IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101 **CWP-1111-2025**
Date of Decision :17.01.2025

Baldev Krishan (since deceased) through LRs **...Petitioners**

Versus

State of Punjab and others **....Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Kumar, Advocate for the petitioner(s).

Ms. Akshita Chauhan, DAG, Punjab.

Mr. H.S. Dhindsa, Advocate for the caveator/respondent.

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the grievance being raised by the petitioner is qua the order dated 05.12.2024 (Annexure P/6) passed by the Additional Deputy Commissioner (G)-cum Appellate Tribunal, Fazilka by which, order dated 17.03.2022 (Annexure P/2) passed by the Tribunal constituted under The Maintenance and Welfare and Parents and Senior Citizen Act, 2007 (in short, '2007 Act') has been set aside.

2. Learned counsel for the petitioner argues that the appeal, which has been allowed by the Appellate authority so as to set aside the order dated 17.03.2022 passed by the Tribunal, could not have been heard as there was a delay in filing the appeal against the said order. Further prayer of the petitioner is that without giving any cogent reasons, order passed by the

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Tribunal has been set aside hence, the order passed by the appellate authority dated 05.12.2024 (Annexure P/6) may kindly be set aside.

3. Keeping in view the caveat filed, learned counsel for respondent No.4 has put in appearance.

4. Learned counsel for respondent No.4 submits that the respondent No.4 was not even served as the proclamation for serving the respondent No.4 was done by the Halqa Patwari in the village whereas, address of respondent No.4 is of Zirakpur, where he is residing which clearly shows that process adopted to serve respondent No.4 was not correct before he was proceeded ex-parte. Learned counsel for the respondent No.4 further submits that when respondent No.4 came to know about the order passed, he filed an appeal which was initially disposed of as not maintainable, which action of the Appellate Authority envisaged under the 2007 Act was challenged by way of filing CWP-14623-2023, which writ petition was allowed by this Court vide order dated 25.07.2023 and the issue was remanded back to the Appellate Authority to decide the appeal in accordance with law and now, vide order dated 05.12.2024 (Annexure P/6) passed by the Appellate Authority, keeping in view the fact that the requirements of Section 23 of the 2007 Act have not been proved, the order passed by the Tribunal dated 17.03.2022 (Annexure P/2) has been set aside.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. It may be noticed that as of now, the senior citizen has unfortunately died. Even when the writ petition was filed by the respondent which was decided by this Court on 25.07.2023, senior citizen had already

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died hence, the question of reverting back the property to him does not arises as of now.

7. Now the fight is between wife of the deceased-petitioner, who transferred the property along with her daughter on one side and respondent-son on the other side.

8. Though, certain arguments have been raised with regard to the service of the private respondent before the Tribunal and that of limitation in filing the appeal but rather than deciding the issue on technicalities, keeping in view the fact that under Article 226 of the Constitution of India, the Court is to impart justice to the parties concerned hence, the claim is being decided keeping in view the entitlement of the parties as per the provisions envisaged under Section 23 of the 2007 Act. The issue which is being decided in this petition is, as to whether even the senior citizen, who has unfortunately died as of now was entitled to claim the benefit of cancellation of transfer deed dated 21.04.2016 under 2007 Act.

9. Before proceeding further, Section 23 of the 2007 Act is reproduced hereinunder for ready reference:-

> **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.

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> (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 organization referred to in Explanation to sub-section (1) of section 5.

10. A bare perusal of the above reproduction would show that in order to get the transfer deed declared void, two parameters have been provided. First parameter is, that the transfer should be subject to the provisions of 2007 Act and secondly, senior citizen's basic amenities and physical needs are not being taken care of, which averments in the application have been proved on the basis of the evidence brought on record.

11. The said question of law qua interpretation of Section 23 of the 2007 Act has already been settled by the Hon'ble Supreme Court of India while passing order in ***Civil Appeal No.174-2021, titled as, Sudesh Chhikara vs. Ramti Devi and another, decided on 06.12.2022.*** Relevant paragraphs of the judgment are as under:-

> 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.
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> 14. Careful perusal of the petition under Section 23 filed by respondent no.1 shows that it is not even pleaded that the release deed was executed subject to a condition that the transferees (the daughters of respondent no.1) would provide the basic amenities and basic physical needs to respondent no.1. Even in the impugned order dated 22nd May 2018 passed by the Maintenance Tribunal, no such finding has

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> been recorded. It seems that oral evidence was not adduced by the parties. As can be seen from the impugned judgment of the Tribunal, immediately after a reply was filed by the appellant that the petition was fixed for arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor – senior citizen is sine qua non for applicability of sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent no.1 that the release deed was executed subject to such a condition."

12. From the joint reading of Section 23 as well as interpretation by the Hon'ble Supreme Court of India in Sudesh Chhikara's case (supra), it becomes clear that for application of Section 23 of the 2007 Act, the transfer deed should contain a condition/terms that same is subject to the provision of 2007 Act or with the condition that transferee will take care of the transferor after the transfer of the property and the failure to comply with the same should be part of the application filed under 2007 Act and the said averments should be proved on the basis of the evidence.

13. On being asked to point out from the transfer deed as to whether transfer in favour of the respondent-son was made subject to the provisions of 2007 Act or with any condition that transferee will take care of the transferor after the transfer of property, learned counsel for the petitioner very fairly submits that though, the transfer deed is not on record but he has copy of the same which was read by the learned counsel for the petitioner, according to which, there exists no such condition that transferee will maintain the transferor after the transfer deed was executed. Hence, the first condition required to get the sale deed declared void in the facts and

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circumstances of the present case is not proved.

14. The second condition is that transferor should be maintained by the transferee after transfer of property which averment should be there and should be proved on the basis of the evidence. Though, an averment has been made by the senior citizen i.e. transferor of the property in his application but, nothing has been brought on record as to what evidence has been produced to support the said averments.

15. Further, not even a single reason has been given by the Tribunal to prove the said averments qua non-maintenance of the senior citizen and no finding has been recorded by the Tribunal while passing order dated 17.03.2022(Annexure P/2) qua non-maintenance of the senior citizen.

16. In the absence of any such evidence which was brought on record to prove that the transferor-senior citizen was not being maintained, the Tribunal acceded its jurisdiction by setting aside the transfer deed in question keeping in view the facts and circumstances of the present case while exercising jurisdiction under 2007 Act.

17. Keeping in view the said facts, the order passed by the Appellate Court needs no interference at the hands of this Court. Apart from the findings recorded by the Appellate authority in the impugned order dated 05.12.2024, the petitioner was given a fresh chance to prove the entitlement under Section 23 of the 2007 Act but the petitioner has failed to prove the fulfillment of ingredients provided under Section 23 of the 2007 Act so as to claim the relief. Hence, once the ultimate decision of the Appellate Court is in consonance with the Section 23 of the 2007 Act as

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well as the settled principle of law settled by the Hon'ble Supreme Court of India in ***Sudesh Chhikara (supra)***, no ground for interference by this Court is made out and the present writ petition is accordingly dismissed.

18. As of now, mother of respondent No.4 is still alive. Learned counsel for respondent No.4 concedes that it is the duty of respondent No.4 to maintain his mother and submits that respondent No.4 is ready to give maintenance to his mother as directed by this Court.

19. In the facts and circumstances of the present case, respondent No.4 is directed to pay a sum of Rs.15,000/- every month to his mother starting from January, 2025 onwards and in case of any default on the part of the respondent-son to pay the said amount, the same will be treated as violation of order of this Court, apart from any other order to be passed against the son in case, such default is brought to the notice of this Court.

20. It may be noticed that any transfer of the land as per the order of the Tribunal, which has been set aside by the Appellate Court, will also be deemed to be set aside and property will remain with respondent No.4-Son for all intent and purposes.

21. At this stage, a fact has been brought to the notice of this Court that the respondent No.4 has filed defamation suit(s) against the mother.

22. Learned counsel for respondent No.4 submits that as respondent No.4 has already undertaken to maintain his mother, the said defamation suit(s) will not be pursued and will be withdrawn.

January 17, 2025 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No

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