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

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CWP No.8142 of 2023**Date of decision:03.02.2025**

Basant Singh

...Petitioner

Versus

Appellate Tribunal-cum-Additional District Magistrate,
Patiala and others

...Respondents

Coram: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: None for the petitioner.

Mr. Soloman Partap Singh, AAG, Punjab.

Mr. BPS Virk, Advocate,
for respondent no.3.

Harsimran Singh Sethi, J. (Oral)

In the present petition, the grievance being raised by the petitioner is that the Tribunal, vide its order dated 05.08.2022 (Annexure P-5) passed under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short "2007 Act"), has wrongly cancelled the transfer deed done in favour of the petitioner through Vasika No.2909 dated 14.02.2017, which order has been upheld by the Appellate Authority on 17.02.2023 (Annexure P-6).

2. The grievance being raised by the petitioner is that the land in dispute was transferred by respondent no.3, who is the father, in favour of his both sons, namely the petitioner Basant Singh and Sahib Singh, in equal shares. The petitioner submitted that he has never shirked to his responsibility of maintaining respondent no.3. He further submits that

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the requirements of Section 23 of the 2007 Act have not been fulfilled so as to pass the impugned order. It is further submitted that no finding has been recorded as to how respondent no.3 was not being maintained especially when no such claim has been made by respondent no.3 qua other son, who was also given other half of the property by way of same transfer deed.

3. Upon notice of motion, learned counsel for respondent no.3 has appeared and submits that once the transfer of land by respondent no.3 in favour of the petitioner was subjected to Section 23 of the 2007 Act, it was his duty to maintain respondent no.3 and, therefore, as the petitioner is not maintaining the private respondent no.3, the said conditional transfer in his favour has rightly been cancelled by the authorities exercising their jurisdiction under the 2007 Act and, thus, the present writ petition may kindly be dismissed.

4. I have gone through the record and heard the learned counsel for respondent no.3.

5. The first question which needs to be adjudicated upon is as to whether the Tribunal and the Appellate Authority envisaged under the 2007 Act had found violation of Section 23 of the 2007 Act or not? Section 23 of the 2007 Act reads as under:-

“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

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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.”

6. With regard to Section 23 of the 2007 Act, a bare perusal of the same would go on to show that in order to grant relief under Section 23, firstly, the transfer of the property should be subjected to the provisions of the 2007 Act and secondly, that there has to be a pleading that the transferor was not being taken care of qua his physical needs and basic amenities, which also have to be proved.

7. In the judgment rendered by the Supreme Court in the case of **Sudesh Chhikara vs. Ramti Devi & anr.**, 2023(1) RCR (Civil) 226, the following observations have been made:-

“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

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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.”

8. In view of the settled principle of law, the burden of proof is upon the transferor to prove that he has been devoid of basic amenities and there has been a non-fulfillment of physical needs. In the present case, the transferor has not been able to prove the same in the manner required. The findings have also not been recorded qua the said aspect by the authorities concerned while passing the impugned orders. It is a conceded position that the petitioner is living in France, whereas the

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senior citizen is living in India. By the same transfer deed, the property was divided equally between the petitioner and his brother who is living in India. However, no claim as such has been put forth by the senior citizen against the brother of the petitioner qua non-maintenance or non-fulfilling the basic needs of respondent no.3. Even at the time of transfer of the property, the petitioner used to live abroad and nothing has come on record to show as to how the petitioner was required to fulfill senior citizen's basic amenities and physical requirements.

8. During the course of hearing, it has also come on record that the senior citizen has his own property to live and whether there is any physical requirement that needs to be fulfilled qua senior citizen has also not been mentioned as nothing has come on record with regard to this and the nothing of this sort has been demanded from the another son who is living in India.

9. In all likelihood, this is a property dispute between the two brothers for which the senior citizen is being used, seeking relief under 2007 Act.

10. Keeping in view the facts and circumstances of the present case, in the absence of any finding recorded on the basis of the evidence which has come on record that the petitioner was required to fulfill certain physical needs and basic amenities of the senior citizen, the orders dated 05.08.2022 (Annexure P-5) and dated 17.02.2023 (Annexure P-6) passed by the Tribunal and the Appellate Authority are

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liable to be set aside as the same is perverse to Section 23 of the 2007 Act as well as the law settled on the issue as noticed hereinbefore and I order accordingly.

11. As the senior citizen has transferred his property, the petitioner is required to maintain him so that he can live a dignified life. Thus, it is directed that from the date of the order passed by the Tribunal, the petitioner shall pay a sum of Rs.10,000/- per month to the senior citizen along with up-to-date arrears in his bank account. In case, the said direction is not complied with by the petitioner, the respondent-senior citizen will be at liberty to file an application before this Court for appropriate orders.

February 03, 2025
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(Harsimran Singh Sethi)
Judge

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