



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

219

CWP-1667-2025

Date of Decision: 14.10.2025

RAJVIR SINGH ALIAS RAJBIR

-PETITIONER

V/S

DEPUTY COMMISSIONER AND ANOTHER

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Rakesh Nehra, Sr. Advocate with
Mr. Ankit Yadav, Advocate, for the petitioner.

Dr. Dharminder S. Lamba, Addl.AG, Punjab.

Mr. Divyam Singh, Advocate for
Mr. Vikram Singh, Advocate, for the respondents no. 2.

KULDEEP TIWARI, J. (ORAL)

1. Learned Senior counsel for the petitioner, in deference to the directions issued by this Court vide order dated 12.09.2025, informs this Court that 12 acres of land was transferred in favour of respondent no.2, and in case respondent no.2 is ready and willing to return 6 acres of land, then he would have no objection.

2. At this stage, learned counsel for respondent no.2, on instructions, informs this Court that the above offer is not acceptable to him.

3. In view of the above, amicable settlement in the instant matter through mediation is not possible, therefore, the matter is to be



adjudicated on merits. Therefore, the instant matter is taken up for adjudication on merits.

4. Through the instant petition, filed under Article 226/227 of the Constitution of India, a challenge is thrown to the order dated 17.12.2024 (Annexure P-1), passed by the Deputy Commissioner, District Magistrate-cum-Chairman (respondent no.1) exercising its powers bestowed under Section 16 of the the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the 'Act of 2007'), wherethrough, the order dated 08.05.2024 (Annexure P-4), passed by the learned Maintenance Tribunal concerned, was set aside, and the transfer deed has been restored to respondent no.2.

5. Learned senior counsel for the petitioner while throwing challenge to the impugned order, submits that the reasons for setting aside the well reasoned order passed by the learned Maintenance Tribunal concerned, is only that the release/transfer deed dated 27.07.2020 (Annexuer P-2) does not contain any condition to the effect that the transferee shall maintain the senior citizen and take care of his basic physical needs and amenities. He further submits that the law has now evolved in this regard, and the senior citizens, despite the absence of any such condition in the release/transfer deed, can still prove before the learned Maintenance Tribunal concerned, that the said deed was, in fact, the conditional one.

6. He also submits that there are ample instances mentioned by



the senior citizen in his application to the effect that after execution of the release/transfer deed dated 27.07.2020, his son started misbehaving with him, and also ignored him, and finally, he ousted him from his house. Now, the petitioner is living at his daughter's house. These factual assertions ought to have been considered by the learned appellate tribunal concerned, before passing the impugned order.

7. Learned counsel for respondent no.2, on the other hand, submits that in the absence of any condition stipulated, in the release/transfer deed, the learned appellate tribunal concerned, has rightly interfered in the order passed by the learned Maintenance Tribunal concerned.

8. He further submits that there is no specific instance mentioned by the petitioner that, as to how respondent no.2, failed to maintain the petitioner. He also submits that the respondent no.2 is still ready and willing to maintain his father (petitioner). Further, the instant petition has been filed by his father (petitioner), at the behest of one of his daughters namely Kalpana, with whom he is presently residing.

9. He in addition submits that release/transfer deed (*supra*), is in fact, an outcome of family partition, whereby, both the sons of the petitioner were given equal shares from the ancestral property, as well as from the self acquired property of the petitioner (father), and this fact deserves due consideration by this Court, while adjudicating the instant petition.



10. He to a greater extent submits that a Joint Investigation Committee was constituted by the learned appellate tribunal concerned, and pursuant thereto, a report dated 11.10.2024, was filed before the latter. The report clearly depicts that the appeal preferred by the petitioner (father), is at the behest of his daughter (sister of respondent no.2). Therefore, the learned appellate tribunal, has rightly set aside the order passed by the learned Maintenance Tribunal concerned.

11. With the able assistance of learned counsel for both the parties concerned, this Court has examined the dispute in question, as well as the impugned order.

12. This Court has to examine, as to whether, these averments in the application are sufficient to invoke the provisions of Section 23 of the Act of 2007, and for this, it is relevant to have a glimpse of the same, which is extracted hereinafter:-

“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.”

13. The above extracted provisions empowers the senior citizen to seek cancellation of any transfer of property executed by them, either by way of gift deed, or otherwise; provided that the transferee has undertaken the obligation to provide basic amenities and maintenance to the senior citizen and such transferee failed to provide the promised maintenance, in that eventuality, such transfer of property shall be deemed to have been made by fraud, coercion or undue influence.

14. Sub-clause (1) of Section 23 of the Act of 2007, creates a legal fiction and empowers the learned tribunal concerned, to presume that the transfer is the result of fraud, coercion or undue influence, in case, the transfer is made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor, and post the execution of the transfer deed, the transferee fails to keep the promise.



15. Two ingredients are essential to be established by leading the cogent evidence. First, that the transfer was subject to the condition that the transferee shall provide the basic amenities and basic physical needs; second, post the transfer of execution of the transfer deed, the transferee failed to provide the basic amenities and physical needs.

16. Hon'ble Supreme Court, in case titled '***Sudesh Chhikara vs. Ramti Devi and another***, Civil Appeal No.174 of 2021, decided on 06.12.2022, has held that, to attract the provisions of Section 23 of the Act of 2007, the condition of providing basic amenities and basic physical needs to transferor-senior citizen is *sine qua non* for its applicability. Therefore, if it is alleged that the conditions mentioned in sub-section (1) of Section 23 of the Act, are attached to the transfer deed, existence of such conditions must be established before the learned Tribunal concerned. The relevant paragraphs are extracted hereunder:-

“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.



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 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.”

17. This Court has examined the submissions, as made by all the parties concerned. A perusal of the impugned order reflects that the learned Maintenance Tribunal concerned, has not given sufficient opportunity to the petitioner to establish by leading cogent evidence that the transfer deed was executed with the condition of providing maintenance and physical needs to the him and, he has been neglected by respondent no.2 (transferee), post the execution of transfer deed.

18. In view of the above, this Court finds that the impugned order does not pass the test of legality, therefore, the same is **set aside** and



the matter is **remanded** to the learned appellate tribunal concerned for decision afresh, while considering the above legal prepositions, so as to enable the petitioner to establish that the transfer was made subject to such conditions and to lead positive evidence to prove that he was in fact neglected and was not provided basic maintenance, after giving due opportunity of hearing to all the parties concerned.

19. Nothing observed above, shall have any bearing upon the merits of the case, and the learned appellate tribunal concerned, shall decide the case on its own merits, as per law.

20. The entire exercise shall be carried out by the learned appellate tribunal concerned, within a period of 03 months from the date of receipt of a certified copy of this order. The concerned parties are directed to cause their appearance before the the learned appellate tribunal concerned, on 10.11.2025 at 11.00 a.m.

21. However, the parties are directed to maintain status *qua* with regard to the property as it exists on today, till the matter is decided by the learned appellate tribunal concerned, afresh.

22. **Disposed of** accordingly.

October 14, 2025
dharamvir

(KULDEEP TIWARI)
JUDGE

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