



CWP-14182-2024

:1:

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

285

CWP-14182-2024 (O&M)  
Date of decision : 06.02.2025

ARSH AGGARWAL

..... Petitioner

VERSUS

DEPUTY COMMISSIONER AND OTHERS

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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Present :- Mr. Jitender Nara, Advocate  
for the petitioner.

Mr. T. P. S. Chawla, Senior DAG, Punjab.

Mr. Narinder Sharma, Advocate  
for respondent No.3.

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**Harsimran Singh Sethi, J. (Oral)**

1. Mr. Jitender Nara, Advocate appears on behalf of petitioner and files Power of attorney with no objection from the earlier counsel, which is taken on record, subject to just exceptions.

2. In the present petition, the challenge is to the order dated 10.04.2024 (Annexure P-13) by which, the Appellate Authority *set aside* the order dated 17.04.2023 (Annexure P-11) passed by the Tribunal so as to cancel the transfer deed dated 09.10.2019 and transfer the aforementioned property back in the name of the respondent No.3-senior citizen (mother).

3. Learned counsel for the petitioner submits that the property in

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question was purchased by the petitioner from his own sources, though same was got registered in the name of the respondent No.3-senior citizen (mother) and the mother rightly transferred half of the property i.e. plot No.542 vide transfer deed dated 09.10.2019 (Annexure P-8) back to the petitioner and therefore, the Tribunal rightly held that the transfer deed cannot be cancelled hence, the Appellate Authority failed to appreciate all the facts while passing the order dated 10.04.2024 (Annexure P-13) so as to cancel the transfer deed dated 09.10.2019 and therefore, the order dated 10.04.2024 (Annexure P-13) passed by the Appellate Authority may kindly be *set aside*.

4. Learned counsel appearing on behalf of the respondent No.3-senior citizen (mother) submits that the petitioner-son has filed a civil suit claiming the title of the property which clearly shows that the property was of the respondent No.3-mother as of now. Learned counsel for the respondent No.3 further submits that the 50% of the property i.e. plot No.542 was transferred to petitioner-son by the transfer deed dated 09.10.2019 with the clear condition that the transferee will be take care of the basic needs of the transferer and in the violation of the said condition, the transfer deed shall be cancelled and in the present case, the situation is such that respondent No.3-mother is living in a rented accommodation whereas, the property is being enjoyed by the petitioner-son and not even a single paisa has been paid to the respondent No.3-mother so as to maintain her. Hence, the order passed by the Sub-Divisional Magistrate (Tribunal) dated 17.04.2023 (Annexure P-11) has rightly been *set aside* by the Appellate

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Authority vide order dated 10.04.2024 (Annexure P-13), which order is perfectly valid and legal.

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

6. In the facts and circumstances of the present case, certain facts are conceded by the parties such as the property in question is in the name of the respondent No.3-senior citizen (mother), half of which was transferred in the name of the petitioner-son vide transfer deed dated 09.10.2019. It is also a conceded position that the aforementioned transfer of property was conditional that transferee will take care of the transferer and in the absence of the same, the transfer deed dated 09.10.2019 will stand cancelled. Further, it is also a conceded position that as of now the respondent No.3-senior citizen is residing in a rented accommodation though, she was owner of the property in question qua which property vide transfer deed dated 09.10.2019, half share was given to the petitioner, which transfer deed has been cancelled by the impugned order dated 10.04.2024 (Annexure P-13).

7. Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as '2007 Act'), gives the power to the senior citizen to declare the transfer deed as fraud in case, the ingredients of Section 23 are proved. Relevant Section 23 of 2007 Act is 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 or fails*

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*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.”*

8. In the present case, learned counsel for the petitioner has not been able to controvert that as per the transfer deed dated 09.10.2019, the petitioner-son was required to maintain respondent No.3-mother hence, one condition that the transfer was as per the condition envisaged under 2007 Act stands proved.

9. The next question which needs to be proved to claim benefit under Section 23 of the 2007 Act is whether the senior citizen was being maintained by the petitioner or not. Keeping in view the facts mentioned hereinbefore, even after the transfer of the half of the property in favour of the petitioner-son by the respondent No.3-senior citizen, the respondent No.3-senior citizen is not being allowed to reside in the said house and the averments that she has been thrown out could not be controverted by the petitioner-son.

10. It is a conceded position that the respondent No.3-senior citizen is living in a rented accommodation and is paying her own rent from the

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sources available to her and is not being taken care by the petitioner-son in any manner. Learned counsel for the petitioner-son has not been able to prove that in any manner, he is taking care of his mother, which he undertook while getting half of the property by the transfer deed dated 09.10.2019. Once the respondent No.3-mother is not being maintained and she is living on her own, the condition of the transfer deed dated 09.10.2019 stands violated and as per Section 23 of 2007 Act, in case, the conditions of 2007 Act stands violated, the transfer will be deemed to be a fraud, which finding has rightly been recorded by the Appellate Court while passing the impugned order dated 10.04.2024 (Annexure P-13).

11. Qua the argument of the learned counsel for the petitioner that the house was purchased by the petitioner-son from his own sources and was purchased in the name of the respondent No.3-senior citizen, a civil suit has already been filed by him claiming the ownership, of the house in question.

12. In case, the petitioner-son is successful in the said litigation to claim the ownership of the house, the claim of the respondent No.3-senior citizen needs to be reconsidered at that stage. In case the petitioner is declared the owner of the house, he can avail appropriate remedy for recalling of the orders passed under 2007 Act for getting the property in question back by proving his entitlement. As of now, initially the property belongs to the respondent No.3-senior citizen (mother) and she had transferred half share of the property in the favour of the petitioner-son with condition that she would be taken care of, which condition has been violated and in the facts and circumstances of the present case, the requirement of



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Section 23 stands proved so as to declare the transfer deed dated 09.10.2019 as fraud, which has rightly been done by the Appellate Court.

13. Hence, no interference is called for by this Court in the present petition and the same is dismissed.

14. The respondent No.3-senior citizen will be at liberty to get police help to secure the possession of the property concerned in case, the petitioner-son does not vacate the house by 30.04.2025.

15. Pending applications, if any, also stand disposed of accordingly.

**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

**06.02.2025**

Rimpal

Whether speaking/reasoned  
Whether Reportable :

Yes  
No