



105

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

CWP-3068-2024

Date of decision: 14.05.2024

Gurcharan Singh

...Petitioner

Versus

Additional Deputy Commissioner-cum-Appellate Authority and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vaibhav Sehgal, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the order dated 04.01.2024 (Annexure P-9) passed by respondent No.1 accepting the appeal filed by respondent No.3 against the order dated 24.03.2022 (Annexure P-5).

2. Brief facts of the present case are that respondent No.3 who is a senior citizen and is the mother of the petitioner had transferred the property measuring 142-2/3 square yards (on which double storey house was constructed) in favour of the present petitioner vide registered transfer deed dated 10.03.2016 (Annexure P-2). A perusal of the said transfer deed would show that it was specifically mentioned in the same



that the beneficiary i.e., the present petitioner will serve the senior citizen and provide basic facilities, failing which the transfer deed shall be treated as cancelled under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter to be referred as “the Act”) and that the respondent No.3 was the owner of the property in question. On 16.09.2019 (Annexure P-3), respondent No.3 had filed a petition under Section 23 of the Act for declaring the said gift/transfer deed dated 10.03.2016 null and void and in the said petition, it was averred that respondent No.3, at that time, was 74 years of age and was suffering from various ailments and the transfer deed had been executed by respondent No.3 in favour of the petitioner on the condition that the petitioner would serve respondent No.3 and would provide her with all basic amenities of life i.e. food, clothes, medicines etc. and that after execution of the said transfer deed, the petitioner started maltreating respondent No.3 and had also stopped providing maintenance and basic amenities to her and had in fact, taken away her gold ornaments i.e. 12 gold bangles and even refused to return the same and had further threatened respondent No.3 to dispossess her from the property in question. A reply was filed by the petitioner to the said petition but no parawise reply was filed and thus, the specific averments made in various paragraphs of the petition were not specifically denied.

3. The Sub Divisional Magistrate, Ludhiana-cum-Maintenance Tribunal, vide order dated 24.03.2022 (Annexure P-5) instead of cancelling the transfer deed, without any justifiable reason, ordered the



payment of Rs.10,000/- per month as maintenance to respondent No.3 by the petitioner and did not cancel the transfer deed. An appeal was filed against the said order by respondent No.3. On a pointed query raised by this Court, learned counsel for the petitioner has fairly submitted that even the petitioner had filed an appeal against the order granting maintenance of Rs.10,000/- per month and the said fact in itself shows that the petitioner is not even ready to pay monthly maintenance to respondent No.3, even after the order had been passed by the Court. The appeal filed by respondent No.3 was allowed by the Appellate Tribunal vide order dated 04.01.2024 (Annexure P-9) and in the said order, it was observed that the petitioner had not even paid the monthly maintenance of Rs.10,000/- in the bank account of respondent No.3 in pursuance of order dated 24.03.2022. It was further observed that respondent No.3 was a widow and was a senior citizen and the petitioner had harassed and threatened her and thus, her prayer for cancellation of the transfer deed was genuine and in accordance with law and deserved to be allowed. It is the said order dated 04.01.2024, which is the subject matter of challenge in the present writ petition.

4. Learned counsel for the petitioner, upon a query, has submitted that the appeal filed by the petitioner had been dismissed, although, the order dismissing the said appeal has not been annexed.

5. Learned counsel for the petitioner has raised two arguments to challenge the said impugned order dated 04.01.2024. The first argument raised by learned counsel for the petitioner is that prior to the



transfer deed dated 10.03.2016, there was an agreement dated 04.03.2016 (Annexure P-1), as per which, there was a settlement between the petitioner on one side and Amarjit Kaur wife of late Sh. Onkar Singh (brother of the petitioner), Simranjeet Singh son of late Sh. Onkar Singh and Manmeet Kaur, daughter of late Sh. Onkar Singh on the other, as per which, the amount of Rs.8 lacs was paid by the petitioner to the said three persons. It is submitted that the said amount was paid with respect to the property in question so that the property in question could be transferred in favour of the present petitioner and to the said agreement, even respondent No.3 was a signatory. It is argued that the transfer deed was in pursuance of a family settlement which had been arrived at, on 04.03.2016. The second argument raised by learned counsel for the petitioner is that the petitioner has love and affection for respondent No.3 and had been taking care of her and respondent No.3 is residing with the petitioner and is also ready to take care of her in future also. It is submitted that in view of the above, the petition under Section 23 of the Act was not maintainable and the impugned order dated 04.01.2024 being illegal, deserves 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.3 who is the mother of the petitioner, is a senior citizen. In para 1 of the petition filed on 16.09.2019 under Section 23 of the Act, it had been stated that respondent No.3 is 74 years of age and is suffering from various ailments.



Even the fact that respondent No.3 was the owner of the property is also not in dispute and the fact that she is owner, has been mentioned in the transfer deed dated 10.03.2016 itself. Even before this Court, the said two aspects have not been challenged. A perusal of the transfer deed dated 10.03.2016 (Annexure P-2) would show that it was specifically mentioned in the same that the beneficiary i.e. the petitioner will serve the senior citizen and will provide basic facilities to respondent No.3, failing which the transfer deed shall be treated as cancelled under Section 23 of the Act. The averments in support of the said condition have also specifically been mentioned in the petition dated 16.09.2019 (Annexure P-3). It is the specific case of respondent No.3 in her petition before the Court that the present petitioner, after execution of the transfer deed, had maltreated her and had not provided her with the basic amenities of life, had refused to serve her and had even taken away her gold ornaments i.e. 12 gold bangles of respondent No.3 and had refused to return the same. On a pointed query raised by this Court, learned counsel for the petitioner has fairly submitted that there is nothing on record to show that any money per month was ever transferred or given to respondent No.3 by the petitioner prior to filing of the petition dated 16.09.2019. It is also not disputed that the petitioner had filed an appeal against the order dated 24.03.2022 vide which the SDM-cum-Maintenance Tribunal had only directed the petitioner to pay an amount of Rs.10,000/- per month to respondent No.3. The said facts establish beyond doubt that the petitioner was not ready to even pay monthly maintenance to the respondent No.3



and has not provided basic needs and maintenance to respondent No.3 and has violated the conditions of the transfer deed dated 10.03.2016 and thus, the petition filed by respondent No.3 was meritorious and has been rightly allowed vide impugned order dated 04.01.2024.

8. It has been observed in the order dated 04.01.2024 that the petitioner has not paid even an amount of Rs.10,000/- per month in pursuance of the order dated 24.03.2022. Learned counsel for the petitioner has referred to Annexure P-6 to show that during the pendency of the appeal, a cheque amounting to Rs.80,000/- was prepared by the petitioner but was not received by respondent No.3. Even, a perusal of the said cheque, which although was not encashed, would show that the monthly amount of Rs.10,000/- was not paid by the petitioner to respondent No.3 inasmuch as a cheque for an amount of Rs.80,000/- was prepared, which shows that the maintenance of the previous months, in spite of the order dated 24.03.2022 being in operation, was not paid by the petitioner to respondent No.3. Learned counsel for the petitioner has fairly submitted that no argument to the effect that the said cheque was prepared, was raised before the Appellate Tribunal and thus, the plea raised by the petitioner that the petitioner was taking care of respondent No.3 is meritless and deserves to be rejected.

9. Even the argument raised on the basis of the agreement dated 04.03.2016 does not further the case of the petitioner. A perusal of the said agreement would show that even if the same is taken to be true on its face value, no amount has been paid to the respondent No.3. In the said

agreement, there is no reference to any specific property much less the property in question. It is not in dispute that respondent No.3 was the owner of the property in question and the registered transfer deed dated 10.03.2016 was executed by her in favour of the petitioner and that the petitioner had undertaken to provide basic amenities to respondent No.3. Once it is established on record that the petitioner has not taken care of the basic needs of respondent No.3, then the order dated 04.01.2024 allowing the petition of respondent No.3 and cancelling the transfer deed is in accordance with law. Merely because the petitioner had given some money to the legal representatives of his brother, would not justify his not taking care of respondent No.3 and maltreating her, who had given birth to him.

10. Keeping in view the abovesaid facts and circumstances, finding no merits, the present writ petition deserves to be dismissed and is accordingly dismissed and order dated 04.01.2024 is upheld.

14.05.2024
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No