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2024:PHHC:148466-DB



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

LPA No.855 of 2023 (O&M)

Date of Decision: 13.11.2024

Sukhdev Singh

...Appellant

Versus

Arwinder Singh and others

...Respondents

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

Present:- Mr.Nitin Meel, Advocate
for the appellant.

None for respondent No.1.

Mr. Malkiat Singh, DAG, Punjab
for respondents No.2 and 3.

G.S. Sandhawalia, J.(Oral)

The present Letters Patent Appeal is directed against the interim order dated 01.05.2023 passed in ***CWP No.8641 of 2023***, whereby learned Single Judge had stayed the order dated 31.01.2023 (Annexure P-6) passed in favour of senior citizen-present appellant.

2. A perusal of the order Annexure P-6 would go on to show that the appeal was filed by the senior citizen against the order dated 31.05.2022 (Annexure P-5) whereby the S.D.M. has dismissed his application. The Appellate Authority had noticed that the conditions of the transfer-deed had not been satisfied since the services had to be rendered by the respondent/son and the transfer was on that condition. Resultantly,



while allowing the appeal and by recording that the respondent had failed to take care of the senior citizen, the transfer-deed dated 22.11.2021 and Mutation No.929 were cancelled.

3. Learned Single Judge had passed the order and apparently, did not take into consideration the observations made by the Apex Court in **Sudesh Chhikara versus Ramti Devi & Anr., 2023 (1) RCR (Civil) 226,** though the respondent had averred about the same wherein it has been held that the transfer becomes voidable at the instant of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void if there is a clause providing for cancellation on the ground of neglect. The relevant part 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.”

4. Resultantly, we are of the considered opinion that the order passed by learned Single Judge is not sustainable whereby the order of the Appellate Tribunal had been stayed. Even otherwise, keeping in view the law as settled, not only the appeal but the writ petition would warrant dismissal. Resultantly, the present appeal is allowed. In view of this order, the writ petition is also deemed to be dismissed. All pending Miscellaneous Applications stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

13.11.2024
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: No