

2025:PHHC:005465



CWP-17500 of 2019 with :1:
CWP-30134 of 2019

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

101+208

**CM-14255-CWP-2024 in/and
CWP-17500 of 2019 (O&M)
Date of decision : 15.01.2025**

BEERO DEVI

..... Petitioner

VERSUS

**APPELLATE TRIBUNAL UNDER THE MAINTENANCE AND
WELFARE OF PARENTS AND SENIOR CITIZENS ACT AND
OTHERS**

..... Respondents

208(II)

CWP-30134 of 2019 (O&M)

NITIN KUMAR

..... Petitioner

VERSUS

**THE APPELLATE TRIBUNAL UNDER THE MAINTENANCE AND
WELFARE OF PARENTS AND SENIOR CITIZENS ACT AND
OTHERS**

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. Rakshit Gupta, Advocate for
Mr. Rakesh Gupta, Advocate
for petitioner in CWP-17500 of 2019 and
for respondent No.3 in CWP-30134 of 2019.

Mr. Vaibhav Parashar, Advocate
for the petitioner in CWP-30134 of 2019 and
for respondents No.4 and 5 in CWP-17500 of 2019.

Mr. Saurabh Girdhar, AAG, Haryana.



**CWP-17500 of 2019 with :2:
CWP-30134 of 2019**

Harsimran Singh Sethi, J. (Oral)

**CM-14255-CWP-2024 in CWP-17500 of 2019 with
CM-14079 -CWP-2024 in CWP-30134 of 2019**

Prayer in these applications is for impleadment of legal heirs of deceased-Beero Devi, which are duly accompanied by affidavit of one of the LR.s.

Keeping in view the facts and circumstances as above, three persons as detailed in para No.4 of the applications, are impleaded as legal heirs of deceased-Beero Devi in these writ petitions, for the purpose of adjudication of these writ petitions.

Amended memo of parties are taken on record, subject to just exceptions.

Both applications are disposed of accordingly.

**CWP-17500 of 2019 and
CWP-30134 of 2019**

1. By this common order, two petitions challenging the order dated 08.05.2019 (Annexure P-8) passed by the Appellate Authority under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as '2007 Act'), are being decided.

2. In the writ petition filed by Beero Devi being CWP-17500 of 2019, the challenge is on the ground that the transfer of land in favour of respondent No.3-son of Beero Devi qua 94 kanals and 2 marlas has not been set aside and only 23 kanals 10 marlas have been returned back to her



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whereas, in the writ petition (CWP-30134 of 2019) filed by minor-grand-son, the challenge to the order dated 08.05.2019 is to the extent that 23 kanals of land which was given to him, has been ordered to be reverted back to Beero Devi.

3. Learned counsel for the petitioner-Beero Devi argues that once Beero Devi was not being maintained properly by her son, the land transferred by her in favour of her son, which was further transferred in the name of the minor grand-children of the petitioner, is void and amounts to fraud and the said transfer of the land measuring 94 kanals 2 marlas in favour of the respondent No.3-son is liable to be *set aside* whereas, the said benefit has not been extended by the Appellate Tribunal without appreciating the facts on record.

4. Learned counsel for the minor grand-children of Beero Devi submits that minor children cannot be supposed to maintain a senior citizen and that the property which was transferred by Beero Devi in favour of her son i.e. the father of the minor children was without there being any restriction as imposed under 2007 Act and the requirements of Section 23 have not been fulfilled but still, the land measuring 23 kanal 10 marlas has been reverted back to Beero Devi which is beyond the jurisdiction of the Appellate Authority while passing the impugned order, being contrary to the provisions of 2007 Act as well as the settled principle of law.

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



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6. The issue as to under what circumstances, the property transferred can be reverted back to the original owner by exercising power under Section 23 of 2007 Act has been interpreted by the Hon'ble Supreme Court of India while passing the judgment in Civil Appeal No.174 of 2021, decided on 06.12.2022 titled Sudesh Chhikara Vs. Ramti Devi and another. The relevant paragraphs 13, 14 and 15 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.

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.

15. We have perused the counter affidavit filed by respondent no.1. Even in the counter, it is not pleaded that the release was subject to such a condition. It is merely pleaded that the appellant had no intention to take



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care of her mother. Thus, the order of the Maintenance Tribunal cannot be sustained as the twin conditions incorporated in sub-Section (1) of Section 23 were not satisfied. Unfortunately, the High Court has not adverted to the merits of the case at all.”

7. By applying the said settled principle of law in the facts and circumstances of the present case, it is a conceded position that the property was transferred by Beero Devi without there being any term and condition that the Beero Devi will be taken care by the transferee. In the absence of any such condition, as per the judgment of Hon'ble the Supreme Court in **Sudesh Chhikara(supra)** the claim under Section 23 of 2007 Act is not admissible.

8. Further, even otherwise Beero Devi has not stated as to how, she was entitled to be maintained qua her basic amenities and physical needs, which were not being fulfilled by the transferee. In the absence of any such averment in the claim petition and no finding recorded by the Tribunal as well as the Appellate Authority qua the said aspect, the transfer of the land could not have been cancelled by treating the same to be a fraud upon a senior citizen under Section 23 of 2007 Act.

9. Keeping in view the above, the order dated dated 08.05.2019 (Annexure P-8) passed by the Appellate Authority is *set aside*.

10. Though, in the the normal circumstances the case would have been remanded back to the Appellate Authority to pass a fresh order on the basis of the the evidence which has come on record qua the claim raised by the senior citizen but learned counsel for the Beero Devi submits that unfortunately she has already passed away. That being so, the case need not



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be remanded back to the Appellate Authority for fresh adjudication as, senior citizen who was claiming the land is no more in this world, hence, the order dated 08.05.2019 (Annexure P-8) passed by the Appellate authority with regard to the transfer of land by holding that Beero Devi will be owner of 23 kanals 10 marlas land is *set aside* and the transfer of the land by Beero Devi in favour of her son and consequent upon the minor grand-children will remain effective subject to any order to be passed by the civil Court in case any litigation is initiated by the legal heirs of the Beero Devi after her death.

- 11. Present petitions are disposed of in above terms.
- 12. Pending miscellaneous applications, if any, also stand disposed of accordingly.
- 13. A photocopy of this order be placed on the connected case file numbered above.

**(HARSIMRAN SINGH SETHI)
JUDGE**

15.01.2025
Rimpal

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