

CM-16247-CWP-2024 in/and
CWP-13094-2023 (O&M)

2025:PHHC:036144



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101+207)

CM-16247-CWP-2024 in/and
CWP-13094-2023 (O&M)
Date of Decision : 17.03.2025

Jaswant Kaur

...Petitioner

Versus

The Additional Deputy Commissioner-cum-Appellate Tribunal and
others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gaurav Dutta, Advocate for the petitioner.

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

Mr. S.P.S. Khaira, Advocate for respondent No. 3.

Harsimran Singh Sethi J. (Oral)

CM-16247-CWP-2024

Present application has been filed for placing on record the
documents as Annexures P-12 to P-16.

Application is allowed and the documents as Annexures P-12 to
P-16 are taken on record with all just exceptions.

CWP-13094-2023 (O&M)

1. In the present petition, the grievance being raised by the
petitioner is that the respondent-mother filed a claim petition under Section
23 of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007



(hereinafter referred to as '2007 Act') for setting-aside the transfer deed No. 556 dated 17.05.2017 (Annexure P-1) on the ground that despite the condition in the transfer deed that the petitioner will maintain her mother, the mother was not being maintained by the petitioner, which was causing prejudice to the respondent-mother. And upon the claim petition filed by the respondent-mother, the Appellate Authority under 2007 Act has set-aside the transfer deed No. 556 dated 17.05.2017 (Annexure P-1) hence, it is the prayer of the petitioner that impugned order dated 18.04.2023 (Annexure P-7) to set-aside and order dated 10.11.2022 (Annexure P-5) be restored.

2. Learned counsel for the petitioner submits that after appreciating all the facts put forth before it, the Tribunal under 2007 Act passed an order on 10.11.2022 (Annexure P-5) and prayer of the respondent-mother for setting-aside the transfer deed No. 556 dated 17.05.2017 (Annexure P-1) was not accepted and the financial monthly assistance @ ₹3,000/- payable to the respondent-mother was fixed. Learned counsel for the petitioner further argues that in an appeal preferred against the order dated 10.11.2022 (Annexure P-5) by the senior citizen-mother, the appellate authority has passed an order on 18.04.2023 (Annexure P-7) accepting the appeal preferred by the respondent-mother and consequently, the transfer deed No. 556 dated 17.05.2017 has been set-aside.

3. Learned counsel for the petitioner argues that the Appellate Authority without there being any finding recorded while passing the impugned order as to how the senior citizen was not being maintained, while on the parallel monthly assistance amounting ₹3,000/- fixed by the Tribunal



vide order dated 10.11.2022 (Annexure P-5) was being paid regularly, has without adverting to any fact qua non-maintenance, cancelled the transfer deed, which is arbitrary and illegal.

4. Learned counsel for the respondent-senior citizen argues that once, the senior citizen was not being maintained, the transfer deed had rightly been cancelled as per the 2007 Act, therefore, the impugned order dated 18.04.2023 (Annexure P-7) may kindly be upheld.

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

6. As per the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 174 of 2021 titled as ***Sudesh Chhikara Vs. Ramti Devi and another***, decided on 06.12.2022, it has been held that the onus is upon the senior citizen to prove that he/she is not being maintained. In the present case, nothing has come on record to show as to how the senior citizen was required to be maintained, especially when the respondent-senior citizen was living with her daughter.

7. A bare perusal of the impugned order dated 18.04.2023 (Annexure P-7) passed by the appellate authority exercising jurisdiction under 2007 Act would show that the Appellate Tribunal has not even reverted as to what evidence has come on record to show that the senior citizen was not being maintained by her.

8. Keeping in view the totality of the circumstances, the order dated 18.04.2023 (Annexure P-7) passed by the Appellate Authority is set-aside. The case is remanded back to the appellate authority to pass



appropriate order so as to record a finding based upon the evidence that has come on record and by keeping in view the respective assertions of the parties. Let the fresh order be passed within a period of three months of the receipt of copy of this order.

- 9. Parties are directed to appear before the Tribunal on 15.04.2025.
- 10. Petition is allowed in above terms.
- 11. Pending miscellaneous application, if any, also stands disposed of.

March 17, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No