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

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DATE OF DECISION: 14.11.2025

ASHOK KUMAR

-PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Pankaj Bali, Advocate,
for the petitioner.

Mr. T.P.S. Walia, AAG, Punjab.

Mr. Mohd. Yousaf, Advocate,
for respondent no.4.

KULDEEP TIWARI, J.

1. The senior citizen fetching grievance from an order dated 06.11.2018 (Annexure P-3), passed by the learned Sub-Divisional Magistrate-cum-Collector, Khanna (hereinafter referred to as the 'learned Maintenance Tribunal'), wherethrough, his application for cancellation of transfer deed dated 06.11.2013, executed in favour of his son (respondent no.4), was dismissed, and further, the statutory appeal preferred thereagainst, was also dismissed, vide an order dated 14.01.2020 (Annexure P-5), by the learned Additional Deputy Commissioner-cum-Collector, Khanna (respondent no.2), has filed the instant writ petition under Article 226 and 227 of the Constitution of India, seeking quashing of the aforesaid orders.

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2. Learned counsel for the petitioner submits that the authorities below have failed to appreciate the fact that the house in question, was owned by the petitioner, and the same was transferred in favour of his son (respondent no.4), with the expectation that he would take care of him in his old age. However, immediately after the execution of the transfer deed, respondent no.4 changed his behaviour towards his father (petitioner), and under a deep-rooted conspiracy, in connivance with the petitioner's wife concocted a story of an extra-marital affair.

3. He further submits that a cheque which was given to the petitioner, which was subsequently, dishonoured, and therefore, this factual aspect clearly establishes that the house in question was transferred in the name of his son (respondent no.4), out of love and affection, and not in lieu of any monetary consideration.

4. He next submits that sufficient evidence has been adduced by the petitioner to establish that he has been neglected, and was not even allowed to take his own movable articles with him, from the house in question.

5. The submissions, as made by learned counsel for the petitioner were vociferously opposed by learned counsel for respondent no.4.

6. He submits that the petitioner is working as a deed writer, and was well aware about the procedure of transfer of properties. Earlier, the petitioner had sold the house in question to his son (respondent no.4), for a sale consideration of Rs.11,70,000/-, and after receiving the hefty

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amount, he cleverly executed the transfer deed instead of sale deed.

7. He further submits that the petitioner was made to purchase the stamp duty by respondent no.4, and on those stamp papers, instead of executing the sale deed, he got executed the transfer deed, with a hidden motive to misuse the same at later stage.

8. He also draws attention of this Court towards the transfer deed (Annexure R-4/3), to submit that the house in question, was subsequently, transferred by respondent no.4 in favour of his wife Monika Sharma on dated 17.04.2018. Thereafter, the petitioner tried to interfere into the peaceful possession of wife of respondent no.4, i.e. Monika Sharma, which led the latter concerned, to file a suit for permanent possession against the petitioner. The trial court concerned, restrained the petitioner to interfere into the peaceful possession of the house in question of Monika Sharma, and further restrained him from dispossessing her from the property in dispute.

9. He further draws attention of this Court towards a photocopy of the passport of the petitioner (Annexure R-4/4), showing that the petitioner visited Thailand from 12.02.2019 to 16.02.2019. On the basis of that, he submits that the petitioner's claim of living in a deprivation, without any basic amenities stands falsified, as he is a man of sufficient means. Even the petitioner purchased a car make Baleno, after the order dated 14.11.2020, passed by the learned appellate authority (respondent no.2). He in addition submits that the petitioner has sufficient bank balance, and is of a sound financial status.

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10. He finally submits that Sanjogita Rani, wife of the petitioner, and mother of respondent no.4, appeared before the learned Maintenance Tribunal, and unambiguously, deposed that the petitioner was duly cared of by respondent no.4, who provided all the basic amenities to him. In fact, respondent no.4, got issued a medical insurance cover for the petitioner, so as to provide him with the best medical facilities.

11. Finally, he draws attention of this Court towards some photographs, which are attached as Annexure R-4/7, showing that the petitioner is being duly taken care of at the time of family occasions as well, and therein, the petitioner is also looking happy with his family, including his son (respondent no.4).

12. This Court has considered the submission, as made by learned counsel for the parties concerned, and has also examined the Awards as impugned before this Court.

13. This Court has to examine, as to whether, the averments as made 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.”

14. The above extracted provisions empowers the senior citizen to seek cancellation of any transfer of property executed by him, 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.

15. 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.



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16. 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.

17. 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. 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.”

18. Similar observations were made by a Co-ordinate Bench of this Court, in case titled '**Tilak Raj vs. State of U.T. Chandigarh and others**', CWP-414-2025, decided on 13.01.2025, wherein, after considering the ratio laid down in **Sudesh Chhikara's case (supra)**, it was held that the condition requiring the transferee to maintain the senior citizen by providing basic amenities and physical needs must not only be expressly stipulated in the transfer deed, but must also be specifically pleaded before the learned Tribunal concerned, in order to establish a breach thereof. It is only upon fulfillment of these conditions that the relief under Section 23 of the Act of 2007, can be granted. The relevant observations of the Co-ordinate Bench are extracted hereinbelow:

“12. A bare perusal of the above paragraphs of the judgment in Sudesh Chhikara (supra) makes it clear that not only the condition that the senior citizen will be maintained by the transferee qua his basic amenities and basic physical needs must be there in the document concerned but, the said part needs to be pleaded before the Tribunal also so as to prove the violation of the said condition and it is only under that circumstances, the relief



can be granted. In the absence of the condition that the transferee is liable to maintain the senior citizen in the deed sought to be recalled, the requirement of Section 23 of the 2007 Act are not fulfilled and the interpretation being given by the petitioner to the paragraphs 13 and 14 of the judgment cannot be accepted.

13. Even otherwise, on being asked to read from the pleadings as to what basic amenities and the basic physical needs were demanded by the petitioner before the Tribunal and how they were proved, learned counsel for the petitioner has not been able to show that any such factual averment was made or any evidence was brought on record with regard to any basic amenities or the physical needs of the petitioner, not being fulfilled by the respondent. Hence, even if the interpretation being given by the petitioner is accepted for the sake of argument, then also, the requirements of the judgment in Sudesh Chhikara (supra) are not fulfilled in the facts and circumstances of the present case.”

19. The legality of the hereinabove expressed observations was tested by the aggrieved by filing LPA No.1012 of 2025. However, the same were affirmed by the Division Bench of this Court, by drawing an order dated 09.05.2025. The relevant paragraphs of this order are extracted hereunder:-

“10. A perusal of the said judgment indicates that transfer must be made subject to the condition that transferee shall provide basic amenities and basic physical needs to the transferor and only then if the transferee refuses or fails to provide such amenities or physical needs to the transferor Section 23 (1) of the 2007 Act can be brought into motion. Only if both the conditions are satisfied by a legal fiction,



then transfer shall be deemed to have been made by way of fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of transferor and the Maintenance Tribunal would have the jurisdiction to declare the transfer void.

11. It was further observed in Sudesh Chhikara's case (supra) that when a petition under Section 23 of the 2007 Act does not reveal that the deed was executed subject to the obligation of maintenance stipulated under Section 23 of the 2007 Act and no such finding is recorded by the Maintenance Tribunal or no oral evidence is adduced by the parties, then the order of the Tribunal could not be held to be maintainable.”

20. Reiteratedly, in the instant case, the release/transfer deed in question contains no recital of any condition obligating the respondent no.2, to provide basic amenities or/and physical needs to the petitioner, a senior citizen. Moreover, the petitioner, failed to adduce any evidence before the learned Maintenance Tribunal, to establish that the transfer was made subject to such a condition. In the absence of necessary conditions in the transfer deed, which are prescribed under Section 23 of the Act of 2007, the impugned orders withstand judicial scrutiny and satisfy the test of legality.

21. It is further observed by this Court that the petitioner had received various amounts by way of cheque or otherwise, for which he is unable to give any feasible explanation/reasons regarding the source or the purpose of such transfers. The property in question had already been transferred in favour of Monika Rani, wife of respondent no.4, who had already initiated a civil proceedings, wherein, an interim injunction has

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been granted against the petitioner.

22. The petitioner before the learned Maintenance Tribunal concerned, has failed to establish by bring on record any cogent evidence that after the transfer of the property in question he was not duly cared of, or provided with the basic necessities, as required. From the evidence as produced before this Court, including the written statement, this Court can safely conclude that the ingredients of Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act of 2007, requiring invoking its mischief are not present, in the application as well as the evidence adduced by the petitioner. Therefore, the transfer deed cannot be cancelled as prayed for.

23. Consequently, the instant petition, stands **dismissed**.

November 14, 2025
dharamvir

(KULDEEP TIWARI)
JUDGE

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