



**CM-1518-CWP-2024 in/and
CWP-5801-2021 (O&M) 1**

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

**(101+214) CM-1518-CWP-2024 in/and
CWP-5801-2021 (O&M)
Date of Decision : February 17, 2025**

Gursharanjit Singh .. Petitioner

Versus

State of Punjab and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Munish Gupta, Advocate, for the petitioner.

Mr. T.P.S. Chawla, Sr. Deputy Advocate General, Punjab.

Mr. Ritesh Aggarwal, Advocate, for respondent No.4.

Mr. Mahesh Dheer, Advocate, with
Mr. Dheeraj Siwach, Advocate, for respondents No. 6 to 8.

HARSIMRAN SINGH SETHI J. (ORAL)

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As prayed for, the application is allowed.

Annexures P-13 to P-15 are taken on record.

CM-10501-CWP-2021

Present application has been filed for impleading Jasvir Kaur Chandi wife of Dharam Singh and Jashandeep Singh Chandi son of Dharam Singh as respondents No. 7 and 8.

Notice of the application to the counsel opposite.

Mr. Munish Gupta, Advocate, who is present in the Court,

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accepts notice on behalf of non-applicant/petitioner. He raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Applicants Jasvir Kaur Chandi wife of respondent No.6-Dharam Singh and Jashandeep Singh Chandi son of respondent No.6-Dharam Singh are impleaded as respondents No. 7 and 8 in the present writ petition and the amended memo of parties attached with the application is taken on record.

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1. In the present writ petition, the challenge is to the order dated 26.11.2020 (Annexure P-4) passed by respondent No.3 by which, the application filed by the respondent No.4-senior citizen under Section 23 of the Welfare of Parents and Senior Citizen Act, 2007 (hereinafter referred as '2007 Act') was accepted so as to cancel the transfer deed No.356 dated 17.07.2009 executed by the respondent No.4-senior citizen in favour of the petitioner son as well as the order passed by the respondent No.2-Appellate Authority dated 23.02.2021 (Annexure P-9) by which, the order passed by the respondent No.3-Tribunal dated 26.11.2020 (Annexure P-4) was upheld.

2. Learned counsel for the petitioner-son argues that certain facts which were very relevant with regard to the maintainability of the second petition at the hands of the respondent No.4-senior citizen under Section 23 of the 2007 Act has not been looked into by the authorities concerned while exercising jurisdiction under 2007 Act hence, the impugned order dated

26.11.2020 (Annexure P-4) and 23.02.2021 (Annexure P-9) are liable to be

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set aside.

3. Learned counsel for the petitioner-son submits that the respondent No.4-senior citizen had filed the first application under Section 23 of the 2007 Act, which came to be decided by the Tribunal on 09.01.2019 (Annexure P-1) wherein, the cancellation of the transfer deed No.356 dated 17.07.2009 was declined and only a payment of Rs.500/- per month as maintenance allowance was allowed in favour of respondent No.4-senior citizen to be paid by all the sons of the respondent No.4-senior citizen and the said order i.e. 09.01.2019 was never challenged and accordingly attained finality hence, the second application for the same relief was not maintainable but the same has been accepted by the respondent No.3-Tribunal vide order dated 26.11.2020 (Annexure P-4) and the said order has been upheld by the respondent No.2-Appellate Court vide order dated 23.02.2021 (Annexure P-9).

4. Upon notice of motion, the respondents have filed the reply.

5. It may be noticed that the respondent No.4-senior citizen has unfortunately died during the pendency of the present writ petition i.e. on 23.09.2024. The legal heirs of the respondent No.4-senior citizen are already on record and are contesting the same keeping in view their respective interest in the property in question.

6. Learned counsel appearing on behalf of respondents No. 6-Dharam Singh submits that once after the passing of the impugned order dated 26.11.2020 (Annexure P-4) and 23.02.2021 (Annexure P-9), the property in question has been further transferred hence, no relief can be

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granted to the petitioner-son and the said petition may kindly be dismissed.

7. Learned counsel for respondents No. 6 further submits that as the first order passed by the Tribunal dated 09.01.2019 was not complied with so as to give maintenance to the respondent No.4-senior citizen (now deceased), the application of cancellation of the sale deed has been considered again and the same has rightly been cancelled vide order dated 26.11.2020 (Annexure P-4) which order may kindly be upheld.

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

9. It may be noticed that in the first proceedings, it has already come on record that the petitioner-son was not served as he was residing in Spain wherein, a direction was given to pay maintenance of Rs.500/- per month to the respondent No.4-senior citizen which was to be paid by all the sons of the respondent No.4-senior citizen including respondent No.6-Dharam Singh. Once, the said order has already attained finality, no second application under 2007 Act could have been filed by respondent No.4-senior citizen before the same authority for passing a fresh order. In case the respondent No.4-senior citizen was aggrieved by the order dated 09.01.2019 (Annexure P-1), she could have availed appropriate remedy under 2007 Act, which was never availed by her hence, in the absence of any provision that the second application for the same relief is maintainable despite rejection of the first application on merit, the second application could not have been treated as valid application under 2007 Act so as to pass an order granting the relief to the respondent No.4-senior citizen

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which is contrary to the interest of the petitioner-son.

10. Further, learned counsel for respondent No.6- Dharam Singh i.e. another son of respondent No.4-senior citizen (now deceased) submits that as the first order which is dated 09.01.2019 was not complied with, the same will give rise to a fresh cause of action to the respondent No.4-senior citizen to the claim the property back.

11. It may be noticed that the aforementioned direction vide order dated 09.01.2019 (Annexure P-1) was given to all the sons of the respondent No.4-senior citizen including the petitioner, respondent No.6-Dharam Singh and the third son respondent No.5-Jaswinder Singh. In case, respondent No.6-Dharam Singh has not complied with the order dated 09.01.2019 (Annexure P-1), the same cannot cause prejudice to the petitioner-son, who was not even served qua the said proceedings hence, any order which was passed in the absence of the petitioner-son, there is no occasion that the aforementioned order was required to be complied with by the petitioner-son and non-compliance would lead to the cancellation of the transfer deed No.356 dated 17.07.2009, which relief had already been declined by the Tribunal vide order dated 09.01.2019 (Annexure P-1).

12. Further, respondent No.6-Dharam Singh is now claiming the benefit as per the impugned order, as during the pendency of the present petition, he has got the property in question mutated in his name and further transferred in the name of his son and daughter-in-law. This fact shows that the question was not with regard to the maintenance of the respondent No.4-senior citizen (now deceased) but was a property dispute where, the other



sons wanted the property which was distributed between the petitioner and respondent No.5-Jaswinder Singh by respondent No.4-senior citizen vide transfer deed dated 17.07.2009 be cancelled so as to take back the property in question from the petitioner in order to divide the same among themselves. The essence of the 2007 Act is missing in the facts and circumstances of the present case.

13. Further, even if it is assumed for the sake of argument that the second application was maintainable, still, the benefit of transfer in favour of the petitioner-son has been set aside on the ground that the petitioner-son has failed to take care of the respondent No.4-senior citizen (now deceased).

14. It may be noticed that at the time of transfer and thereafter, the petitioner-son remained out of country and was living in Spain. Nothing evident has come on record as to how, the petitioner-son was supposed to take care of the respondent No.4-senior citizen while in Spain. The reason given by the authorities adjudicating the claim of the respondent No.4-senior citizen under 2007 Act is that no medical care was being provided to the respondent No.4-senior citizen. Nothing material has come on record that at any given point of time, the respondent No.4-senior citizen had requested the petitioner-son with regard to the difficulties being faced so as to redress the same. The orders passed by the authorities concerned i.e. respondents No. 3 and 2 even otherwise, is without appreciating the actual facts that the petitioner-son who was living abroad, even at the time of the transfer, in the absence of the any information that the respondent No.4-



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senior citizen was ill, hence, was required to take care of her, cannot be a

ground to set aside the transfer dated 17.07.2009 especially when, the facts and circumstances show that the litigation is at the instance of the other brothers of the petitioner so as to take back the property in question from the petitioner and to divide the same again which act has actually happened after the passing of the impugned order dated 26.11.2020 (Annexure P-4), which is not permissible under the 2007 Act.

15. Keeping in view the above, the impugned orders dated 26.11.2020 (Annexure P-4) and 23.02.2021 (Annexure P-9) are set aside. The cancellation of the transfer deed dated 17.07.2009 is set aside and the deed dated 17.07.2009 remains in favour of the petitioner and respondent No.5-Jaswinder Singh. Any transfer of the property in pursuance to the impugned order Annexures P-4 and P-9 shall stand nullified and the petitioner and respondent No.5-Jaswinder Singh will be the owner of the property in question for all intents and purposes as per the transfer deed dated 17.07.2009.

16. The present writ petition is allowed in above terms.

17. Civil miscellaneous application pending if any, also stands disposed of.

February 17, 2025
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No