



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.172 of 2024 (O&M)
Date of decision: 14.08.2024

Manjot Singh and Anr

.....Appellants

Versus

Ld. Appellate Tribunal-D.M, Malerkotla and Ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. S.K Singla, Advocate for the appellants.

G.S. SANDHAWALIA, J

1. The challenge laid in the present petition is to order dated 22.11.2023 passed by learned Single Judge in CWP No.26272 of 2023 whereby the writ petition filed by the present appellants was dismissed.

2. The appellants, who are the son and wife of Dara Singh @ Didar Singh are aggrieved against the fact that the grand father of appellant No.1 had executed a transfer deed No.784 dated 03.06.2016 in favour of his four sons out of which Dara Singh @ Didar Singh was one of the beneficiaries, which he sought to cancel. It is pertinent to notice that in the transfer deed, a specific clause was incorporated that in case, the beneficiary does not take care of the executant then the senior citizen would have a right to get cancelled the transfer deed under



Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for brevity “the Act”).

3. It is to be noticed that apparently the beneficiaries of transfer deed did not look after their father and resultantly, respondent No.3-Bhajan Singh filed an application on 20.04.2018 against his four sons-respondent Nos.4 to 7 herein for cancellation of the said transfer deed dated 03.06.2016 (Annexure P.3). The present appellants were given 1/4th share of their land by Dara Singh @ Didar Singh (son of respondent No.3-Bhajan Singh). Apparently, in order to defeat the very purpose of filing the application, Dara Singh @ Didar Singh executed a registered transfer deed in their favour vide transfer deed dated 23.05.2018 (Annexure P.4) after the application had been filed by his father seeking cancellation. It is, in these circumstances, that the claim of locus standi arose to challenge order dated 01.11.2021 (Annexure P.2) whereby the Appellate Authority set aside the transfer deed while recording a finding that the senior citizen was not being looked after especially when the Transfer Deed contained a Note that the transfer shall be liable to be cancelled when the beneficiary did not take care of the executant being a senior citizen.

4. It has been specifically recorded by the Appellate Authority that Dara Singh @ Didar Singh was not looking after his father. Resultantly, the transfer of ownership deed No.784 dated 03.06.2016 was cancelled vide order dated 01.11.2011 and the Assistant Collector, 2nd Grade, Ahmedgarh was directed to get the mutation of land mentioned in the transfer of ownership deed sanctioned back in favour of Bhajan Singh.

5. Learned Single Judge while keeping all factors into mind and noticing that the clause was mentioned in the transfer deed, recorded a finding that there is nothing on record to show that any evidence was produced by the present



appellants to show that any maintenance was being paid to respondent No.3-Bhajan Singh. It was also noticed that other sons were staying abroad and there was nothing to show that Dara Singh @ Didar Singh was looking after his father, rather averments have been made that his family members had been fighting with him. Therefore, the necessary ingredients of Section 23 of the Act having been met and the transfer by respondent No.4- Dara Singh @ Didar Singh in favour of his own son and wife (present appellants) was thus, held to be hit by the principle of *lis pendens* as they had acquired the property during the pendency of the application filed for cancellation of the transfer deed. It was also noticed that an application for impleadment of appellant No.1-Manjot Singh was filed and the same was dismissed on 25.03.2021 and the said order was never under challenge and therefore the present appellants had no locus standi and the transfer made in favour of respondent No.4-Dara Singh @ Didar Singh when the conditions having been met, having been cancelled would also bind the appellants.

6. The said issue stands squarely covered by the judgment of Apex Court reported as **Sudesh Chhikara vs. Ramti Devi & Anr, 2023 (1) RCR (Civil) 226** wherein the Apex Court has come to the conclusion that when a senior citizen parts with his or her property executing a gift or a release or otherwise in favour of his or her near and dear ones and once a condition is imposed that the senior citizen is to be looked after and the transfer was made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and in the event of the transferee having refused or failed to provide such amenities and physical needs to the transferor, 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. 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.”

7. The factual matrix of the instant case are not in dispute and therefore, we are of the considered opinion that the Appellate Tribunal has rightly exercised jurisdiction and allowed the appeal while setting aside the order dated 26.03.2021 passed by the Sub Divisional Magistrate whereby paltry amount of Rs.2000/- was awarded to respondent No.3-Bhajan Singh while not setting aside the transfer deed. Learned Single Judge has not erred in any manner while passing a well



reasoned order and taking care of all the contingencies. In the absence of any irregularity, we do not find any plausible reason to entertain the present appeal.

8. Dismissed.

(G.S. SANDHAWALIA)
JUDGE

August 14, 2024
manoj

(MEENAKSHI I. MEHTA)
JUDGE

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