

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

LPA-135-2024 (O&M)
Date of decision: 18.01.2024

Anil KumarAppellant

 V/s

Jagdish Rai and othersRespondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Saurabh Bajaj, Advocate
for the appellant.

Mr. Sherry K. Singla, Advocate
for the respondent No.1.

DEEPAK SIBAL J. (ORAL)

The present intra Court appeal originates from the judgment dated 07.12.2023 passed by a learned Single Judge of this Court dismissing the appellant's writ petition filed by him for setting aside the order dated 27.03.2019 passed by the Additional District Magistrate, Patiala (for short, the Magistrate) while exercising powers of the Appellate Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, the 2007 Act).

2. Briefly stated, the facts are that respondent No.1 filed an application before the Maintenance Tribunal-cum-Sub Divisional Magistrate, Patiala (for short, the Tribunal) seeking therein cancellation of the transfer deed of a shop in Patiala dated 11.05.2016 executed by him in favour of the appellant, who is his son. According to respondent No.1 the transfer deed in

question had been made subject to the appellant taking care of respondent No.1 with a further stipulation therein that in case the appellant did not do so then, in terms of Section 23 of 2007 Act, the transfer deed was liable to be cancelled. Since after execution of the transfer deed, the appellant had treated respondent No.1 badly, in terms of Section 23 of the 2007 Act, the transfer deed was liable to be cancelled.

3. On being put to notice, the appellant filed a reply and denied the allegations made against him. The case set up by the appellant was that the application had been got filed at the behest of his younger brother Rakesh Kumar as there were civil disputes pending between both of them; it was respondent No.1 and not the appellant who was aggressive in nature as respondent No.1 had thrown out his wife (the appellant's mother) from her matrimonial home forcing her to reside with the appellant; respondent No.1, who was a Former Senior Deputy Mayor of Municipal Corporation, Patiala, had sufficient sources to maintain himself as he was getting pension as also receiving rent from a shop at Patiala and that in case respondent No.1 was in need of a shop, he could always seek eviction of the appellant's brother Rakesh Kumar who with the appellant, had also been gifted a shop by respondent No.1.

4. The Tribunal dismissed respondent No.1's application against which respondent No.1 filed an appeal which was accepted by the Magistrate. Through filing of a writ petition the appellant challenged before this Court the order passed by the Magistrate. On the dismissal of his petition by the learned Single Judge, the appellant is before us through the instant intra Court appeal.

5. Learned counsel for the appellant submits that respondent No.1 is a man of means being a former Senior Deputy Mayor of Municipal

Corporation, Patiala; he is in receipt of pension and rent from a shop let out by him; the entire proceedings in question have been got lodged at the behest of the appellant's brother Rakesh Kumar with whom the appellant has pending civil disputes and that it is not the appellant but respondent No.1 who is aggressive by nature as at an earlier point of time, it is he who had thrown out his wife (appellant's mother) from her matrimonial home forcing her to come and live with the appellant.

6. We have heard the learned counsel for the appellant and learned counsel appearing for the respondent No.1-caveator. With their able assistance we have also gone through the record.

7. Section 23(1) of the 2007 Act reads as under:-

"23. Transfer of property to be void in certain circumstances. (1) Where any senior citizen who, after the commencement of this Act, has 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.

8. As per the afore quoted provision if a senior citizen after the commencement of the 2007 Act, has transferred his property with a condition that the transferee shall provide to the senior citizen basic amenities and fulfill his physical needs but after such transfer if the transferee refuses to provide such amenities or physical needs, the transfer of the property in question shall be deemed to have been made fraudulently or under coercion/undue influence and shall, at the option of the transferor, be declared to be void by the Tribunal.

9. Respondent No.1 was a senior citizen at the time of transfer of the shop in question made by him in favour of the appellant (his son). The transfer deed contained a clear stipulation that in case the appellant does not take care or provide all basic amenities to respondent No.1, the transfer shall be cancelled.

10. Respondent No.1 seeks cancellation of the transfer deed in question on the ground that after the transfer, the appellant has failed to provide respondent No.1 with basic amenities and has rather treated him badly. Learned counsel for the appellant has not shown to us any plea or evidence to rebut this ground.

11. Learned counsel for the appellant reiterates the grounds taken by the appellant before the authorities as also the learned Single Judge. The first of such grounds that it is not the appellant but respondent No.1 who is aggressive by nature having thrown out the appellant's mother from her matrimonial home is contradicted by the appellant's own pleadings as in his reply to respondent No.1's application the appellant has stated therein that his parents (which includes his mother) were thrown out from their house by the appellant's brother Rakesh Kumar. Even otherwise, respondent No.1's behaviour with his wife would have no bearing on the facts of the present case.

12. The second ground taken by the appellant is that respondent No.1 is a man of means. This ground too has no legs to stand on as the record reveals that respondent No.1's bank account shows to his credit a paltry sum of Rs.48,000/-. The monthly pension being received by him is also only Rs.1,000/- and that the shop from which he is alleged to be receiving rent already stands vacated.

13. The third and final ground raised by the appellant is that in case respondent No.1 needs a shop he can always ask for the same from his other son Rakesh Kumar. Such ground is neither here nor there. Respondent No.1's relationship with Rakesh Kumar and the transfer of property by him in Rakesh Kumar's favour has no bearing with the transfer of the shop in question by him to the appellant. The terms of transfer of the shop by respondent No.1 to Rakesh Kumar are also not on record. In fact, the record reveals that presently respondent No.1 is living with Rakesh Kumar and is happy with the love and affection being dolled out to him by Rakesh Kumar.

14. In cases like the present one all that is required to be seen is as to whether, after the transfer, the transferee had failed to be the source of the transferor-senior citizen's basic needs. Basic needs of a senior citizen, in addition to the materialistic needs are also that in the twilight of his life, the senior citizen be treated with dignity and respect. If these needs are missing, the senior citizen concerned would be well within his rights to seek cancellation of the transfer which was made conditional to the providing of the same.

15. In the case in hand respondent No.1, at the age of 76 years, decided to hang his boots and transferred two shops under his ownership. One of these shops was transferred to the appellant and the other to his second son Rakesh Kumar. Another shop under his ownership, through a registered Will dated 18.06.2010, had already been willed by him to the widow of his third son. Thus, he is an affectionate father who, in the twilight of his life, expected from such transfers nothing but basic amenities and respect in return. In the transfer deed made in favour of the appellant by respondent No.1 he duly incorporated his afore expectation. The consequences for not living up to

respondent No.1’s expectations were also stipulated. The appellant did not meet respondent No.1’s expectations. In terms of the transfer and Section 23 of the 2007 Act, he has to bear the consequences.

16. There is yet another aspect of the matter. On 14.12.2022, while the matter was pending before the learned Single Judge, an interim direction was issued to the appellant to pay maintenance @ Rs.15,000/- per month to respondent No.1. In terms of the interim order, some deposits were made by the appellant in the bank account of respondent No.1 but then he moved an application for recalling the said order. Learned counsel for the appellant explains that such application was filed as in terms of Section 9 of the 2007 Act the maximum monthly maintenance that can be granted is Rs.10,000/-. It may be so. However, this fact does not speak very highly of the appellant’s attitude towards his father from whom he had inherited the property in question.

17. Dismissed.

18. All pending miscellaneous application(s), if any, also stand disposed of.

(DEEPAK SIBAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

18.01.2024
Sapna

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No