

104

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

CWP-26272-2023

Date of decision: 22.11.2023

Manjot Singh and another

...Petitioners

Versus

Ld. Appellate Tribunal-cum-District Magistrate, Malerkotla and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sunny Kumar Singla, Advocate for the petitioners.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 01.11.2021 (Annexure P-2) passed by respondent No.1.

2. Brief facts of the present case are that respondent No.3-Bhajan Singh had filed an application on 20.04.2018 against his four sons i.e. Dara Singh, Avtar Singh, Sikander Singh and Harjinder Singh (respondent Nos.4 to 7 respectively) under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter to be referred as "Senior Citizens Act") for cancellation of transfer deed No.784 dated 03.06.2016. The first authority under the Act accepted the

said application vide order dated 27.02.2020 and cancelled the transfer deed dated 03.06.2016. Respondent No.4-Dara Singh filed an appeal against the said order and the Appellate Tribunal on 19.11.2020 set aside the order dated 27.02.2020 and remanded the case back to the first authority to decide the case on merits after providing an opportunity of hearing to all the concerned parties. The first authority, in the second round of litigation, vide order dated 26.03.2021, disposed of the application under Section 23 of the Senior Citizens Act by only granting maintenance of Rs.2,000/- each per month to respondent No.3 and did not order cancellation of the transfer deed. An appeal was filed against the said order, by respondent No.3 and the Appellate Authority vide order dated 01.11.2021 (Annexure P-2), allowed the said appeal and cancelled the transfer deed dated 03.06.2016 by observing that respondent No.3-Bhajan Singh was aged about 75 years and was a senior citizen and had transferred 44 bighas 16 biwas 7 biswasi of land situated in village Flaud Khurd in the name of his four sons vide transfer deed dated 03.06.2016 and in the said transfer deed, it was specifically mentioned that in case the beneficiaries do not take care of the executant, then the senior citizen/respondent No.3 would have a right to get the transfer deed cancelled under Section 23 of the Senior Citizens Act. It was further observed that the four sons of respondent No.3, in whose favour the transfer deed was executed, did not take care of respondent No.3 and did not provide the requisite needs of life to respondent No.3 and the respondents therein could not adduce any evidence to show that they had

ever given any maintenance to their father or had provided anything to meet the basic needs of respondent No.3. It was the case of respondent No.3 that Avtar Singh, Sikander and Harjinder Singh had gone abroad and that he had spent his hard-earned money for sending the said sons abroad and the said sons had forgotten respondent No.3 and were not taking care of him. It was further the case of respondent No.3 that respondent No.4-Dara Singh, father of the petitioner No.1 and husband of petitioner No.2, never took care of respondent No.3 and in fact, the said respondent No.4 and petitioner No.2 used to fight and abuse respondent No.3. It is the order dated 01.11.2021 which is sought to be challenged by the petitioners after a delay of more than 2 years.

3. Learned counsel for the petitioners has submitted that respondent No.4 had executed a transfer deed dated 23.05.2018 in favour of the present petitioner Nos.1 and 2, who are the son and the wife of respondent No.4 respectively and the said two persons had not been made a party in the proceedings before the authorities below and had not been granted an opportunity of hearing and thus, the entire proceedings and the impugned order deserves to be set aside on the said ground alone. It is further submitted that petitioner No.1 is 100% disabled and for the said purpose, reference has been made to the Certificate (Annexure P-5). It is also submitted that the petitioners are ready to take care of respondent No.3.

4. This Court has heard learned counsel for the petitioners and has perused the paper book and finds that the present writ petition is

meritless and deserves to be dismissed for the reasons which have been detailed in the following paragraphs.

5. It is not in dispute that respondent No.3-Bhajan Singh is a senior citizen and is stated to be more than 75 years of age and is also the original owner of the property measuring 44 bighas 16 biswas and 7 biswasi and he had executed a transfer deed dated 03.06.2016 in favour of his four sons namely Dara Singh @ Didar Singh, Avtar Singh, Sikander Singh and Harjinder Singh (respondent Nos.4 to 7). The said transfer deed dated 03.06.2016 has been annexed along with the present petition as Annexure P-3. A note has been mentioned in the said transfer deed to the effect that in case the beneficiary does not take care of the executant, then the senior citizen i.e. respondent No.3 would have a right to cancel the transfer deed under Section 23 of Senior Citizens Act. The relevant portion of the said transfer deed is reproduced hereunder:-

“Dated: 03.06.2016

Note: That in case the beneficiary does not take care of the executant, then the senior citizen has a right to get cancel the transfer deed under Section 23 of the Senior Citizen Act.”

6. The Appellate Tribunal vide order dated 01.11.2021 has rightly come to the conclusion that the sons of respondent No.3 are not taking care of respondent No.3 and are not providing him with the basic needs of life after getting the property transferred in their name. There was no evidence produced by the respondents therein to even remotely show that any maintenance was being paid to respondent No.3 or the

basic needs of respondent No.3 were being fulfilled by his sons. The statement of respondent No.3 in the said regard was also taken into consideration in which he had stated that his children, including respondent No.4, who is the father and husband of the present petitioners, were not taking care of him and were not fulfilling his basic needs. It has also not been disputed that respondent Nos.5 to 7 are staying abroad and there is nothing on record to show that they have ever done anything to take care of respondent No.3. With respect to respondent No.4, it is the case of respondent No.3 that respondent No.4, along with petitioner No.2, who is the wife of respondent No.4, are not treating respondent No.3 properly and even used to fight with him. At any rate, nothing has been produced on record before the authorities or before this Court to show that any son or even the petitioners have been taking care of respondent No.3 so as to fulfill his basic needs and thus, in the present case, all the necessary ingredients of Section 23 of the Senior Citizens Act are met and the impugned order dated 01.11.2021 being legal, deserves to be upheld. Moreover, the petitioners have approached this Court after a delay of more than 2 years.

7. The arguments raised by learned counsel for the petitioners to the effect that respondent No.4 had transferred the land measuring 11 bighas 4 biswa 1.4/5 biswasi vide transfer deed dated 23.05.2018 in favour of the petitioners and thus, the petitioners have an independent right of being heard, is misconceived and deserves to be rejected for the following reasons:-

- (i) It is not in dispute that the application was filed on 20.04.2018, which fact further stands reiterated from page 14 where the date of institution has been mentioned as 20.04.2018 (Annexure P-1) and also from page 18 in which the date of institution of the case has been specifically mentioned. Admittedly, the transfer by respondent No.4-Dara Singh in favour of his own son and wife (petitioner Nos.1 and 2) is dated 23.05.2018 and is thus, hit by the principle of *lis pendens*. The petitioners have to sink and swim with respondent No.4. Once, respondent No.4 after contesting the case, has been unsuccessful, then it would not be open to the petitioners to raise any independent plea or to raise a plea that they should have been given an opportunity of hearing, more so when the application for impleading them moved by respondent No.4 herein before the Sub-Divisional Magistrate was rejected vide order dated 25.03.2021, which order has not been further challenged and is also not challenged in the present proceedings.
- (ii) As has been stated hereinabove and as is mentioned in page 18 (Annexure P-1) before the Sub-Divisional Magistrate, the application for impleadment of petitioner No.1-Manjot Singh was filed and the same was dismissed on 25.03.2021. The said order is not under challenge before this Court nor the same is on record and thus, on the said ground also, the argument raised on behalf of the petitioners deserves to be rejected.
- (iii) Petitioner No.1 and petitioner No.2 are the son and wife of

respondent No.4 and apparently, the transfer has been made in favour of the petitioners, after the institution of the proceedings by respondent No.3 against respondent No.4 and his other sons, in order to delay the fruits of the litigation which may ensue to the respondent No.3, on the culmination of the same. Once the Appellate Tribunal had cancelled the transfer deed dated 03.06.2016 and the said order is in consonance with Section 23 of the Senior Citizens Act, then any transfer made by respondent No.4, who was a party to the proceedings and that too during the pendency of the proceedings, would consequently stand set aside.

- (iv) It is a matter of settled law that in case a person is a purchaser of the suit property during the pendency of a case then the said purchase is hit by the doctrine of lis pendens and the said person, at best, can only raise pleas which are available to the seller(s) in whose shoes he has stepped into i.e. Dara Singh in the present case. Thus, petitioner No.1 is estopped from raising any independent plea including the plea of petitioner No.1 being handicapped. Moreover, the said plea, for the first time is sought to be raised before this Court and no such plea was raised before the authorities.

8. Even the plea raised by learned counsel for the petitioners to the effect that petitioners are now ready to take care of respondent No.3 is apparently an afterthought, inasmuch as application was filed by respondent No.3/senior citizen in the year 2018 and the matter was earlier

even remanded and the initial transfer deed executed by respondent No.3 was in the year 2016 and for all these years, there is nothing on record to show that the petitioners or respondent No.4 had served respondent No.3 and thus, the said plea deserves to be rejected being an afterthought. At any rate, once the necessary ingredients of Section 23 of the Senior Citizens Act, are met and the order dated 01.11.2021, is passed in accordance with law, the said plea of the petitioners would not call for setting aside the said order.

9. Keeping in view the abovesaid facts and circumstances, the impugned order dated 01.11.2021, being legal and valid, is upheld and the present writ petition, being meritless, deserves to be dismissed and is accordingly, dismissed.

22.11.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No