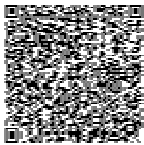


IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:117857-DB



(127)

LPA-282-2024 (O&M)

Decided on :09.09.2024

Ajit Dahiya

.....Appellant(s)

Versus

Deputy Commissioner-cum-Appellate Tribunal, Sonipat and others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Vikram Singh, Advocate for the petitioner (s).

G.S. Sandhawalia, J.(Oral)

1. Present letters patent appeal is directed against the judgment of the learned Single Judge passed in CWP No.618 of 2024, whereby the learned Single Judge dismissed the writ petition and did not interfere in the orders passed by the SDM-cum-Deputy Commissioner, Sonipat under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short '2007 Act')
2. Counsel for the appellant very fairly at the outset stated that on account of orders whereby the transfer deed dated 11.07.2019 in favour of the present appellant and resultant mutation was cancelled, the house in question now stands restored in the name and possession of the private respondent No.3-Ram Narayan, father of the appellant.
3. The Appellate Authority as such noticed that the said respondent was 87 years old and in spite of an attempt being made to resolve the dispute amicably, the same had not been fructified and, therefore, did not interfere in the orders passed by the SDM. The learned Single Judge noticed that the transfer deed itself had contained a condition that the basic amenities was to be provided and in the case of failure, the respondent No.3 would have a right

to get the property back. It was noticed that there was nothing on record that any amount had been paid for maintenance of the parents as such, and the counselling report shows that the father was residing with his relatives for the last several years and the appellant has refused to keep him in the house. Therefore, once the ingredients of Section 23 of the 2007 Act as such were fulfilled, the orders were held to be sustainable. The attempt to further convince the Court that the appellant is now ready to keep respondent No.3, was held to be an afterthought, keeping in view the fact that earlier the writ petitioner had given a statement that he was not ready to give even an inch of the house in question to his father, in the form of one room for living.

4. The law stands settled regarding this aspect by the Apex Court in the judgment passed in **Sudesh Chhikara Vs. Ramti Devi and another, 2023(1) PLR 107**, wherein it has been held that any transfer deed which contains such a condition, the Courts would have a power to cancel the same. Relevant portion of the said judgment reads as under:-

“12. Sub-section (1) of [Section 23](#) covers all kinds of transfers as is clear from the use of the expression “by way of gift or otherwise”. For attracting sub-section (1) of [Section 23](#), the following two conditions must be fulfilled:

- a. 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
- b. the transferee refuses or fails to provide such amenities and physical needs to the transferor.

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.

13. 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. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in sub-section (1) of [Section 23](#) are attached to a transfer, existence of such conditions must be established before the Tribunal.”

5. Keeping in view the settled principles of law, we do not feel that the authorities have erred in any manner and resultantly, there is no merit in the present appeal and same is hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

09.09.2024
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	No