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

CWP-7293-2024

Date of decision: 01.04.2024

Harpreet Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gazi Mohammad Umair, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing of order dated 26.11.2021 passed by respondent No.2 whereby the application filed under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter to be referred as “the 2007 Act”) has been allowed and the transfer deed vasika dated 25.07.2019 and mutation No.18591 have been set aside and cancelled in respect of the property situated at Tehsil Samana, District Patiala. Challenge is also to the order dated 28.04.2023 passed by respondent No.3 whereby the appeal filed by the petitioner has been dismissed.

2. Brief facts of the present case are that respondent No.4 who is the father of the petitioner had filed an application under Section 23 of the 2007 Act for cancellation of transfer of ownership document No.2019-20/78/1/1236 dated 25.07.2019. Although, the application and reply as well as the transfer deed have not been annexed along with the present petition but a perusal of order dated 26.11.2021 (Annexure P-7) would show that it was the case of respondent No.4 that he was a senior citizen and was aged about 75 years and had executed the transfer deed in favour of his daughter Harpreet Kaur (present petitioner) and while executing the said document, the petitioner had stated that she would look after and take care of respondent No.4 in his old age, but however, after getting the transfer deed executed in her favour, she has stopped taking care of respondent No.4. It is further the case of respondent No.4 that he has an old aged wife and another daughter namely Parampal Kaur who is a divorcee and she along with her two daughters is residing with him and since the said Parampal Kaur is a divorcee thus, the respondent No.4 is having to take care of the said Parampal Kaur and her daughters (grand children of respondent No.4). It is admitted before this Court that the petitioner, after execution of the transfer deed, had gone to Canada and even at present is residing in Canada. A reply was filed by the petitioner to the abovesaid application. The Sub Divisional Magistrate-cum-Maintenance Tribunal vide order dated 26.11.2021 (Annexure P-7) had allowed the said application and had ordered cancellation of the transfer deed in question. A perusal of the said order would show that it

was specifically recorded by the Sub Divisional Magistrate that it was a conditional transfer and as per the conditions mentioned at page 4 of the transfer deed, it had been stated that in case the beneficiary did not take care of the transferee and did not fulfill his needs of medicines etc. or violated the conditions mentioned therein, then the transfer deed could be cancelled. It was observed that the petitioner had not been taking care of respondent No.4 and had not been fulfilling his basic needs and rather had been residing in Canada and thus, the transfer deed was ordered to be cancelled. An appeal filed by the petitioner was dismissed by the Appellate Tribunal-cum-Additional Deputy Commissioner, Patiala vide order dated 28.04.2023 (Annexure P-8). In the said order, it was observed that respondent No.4 was a senior citizen and was suffering from old age ailments and that wife of respondent No.4 who is the mother of the petitioner was also of old age and that he had three daughters, including the present petitioner, Jaswinder Kaur and one Parampal Kaur and the said Parampal Kaur who was a divorcee, along with her two daughters, were also to be looked after by respondent No.4. The fact that the transfer was conditional and also the fact that the petitioner was residing in Canada and was not taking care of respondent No.4 was also noted. It is the said two orders which have been challenged in the present writ petition.

3. Learned counsel for the petitioner has raised two submissions to challenge the impugned orders. First argument raised by learned counsel for the petitioner is that the present dispute is a family dispute

between the petitioner (daughter of respondent No.4) and respondent No.4 and that the present case has been instituted at the instance of the third daughter namely Jaswinder Kaur, after the petitioner had left for Canada. Second argument raised is that respondent No.4 has his own source of income and has submitted that respondent No.4 is also the owner of one showroom at Punjabi Bagh. It is submitted that on the said two aspects, the impugned orders deserve to be set aside and the present writ petition deserves to be allowed.

4. This Court has heard learned counsel for the petitioner and has perused the paper book and finds that the present writ petition is meritless and deserves to be dismissed for the reasons which are detailed hereinafter.

5. Respondent No.4 was stated to be 75 years of age at the time of filing of the application in the year 2021 and had been held to be a senior citizen. The aspect that respondent No.4 was a senior citizen on the date of filing the application has not been disputed before this Court. Even the fact that respondent No.4 was owner of the property, which had been transferred by respondent No.4 to the petitioner, who is the daughter of respondent No.4, has also not been disputed before this Court. A perusal of order dated 26.11.2021 (Annexure P-7) (at page 36 of the paper book) would show that it was specifically recorded that the said transfer deed was a conditional transfer and the condition was contained at page 4 of the transfer deed, which provided that in case the beneficiary i.e., the present petitioner did not take care of the transferee i.e.,

respondent No.4 and did not fulfill his needs of medicines etc. or violated the conditions mentioned in the said transfer deed, then, the transfer deed could be cancelled by respondent No.4. Even the order dated 28.04.2023 (Annexure P-8) (at page 43 of the paper book) takes note of the fact that the document dated 25.07.2019 transferring the property in question in favour of the petitioner was executed on the condition that the petitioner would take care of respondent No.4 during his old age. The fact that the said condition was present in the transfer deed is not disputed before this Court. Moreover, the transfer deed has not been annexed in order to rebut the concurrent findings of the fact on the said aspect. It has further concurrently been found by both the authorities that the petitioner had gone to Canada and even now is residing in Canada and is not taking care of respondent No.4 and has thus, violated the conditions mentioned in the transfer deed, entitling respondent No.4 to seek cancellation of the said transfer deed. There is nothing on record to show that the present petitioner has taken care of respondent No.4 or has sent any money from abroad to respondent No.4 in order to provide for his basic needs or to take care of respondent No.4. It has been observed in the impugned orders that respondent No.4 was 75 years of age and was suffering from old age ailments and that wife of respondent No.4, who was the mother of the petitioner, was also of old age and that he had three daughters including the present petitioner, Jaswinder Kaur and one Parampal Kaur and the said Parampal Kaur was a divorcee and had two daughters and responsibility of the said Parampal Kaur and her two daughters had fallen

on respondent No.4. In the said circumstances, application filed by respondent No.4 has been correctly allowed by both the Courts below and there is no illegality or infirmity in the order passed by the authorities.

6. The argument raised by learned counsel for the petitioner to the effect that the present application has been filed at the behest of Jaswinder Kaur, is meritless. A perusal of the order dated 26.11.2021 would show that respondent No.4 had himself appeared along with his counsel and the said fact was recorded at pages 30 and 31 of the paper book. At page 31, it was recorded that respondent No.4 was also heard. It is thus, apparent that respondent No.4 had personally filed the case and pursued the matter. There is nothing on record to show that the said application was filed by respondent No.4 at the instance of Jaswinder Kaur. Moreover, at any rate, once the application had been personally signed by Gurjeet Singh and he had appeared in person before the authority and had even been heard, the objection raised by the petitioner being meritless, deserves to be rejected. Even the argument raised by learned counsel for the petitioner that respondent No.4 has his own source of income and is an owner of one showroom and thus, the impugned order should be set aside, also deserves to be rejected. Whether respondent No.4 has any independent income or not is not the relevant factor to be considered while deciding an application filed by the senior citizen for setting aside the transfer deed. The relevant factor to be considered is as to whether the beneficiary provided the basic amenities and basic physical needs to the transferor, more so, when the transfer was

made subject to the said condition. There is nothing on record to even remotely show that the said basic amenities were being provided by the petitioner to respondent No.4. Moreover, the pleadings of the parties have not been produced on record. Once the ingredients of Section 23 of the 2007 Act are fulfilled, as have been fulfilled in the present case, then, it is necessary for the authorities to allow the application filed under Section 23 of the 2007 Act. Section 23 of the 2007 Act is reproduced herein below: -

“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.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.”

7. A perusal of the same would show that once a senior citizen has transferred the property subject to the condition that the transferee would 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 would be deemed to have been made by fraud or coercion or under undue influence and would at the option of the transferor be declared void by the Tribunal. As has been observed herein above, all the ingredients as required under Section 23 of the 2007 Act have been fulfilled in the present case.

8. Keeping in view the abovesaid facts and circumstances, the present writ petition being meritless, deserves to be dismissed and is accordingly dismissed.

9. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

01.04.2024
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No