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

CWP-27118-2021 (O&M)
Date of decision: 04.04.2024

Parkash Singh and another

...Petitioners

Versus

Sub Divisional Magistrate, Sangrur-cum-Maintenance Tribunal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Tarunveer Vashist, Advocate for the petitioners.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. K.S. Sidhu, Advocate for respondent No.3.

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 setting aside the order dated 20.09.2021 (Annexure P-1) and order dated 30.11.2021 (Annexure P-2) passed by respondent Nos.1 and 2 respectively.

2. Brief facts of the present case are that respondent No.3 who is the father of petitioner No.1 had filed an application dated 18.03.2021 under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter to be referred as “the 2007 Act”) for setting aside the transfer deed dated 23.08.2017 executed by him in favour of petitioner No.1 with respect to land measuring 34 kanals 8 marlas. Challenge was also made

to the transfer deed dated 12.10.2017 vide which petitioner No.1 had further transferred 32 kanals 7 marlas out of the above land to his wife-petitioner No.2. A perusal of the application (Annexure P-3) would show that respondent No.3 was stated to be 92 years of age and was a senior citizen when the application was filed in the year 2021. It was further stated in paras 3 and 4 that respondent No.3 was owner in possession of sufficient land and after having transferred the property in favour of his sons, he was left with 34 kanals 8 marlas of land so as to manage his expenses in old age and even the said land measuring 34 kanals 8 marlas was transferred by respondent No.3 in favour of petitioner No.1 on the condition that petitioner No.1 would render all the services to respondent No.3 during his lifetime and would provide meals, clothing etc. to respondent No.3 and will not misappropriate the land. It is further pleaded that on the basis of the said assurances, respondent No.3 transferred the abovesaid land in favour of petitioner No.1 without taking any money and that thereafter, the behaviour of petitioner No.1 i.e. his son and petitioner No.2 i.e. his daughter-in-law changed towards respondent No.3 and they stopped providing any meals, clothing, medicines etc. to respondent No.3 and to maintain him. It was pleaded that petitioner No.1 in order to usurp the property had transferred the same in favour of petitioner No.2 who is his wife vide transfer deed dated 12.10.2017. The said transfer deed itself shows the mala fide intent of petitioner No.1. It is pleaded in para 9 that respondent No.3 was old aged and was unable to maintain himself and thus, prayed that transfer deed be cancelled.

A joint written statement was filed by the petitioners which has

been annexed as Annexure P-4. The fact that respondent No.3 was 92 years of age and was a senior citizen and had transferred the property in question in favour of petitioner No.1 was not disputed. Even the fact that petitioner No.1 had further transferred the property in favour of petitioner No.2 was also not disputed. In para 6 of the written statement, it was also stated by the petitioners that respondent No.3 was hard of hearing and also did not have proper eye-sight. The Sub Divisional Magistrate-cum-Maintenance Tribunal, vide order dated 20.09.2021 (Annexure P-1), allowed the said application. A perusal of the said order would show that on 15.09.2021, the petitioners had come present and had assured that they would maintain respondent No.3 and keep him with them but thereafter on 20.09.2021, while appearing in the Court, petitioner No.1 and his son started quarreling and speaking loudly with respondent No.3 and the Court, after considering the attitude of petitioner No.1, formed an opinion that the promise made by petitioner No.1 was doubtful and that in the said circumstances, respondent No.3 cannot be left with the petitioners. It was further observed that the fact that petitioner No.1 had transferred the property in favour of his wife on 12.10.2017 also shows the mala fide intent of the petitioners and thus, accordingly allowed the application. Appeal filed by the petitioners was dismissed by the Appellate Tribunal-cum-District Magistrate, District Sangrur vide order dated 30.11.2021 (Annexure P-2). A perusal of the said order would show that the stand of respondent No.3 to the effect that the petitioners have not been maintaining him and had given beatings to him and had thrown him out of the house, was noticed and after considering all the said aspects including the aspect that respondent No.3 was 93 years of

age and that the petitioners had not been dealing properly with respondent No.3 and had been neglecting to maintain him and had given beatings to him, dismissed the appeal filed by the petitioners. Aggrieved against the said orders, the petitioners have filed the present writ petition.

3. Learned counsel for the petitioners has submitted that as per the provision of Section 23 of the 2007 Act, the order is to be passed in favour of senior citizen in case the petitioners refused or failed to provide such amenities and physical needs which have been promised by the petitioners. It is further submitted that the petitioners are ready to take care of respondent No.3 and are also ready to pay him monthly expenses and has further submitted that on the basis of the said submissions, impugned orders deserve to be set aside.

4. Learned counsel appearing on behalf of respondent No.3 has opposed the present writ petition and has submitted that apart from there being specific pleadings on behalf of respondent No.3 with respect to the maltreatment given by the petitioners to respondent No.3, the conduct as noticed by the Sub Divisional Magistrate-cum-Maintenance Tribunal at page 28 of the paper book as also the fact that the petitioner No.1 immediately, after respondent No.3 had transferred the property in his favour, had further transferred the property in favour of petitioner No.2 i.e. in his wife's name, clearly showed the mala fide intent of the petitioners. It is submitted that the petitioners have thrown respondent No.3 out of the house and have not given any maintenance till now and the plea now sought to be raised is only an afterthought in order to somehow keep the property in question. It is further submitted that the application was filed by

respondent No.3 in the year 2021 and there is nothing on record to even remotely show that any maintenance was paid by petitioner No.1 till the said date or even till date. It is argued that respondent No.3 had all love and affection for the petitioners and for the said reason, he had transferred the property in favour of petitioner No.1 subject to the condition that petitioners would take care of him and that respondent No.3 has been constrained to file the application only on account of the ill behaviour and non-providing of the basic needs by the petitioners to respondent No.3. It is submitted that the present writ petition being meritless, deserves to be dismissed.

5. This Court has heard learned counsel for the parties and has perused the paper book.

6. It is not in dispute that respondent No.3 is a senior citizen and was 92 years of age in the year 2021 when the application under Section 23 of the 2007 Act was filed. The said fact had been specifically pleaded in para 1 of the application (Annexure P-3) and had not been denied in the written statement (Annexure P-4) and rather the averments in para 1 of the application were stated to be correct. The fact that the property was in the name of respondent No.3 and he was owner of the same has not been disputed before this Court. Even the fact that transfer deed dated 23.08.2017 was made by respondent No.3 in favour of petitioner No.1 on the condition that the petitioners would render all the services to respondent No.3 during his lifetime and provide meals, clothing, medicines etc. to respondent No.3 and would not misappropriate the land, has not been disputed. Moreover, the said pleadings have been specifically made in para 4 of the application and the pleadings to the said effect have not been disputed. It is the case of

respondent No.3 that the petitioners have not taken care of him and have not provided him with meals, clothing and medicines etc. and have not maintained him also. In the order dated 30.11.2021 passed by the Appellate Court, it is the stand of respondent No.3 (at page 36 of the paper book) that he has been thrown out of the house after having been given beatings by the petitioners. During the course of arguments, it has not been disputed that respondent No.3 is not residing with the petitioners and is residing with Baldev Singh. There is nothing on record to show that any money was transferred by the petitioners to respondent No.3 for his maintenance or for meeting his basic needs. A perusal of order dated 20.09.2021 (Annexure P-1) (at page 28 of the paper book) would show that the conduct of petitioner No.1 and even his son was abominable towards respondent No.3 even before the Sub Divisional Magistrate and during the course of the proceedings (in third para of page 28, there is a slight mistake in the translation inasmuch as the vernacular at page 43 of the paper book would clearly show that it has been recorded in the said order that Parkash Singh-petitioner No.1 and his son had a quarrel and talked loudly with respondent No.3 (petitioner therein) in front of the Tribunal). The fact that petitioner No.1 had transferred land measuring 32 kanals 7 marlas out of the total land measuring 34 kanals 8 marlas in favour of his wife i.e. petitioner No.2 within a period of three months from the date respondent No.3 had transferred the property in favour of petitioner No.1 also clearly shows the mala fide intent of the petitioners to usurp the property of respondent No.3 and not to adhere to the conditions of the transfer deed as had been detailed in para 4 of the application. Thus, the plea raised by the petitioners that they

are now ready to take care of respondent No.3 and are now ready to pay monthly maintenance is apparently an afterthought and only to keep the property transferred by respondent No.3 in favour of petitioner No.1. Both the authorities have, after duly considering the matter, correctly allowed the application filed under Section 23 of the 2007 Act and this Court finds no reasons to interfere in the said orders passed by the authorities.

7. Keeping in view the abovesaid facts and circumstances, the present Civil Writ Petition being meritless, deserves to be dismissed and is accordingly, dismissed.

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

04.04.2024
Pawan

(VIKAS BAHL)
JUDGE

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