

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

(109)

**2024:PHHC:015485
CWP-2458-2024
Date of Decision: 05.02.2024**

Hardev Lal

--Petitioner

Versus

Guljar Chand & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE VIKAS BAHL.

Present:- Mr. Vipin Kumar Sharma, Advocate for petitioner.

VIKAS BAHL.J (Oral)

1. This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned order dated 28.03.2023 (Annexure P-4) passed by respondent no.4 and order dated 22.11.2023 (Annexure P-6) passed by respondent no.5, whereby the application filed by the senior citizen has been allowed and the transfer deed no.2097 dated 7.12.2016 (Annexure P-1) has been set aside.

2. Brief facts of the present case are that respondent no.1 is the father of the petitioner and by transfer deed dated 7.12.2016 transferred land measuring 14 kanals in favour of the petitioner and other land in favour of his other son namely Hans Raj (respondent no.2). In the said transfer deed it was stated that the entire land including the land which was transferred in favour of the present petitioner was in the ownership of respondent no.1 and the same was being transferred without any consideration and it was further stated that in case the petitioner and respondent no.2 do not take care of respondent no.1, then respondent no.1 would have a right to cancel the said transfer deed.

3. On 14.12.2021 respondent no.1 filed an application against the petitioner and the other son i.e. respondent no.2 for cancellation of the transfer deed and in the said application it was stated that respondent no.1 was a senior citizen being 85 years of age and was having several health problems. It was further averred that the petitioner and respondent no.2 had assured respondent no.1 to take his full responsibility for life time and to provide him all the necessities of life and also provide him food, clothing as well as medical care and to maintain respondent no.1 but, after getting the transfer of land in his favour, the petitioner deserted and abandoned respondent no.1 and failed to provide him necessary care and protection inspite of being legally bound to do so.

4. In the reply filed by the petitioner, no specific averment, muchless document was annexed to show that the petitioner was paying any maintenance to respondent no.1 or was taking care of him. The Maintenance Tribunal vide order dated 28.03.2023 (Annexure P-4) allowed the said application and cancelled the transfer deed. It was observed that from the facts and circumstances of the case, it was clear that the petitioner did not take care of respondent no.1 and was misbehaving with him and he and his wife used to speak badly and used to insult respondent no.1 and also did not provide medicines to him. The appeal filed by the petitioner was also dismissed by the Appellate Tribunal vide order dated 22.11.2023 (Annexure P-6). The arguments raised on behalf of respondent no.1 to the effect that the petitioner did not fulfill his needs and did not take care of respondent no.1 after the transfer deed had been executed and that the petitioner use to misbehave with respondent no.1 were noticed. The said orders are sought to be challenged in the present writ petition.

5. Learned counsel for the petitioner has submitted that the application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter to be referred as “the Act of 2007”) has been filed on the behest of respondent no.2 Hans Raj, who is also the son of the respondent no.1. It is submitted that the said fact is clearly proved from the fact that respondent no.1 has executed a Will in favour of respondent no.2 and his wife. It is submitted that on the said ground alone the impugned orders deserve to be set aside.

6. This Court has heard learned counsel for the petitioner and has perused the paper book.

7. It is not in dispute that respondent no.1 is a senior citizen and is the father of the present petitioner. At the time of filing of the petition under Section 23 of the 2007 Act i.e. on 14.12.2021 respondent no.1 was stated to be 85 years of age and the said averment was made in paragraph 1 of the said petition and the said fact was not denied. The transfer deed specifically records that respondent no.1 was the owner of the property and even a perusal of the order dated 28.3.2023 at page 26 would show that the relevant Jamabandi was also produced before the Tribunal and at any rate the ownership of respondent no.1 of the property in question is not disputed before this Court. A perusal of the transfer deed dated 7.12.2016 (Annexure P-1) would show that it was specifically stated in the said transfer deed that in case the petitioner and respondent no.2 do not take care of the senior citizen i.e. respondent no.1, then he would have the right to get the transfer deed cancelled. It is the specific case of respondent no.1 in the pleadings (Annexure P-2) that the petitioner and respondent no.2 had assured him to take his full responsibility for life time and to provide him all

the necessities of life including food, clothing and medical care and maintenance etc. and that after execution of the said transfer deed the petitioner deserted respondent no.1 and failed to provide necessary care. The said fact has been reiterated by respondent no.1 in his submissions/evidence and both the courts below after considering the facts and circumstances of the case, accepted the pleas of respondent no.1. The Maintenance Tribunal in its order dated 28.03.2023 had further observed that the petitioner did not take care of respondent no.1 and misbehaved with him and he and his wife badly talked to respondent no.1, insulted him and did not provide him necessary medicines. Nothing has been produced on record to show that the petitioner was giving any maintenance to respondent no.1 for meeting his day to day expenses. Thus, all the necessary ingredients as provided under Section 23 of the 2007 Act are fulfilled in the present case and both the orders passed are legal and in accordance with law and do not call for any interference by this Court.

8. The argument raised by learned counsel for the petitioner that the petition had been filed on behest of respondent no.2 and a Will has been executed by respondent no.1 in favour of respondent no.2 and his wife, does not in any way further the case of the petitioner. It would be relevant to note that there is no averment regarding the said Will in the reply filed by the petitioner before the Tribunal nor the said Will has been annexed along with the present petition nor any date of the said Will has been mentioned in the present petition. Even assuming any such Will has been executed, the same would also not call for setting aside the impugned orders, as once the ingredients of Section 23 of the 2007 Act have been met and the application filed by respondent no.1 has been found to be meritorious, then it is the

choice of respondent no.1, who is the owner of the property to either transfer or execute a Will regarding the same in favour of any person. Moreover, the application before the Tribunal has been filed by respondent no.1 and the respondent no.1 has also appeared and given evidence/affidavit in support of the said application. This fact has been recorded in the order dated 28.03.2023, Annexure P-4 at page 26 and the said application has been filed against both the sons.

9. Keeping in view the above said facts and circumstances, the impugned orders do not call for any interference by this Court and the present writ petition deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

05.02.2024

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No