

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-28154-2022

Reserved on 17.08.2023

Decided on 15.12.2023

Renu Sehrawat & Ors.

... Petitioners

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sanjay Rathi, Advocate for
Mr. NK Vadehra, Advocate the petitioners

Ms. Dimple Jain, DAG Haryana

Mr. Edward Masih, Advocate for Respondent No.2-Savitri

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing of order dated 04.10.2022 passed by the appellate authority i.e. District Magistrate, Jhajjar in case No.42/Senior Citizen/2022 (Annexure P5) and order dated 13.07.2022 passed by Maintenance Tribunal/SDM Beri in case No.1619/Senior Citizen/2021 (Annexure P3).

(2). Petitioner No.1-Renu Sehrawat is the daughter-in-law of Respondent No.2-Savitri and wife of petitioner No.2 (Sanjay Sehrawat) and petitioner No.3 (Kushagra Sehrawat) is the grandson of Respondent No.2-Savitri and son of petitioners No.1&2. Respondent No.2-Savitri had filed three separate complaints/petitions before the SDM, Beri exercising the powers as Maintenance Tribunal under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (in short, the 2007 Act), under Section

23(1) for Cancellation of transfer deed No.1131 dated 28.05.2015 (transfer of immovable property within blood relation) and mutation No.616 and the same was decided vide impugned order dated 13.07.2022 (Annexure P3) declaring the Deed NO.1131 dated 28.05.2015 as null and void in view of the fact that the allegations as per the complaint filed by respondent No.2-Savitri regarding physical assault and misbehavior stood established. The petitioners filed appeal against the order dated 13.07.2022 (Annexure P3), under Section 16 of the 2007 Act, before the District Magistrate-cum-Appellate Tribunal which has been dismissed vide impugned order dated 04.10.2022 (Annexure P5).

(3). Brief facts of the case are that one Gulab Singh was the ancestor of the parties, who are survived by four sons and three daughters namely, Shiv Narayan, Laxman, Srichand, Khushali, laxmi Devi, Hukmo and Ram Devi. Srichand and Khushali being real brothers, both were married on the same day in the same family with two real sisters. Sri Chand was married to Smt. Chandro and Khushali was married to Smt. Bhateri Devi and Smt. Chandro who was married to Sri Chand had expired 59 years back and thereafter the third sister of Chando and Bhateri Devi namely Savitri i.e. Respondent No.2 herein was married to Sri Chand. However, Sri Chand had also expired on 03.08.1961 leaving behind Respondent No.2-Savitri herein as his widow. The name of Respondent No.2-Savitri being widow of Sri Chand was recorded in the records of rights in respect to the revenue estate of Nangal Dewat, New Delhi, the place to which the parties herein belongs and on considering the report of the then patwari dated 13.11.1961, the mutation was recorded wherein the death of Sri Chand was reported to have occurred on 03.08.1961 and accordingly, in the presence of Khushali and Yaadram, the then village

Pradhan of Village Nangal Dewat, both were witnessed in the mutation proceedings. Not only this, the respondent No.2-Savitri herein being widow of Sri Chand, had also inherited land of village Sahupur, New Delhi.

(4). After the death of Sri Chand, the Respondent No.2-Savitri herein Savitri Devi who had no issues/children from the union of Sri Chand was married in Kareva marriage with Khushali, the brother of deceased Sri Chand, in the year 1961 with her consent and with the consent of elder family members and it was decided in the oral settlement that who were will be born from the union/ lions of the respondent and Khushali, will inherit the ancestral property/family property of the share of Sri Chand and in the said family settlement, it was also discussed and decided that whoever will be born from the Union of Khushali and his wife Bhateri, they will inherits the ancestral property only from the share of Khushali. The four children have been born from the union/loins of Respondent No.2-Savitri and Khushali including Baljeet Singh.

(5). The original land situated at Village Nangal Dewat, Delhi was acquired and from the compensation of the said land, the Respondent No.2-Savitri herein had purchased agricultural land in village Dulina, District Jhajjar, Haryana in the year 1975 and that point of time, the petitioner No.2 and another son namely Baljeet have born from the union of the Respondent No.2-Savitri and Sh. Khushali and in the land measuring 121 Kanal 12 Marla, the petitioner No.2, Baljeet and the Respondent No.2-Savitri had one-third (1/3rd) each. The petitioner No.2 has transferred his one-third share from the abovesaid property in favour of petitioner No.1 vide transfer deed dated 22.08.2014 and the respondent No.2 allegedly in connivance with Baljeet had

filed a civil suit titled as Savitiri v/s Renu & Ors. pending before the Civil Court at Jhajjar, Haryana and the respondent had also filed complaint No.1618/2021 before the Maintenance Tribunal. Baljeet, who is the brother of the petitioner No.1, had also preferred civil suit No. 497/2016 titled as Baljeet Singh V/s Khushagrah Sehrawat & Ors. for cancellation of release deed dated 28.05.2015 and also the respondent No.2 had preferred complaint with the same subject matter vide complaint No.1619/2021.

(6). The respondent No.2-Savitri herein out of her own with free will, love and affection had transferred/gifted/released land measuring 20 Kanal 33 Marla being half of her one-third share in the above mentioned land total measuring 121 Kanal 12 Marla in favour of the petitioner No.3 herein by registered lease deed dated 28.05.2015 against which complaint No.1619/2021 was preferred before the Maintenance Tribunal in which the Maintenance Tribunal had passed the impugned order dated 13.07.2022 (Annexure P3) .

(7). Learned counsel for the petitioners contended that the Transfer Deed (Transfer of the property within the blood relation) bearing No.1131 dated 28.05.2015 (Annexure P-6) was executed by respondent No.2-Savitri vide which immovable property falling in Khewat No.26/19, having Khatta No.64, with total land measuring 121 Kanal, 12 Marle, out of which the Respondent No.2-Savitri was having $1/3^{\text{rd}}$ share which is measuring 20 Kanal and 5.33 Marla, was transferred by respondent No.2-Savitri in favour of her grandson, namely, petitioner No.3-Kushagra (minor). He submitted that another son of Respondent No.2-Savitri namely Baljeet, brother of the petitioner No.2 herein also filed Civil Suit bearing CS No.497/2016 titled as

"Baljeet Singh Versus Kushagra Sehrawat & Ors." wherein said Baljeet Singh has challenged the said deed (Annexure P6) on the ground that the property mentioned in the said release/transfer deed has already been transferred to said Baljeet Singh and during the pendency of the application and appeal under 2007 Act, the Respondent No.2-Savitri herein had filed her written statement (Annexure P8) admitting the contents of the suit so filed by said Baljeet Singh.

(8). It is further pleaded that even in the written statement filed by the Respondent No.2-Savitri and suit filed by Baljeet Singh, they have not even remotely pleaded that the present petitioners are unable to maintain the Respondent No.2-Savitri or denied to maintain the Respondent No.2-Savitri. He then submitted that the said Baljeet Singh even attempted to manipulate an order of the Maintenance Tribunal. It is then argued that the said Baljeet Singh has moved many false complaints against the petitioners No.1 and 2 by using the name of Respondent No.2-Savitri and as such the same were found to be false, which fact is apparent from the statement recorded by S.I dated 11.03.2022 (Annexure P-10).

(9). Learned counsel for the petitioners then argued that the complaint purportedly filed on behalf of respondent No.2 is further bad in the eyes of law and is not maintainable as none of the requisite requirements for maintaining the said complaint nor the requirements have been fulfilled by the Respondent No.2 and the same deserves to be dismissed outrightly as there is no averment as to what basic amenities and basic physical needs which be said to have not been provided by the petitioners to the Respondent No.2 after the said volunteered execution of the release deed (transfer of immovable

within the blood relation) dated 28.05.2015. He then submitted that petitioners had always given due care and respect and had always provided all basic and best amenities at each point of time to respondent No.2-Savitri, till she had been poisoned by Baljeet who is the son of respondent No.2 and brother of the petitioner No.2.

(10). Another submission made by the petitioners is that Baljeet has coerced and influenced Respondent No.2 and under his pressure respondent No.2 has filed the petition under Section 23. He submitted that there is no material placed on record before the Maintenance Tribunal to even indicate that the execution of the release deed was vitiated by fraud or coercion or undue influence. Another submission is that the Maintenance Tribunal did not hold any inquiry as contemplated by the 2007 Act. He submitted that the ingredients of Section 23 were not established. Reliance has been placed on **Jagmeet Kaur Pannu V/s Ranjit Kaur Pannu 216 (2) RCR Civil 82** wherein this Court held that the parents cannot revoke a gift made to his/her child voluntarily unless it is proved with positive evidence that the child was not willing to maintain or refused or failed to provide such amenities and physical need and that the gift cannot be cancelled or revoked at the will of the transferor.

(11). Learned counsel further placed on heavily reliance on the judgment of the Kerala High Court in **Subhashini vs. District Collector, Kozhikode (WA No.1460/2015)** decided on 22.09.2020 wherein the ratio of jurisdiction for invoking the provisions of the 2007 Act was evaluated and it was held that the jurisdiction of Tribunal does not stands created unless specific recitals in the impugned document creates the jurisdiction and in the

absence of the same, any such alleged right is to be adjudicated by the civil jurisdiction and not by the Maintenance Tribunal. It was thus argued that Maintenance Tribunal did not have jurisdiction to try or entertain the complaint/petition.

(12). Notice of motion was issued on 07.12.2022 and it was directed that no third party righty shall be created qua the property in question. Respondent No.2 put in appearance and submitted that it does not want to file any reply in the matter. So was the stand of the State Government and as such, this Court proceeded to hear the case on merits.

(13). On 09.08.2023, learned counsel for respondent No.2 sought time to place on record CCTV footage showing the beatings given by the petitioners No.1&2 as well as x-ray reports to which a reference has been made on the emergency OPD slip dated 20.05.2022 and in response thereto, CM-13471-CWP-2023 has been filed by respondent No.2, placing on record CCTV footage as well as copy of MLR report (Annexure R2/2 & R2/3) showing merciless beatings given to respondent No.2 by the present petitioners NO.1&2. It was further averred in the application that in regard to beatings given by petitioners NO.1&2, a FIR No.270 dated 21.05.2022 under Section 308/325/341/506/34 IPC has also been registered at Police Station Vasant Kunj South.

(14). Heard learned counsel for the parties and gone through the record.

(15). In modern era, due to urbanisation and vast expansion in search for livelihood, parents have been treated as a liability because of their old age and infirmities. Old age homes have sprung up in every nook and corner of

the country. The act of serving and caring for the parents which was once considered as part of the tradition and culture has slowly disappeared giving rise to new social challenges. The State is concerned about cohesive order in the family which is the basic unit of the society. Happiness in the State would depend upon the happiness cherished in the Society. This happiness is derived from the values cherished. These values have been cited as moral values

(16). The parliament enacted the Senior Citizens Act to uphold the dignity and respect of a senior citizen at the time of old age. State had serious concern about the challenge faced by the people in their old age. Apart from physical vulnerabilities, they face emotional and psychological challenges. On account of these frailties, they are totally dependent. The moral laws formulated through the legislation is necessary to rationalise the well being of all in the society. The moral values that prevailed in the society in the past have been accepted as universal values. The State in its wisdom, considering the acceptance of these values, seeks to promote the common good through the 2007 Act. These values carried duties and obligations.

(17). Section 23 of the 2007 Act gives power to the Maintenance Tribunal to declare transfer of deed as void in certain circumstances referred therein. It states that after the commencement of the enactment, transfer of property of a senior citizen by way of gift or otherwise, is subject to the condition that transferor would be provided basic amenity and physical needs and that if the transferee refused to provide basic amenities and physical needs. Thereafter, the Tribunal can declare such deed as void invoking power under Section 23.

(18). For attracting sub-section (1) of Section 23, the two conditions must be fulfilled, namely, the transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and if the transferee refuses or fails to provide such amenities and physical needs to the transferor and if both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void.

(19). It may be true that when a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it as, very often, such transfers are made out of love and affection without any expectation in return, however, it has become a part of our so-called 'modernised', 'sophisticated' and 'educated' society to see aged parents and aged senior citizens seeking shelter of the Courts for their social and economic safety as we see some of them being driven away from their own house by their own daughter-in-law and son craving for proper maintenance and basic necessities ultimately constraining them to take shelter in old age home run by government or by NGOs, which is eroding the values and tradition of Bharat – a country where an obedient son like Ram happily accepted 14 years of exile just to obey his father's order.

(20). In the present case, it has come on record that Baljeet Singh son of respondent No.2-Savitri had given affidavit and request for withdrawing the Suit No. 497/2016 N.D.H. 27.07.2022. Further, Deed No.1131 dated

28.05.2015 has been got registered after threatening to respondent No.2-Savitri by petitioners No.1&2 and since 2019, the said petitioners are stopping to do farming on the land of the respondent No.2 due to which, complaints for physical assault and misbehaviour have also been got filed by the respondent No.2. undoubtedly, the purpose of the 2007 Act is for providing protection to the life and asset of the senior citizens and if children and successors are not properly following the obligations towards their own senior citizens, then whatever property they have received from ancestry, they must be disrobed from their rights and entitlements. The respondent No.2 is a senior citizen and due to end of joint family culture nowadays, there has been constant negligence of the parents and senior citizens and as such cases of crime, sin and abandonment against these gullible members of the family are on the rise in the society. The object of the Maintenance & Welfare of Parents and Senior Citizen Act 2007 is to ensure social safety of the seniors and their livelihood & welfare, and those senior citizens who are being oppressed even with their children, protecting their rights is obligation of the Maintenance Tribunal. The beatings and harassment being meted out to respondent No.2-Savitri is evidence from the CCTV footage, photographs and MLR placed on record by respondent No.2 as Annexures R2/2 & R2/3.

(21). On merits, it is undeniable that Deed No. 1131 dated 28.05.2015 has been got executed by the respondent No.2-Savitri but it has also established on the record that complaints for physical assault and misbehaviour have also been got registered by respondent No.2-Savitri against the petitioners No.1&2. As far as pending Civil Suit is concerned, on that Baljeet Singh has filed application on record for withdrawing the case. Hence,

the decision concerning with the Deed No. 1131 dated 28.05.2015 is to be taken even by the Maintenance Tribunal.

(22). Further the beneficiary in the instant case is minor and Section 23 of 2007 Act is silent with regard to its applicability on a minor or major. There cannot be any dispute with regard to the fact that guardian is owner in the matter of minor. Therefore, petitioner No.1 has been brought in the array of the parties and separate relief has not been required for her. As far as complaint to be maintained is concerned, no necessity to write or describe in the deed, which fulfils the purpose of the 2007 Act which is made for the welfare of Senior Citizen. Not only so, the petitioners No.1&2 harass the Respondent No.2, beat her, for which the Respondent No.2 has also been got registered FIR No.270 dated 21.05.2022 for which Delhi Police has already rendered its assistance to the Respondent No.2 (Savitri).

(23). In view of the reasons recorded hereinabove, this writ petition is dismissed.

15.12.2023
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No