 is dated 16.10.2018, would show the malafide intent of the petitioner. The Sub Divisional Magistrate-cum-Maintenance Tribunal has accepted the application filed by respondent no.3 under Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 and had set aside the transfer deeds. The appeal filed by the petitioner was dismissed by the Appellate Tribunal vide order dated 01.10.2019 after observing that the transfer deeds were executed by respondent no.3 in favour of the petitioner on the ground that the petitioner would take care of respondent no.3 and

provide basic amenities to respondent no.3 but the petitioner had not taken care of respondent no.3 and had also given beatings to him and had transferred the land in favour of respondent no.4 and had also turned him out of the house and respondent no.3 is now residing with his daughter under compulsion as he has no source of income.

6. Both arguments raised by learned counsel for the petitioner are meritless and deserve to be rejected. With respect to the first argument of learned counsel for the petitioner to the effect that the sale/ transfer was made by the petitioner in favour of respondent no.4 with the consent of respondent no.3, it would be relevant to note that there is nothing on record to even remotely suggest the same. In the application filed by respondent no.3 (Annexure R-3/1), it was specifically stated in paragraph 9 (page 32 of CM-7378-CWP-2023) that the present petitioner had transferred the land to respondent no.4 without the consent of respondent no.3. In reply (Annexure R-3/2) in paragraph 9, contrary pleas have been taken by the petitioner. It has been stated in paragraph 9 that no consent of respondent no.3 was required for transferring the land to respondent no.4 whereas in the latter part of said paragraph, it has been mentioned that the sale has taken place with the consent of respondent no.3. The said sale had been made on 16.10.2018, which is immediately after the transfer deed dated 08.10.2018 and in case the property had to be ultimately transferred to respondent no.4 only, there was no need to execute two transfer deeds first in favour of the petitioner and then to execute sale deed in favour of respondent no.4, who is the maternal aunt of the petitioner and incur unnecessary expenses and waste energy in executing three registered documents. Moreover, the respondent no.3 had filed the application for cancelling the transfer deeds

on 25.10.2018 i.e, immediately after the sale executed by the petitioner in favour of respondent no.4. The said facts clearly show that the respondent no.3 never consented to the transfer in favour of respondent no.4 and the petitioner has raised the said plea without there being any substance in the same. It would also be relevant to note that respondent no.4, who is the maternal aunt of the petitioner and in whose favour, the petitioner had transferred the property, had earlier filed CWP-2056-2020, which was dismissed as withdrawn vide order dated 09.08.2022 (Annexure P-3) and thus, impugned orders have attained finality qua the respondent no.4 and the petitioner is estopped from raising the plea that respondent no.4 is a bonafide purchaser and the sale in her favour should be protected.

7. The second argument raised by learned counsel for the petitioner to the effect that Rs.10,000/- was sent on 14.09.2019 and that the same would indicate that the petitioner was taking care of respondent no.3 also deserves to be rejected. The application in the present case was filed on 25.10.2018 with the specific averments that the petitioner was not taking care of respondent no.3 and had even turned him out of the house one week prior to the filing of the said application. The Sub Divisional Magistrate-cum-Maintenance Tribunal vide order dated 22.07.2019 had accepted the plea of respondent no.3 and had cancelled the transfer deeds. During the entire proceedings, the petitioner was not able to place on record any document to show that any money was transferred by the petitioner to respondent no.3 or that the petitioner was taking care of respondent no.3 as had been assured to him by the petitioner at the time of execution of the transfer deeds in his favour. The postal receipt dated 14.09.2019 (Annexure P-5) has been apparently created subsequent to the passing of the order

dated 22.07.2019 for the purpose of raising a plea before the Appellate Authority. It is the case of respondent no.3 that he had never received the said postal order vide which as per the case of the petitioner, an amount of Rs.10,000/- was transferred to respondent no.3. There is nothing on record to prove that the amount of Rs.10,000/- was actually sent or actually received by the respondent no.3. At any rate, the postal order is only with respect to one month and there is no other document annexed with the present petition to show that any other amount was paid for any other month. Moreover, as is apparent from the pleadings, the transfer deeds were executed by respondent no.3 in favour of the petitioner on the condition that the petitioner would serve him during his old age and would also provide meals and basic amenities of life and would also cultivate the land himself and not waste or alienate the same and also would keep the petitioner in the house at village Kallewal and since the petitioner has violated the said conditions, the impugned orders have been rightly passed.

8. Section 23 of Act 2007 specifically provides that where a senior citizen has, after commencement of the Act, 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. In the present case, necessary ingredients of said provisions are met and, thus, the impugned orders have been rightly passed. Moreover, the impugned orders were passed on 22.07.2019 and 01.10.2019, the present petition has been filed on

08.09.2022 and for the first time, the petition was listed on 12.09.2022 i.e., after an unexplained delay of more than 2 years and 11 months from passing of the order by the Appellate Tribunal.

8. Finding no merit in the present petition, the same is dismissed.

August 16, 2023

Davinder Kumar

(VIKAS BAHL)

JUDGE

Whether speaking / reasoned

Whether reportable

Yes/No

Yes/No