

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

213

CWP-10884-2017

Date of decision: 03.02.2025

BUTA SINGH**...Petitioner****VERSUS****STATE OF PUNJAB & ORS****...Respondents****CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

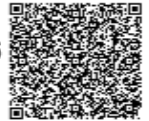
Present: Mr. H.P.S. Isahar, Advocate
for the petitioner
(through video conferencing)

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

Mr. R.V.S. Chugh, Advocate
for respondents No.4 & 5.

HARSIMRAN SINGH SETHI, J.(ORAL)

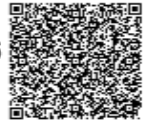
1. In the present petition, the grievance being raised by the petitioner is that Modan Singh i.e. senior citizen was unmarried and he was being taken care of by his 02 nephews namely Buta Singh (petitioner) and Hari Singh. The senior citizen - Modan Singh transferred a land vide transfer deed No.550 dated 05.07.2012 in favour of the petitioner. Out of the total land owned by the senior citizen, only 02 acres were transferred in favour of Buta Singh. The said land was transferred without there being any condition that the transferee will take care of the transferor as, the transferor was



already having his own land apart from one transferred to the petitioner – Buta Singh.

2. Thereafter, an application was filed under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short – the 2007 Act) for the purpose of canceling of the said transfer deed on the ground that the petitioner is not taking care of Modan Singh. On the basis of the said application, the Tribunal vide order decided on 30.11.2015 (Annexure P-4) held that execution and transfer deed No.550 dated 05.07.2012 in favour of Buta Singh is being cancelled till the time applicant - Modan Singh is alive but he will not be able to further transfer this land to any other person. Against the said order, Modan Singh filed an appeal before the Appellate Court, which was allowed on 26.02.2016 (Annexure P-5), and execution of transfer deed declared void. Hence, the present petition.

3. Learned counsel for the petitioner argues that out of more than 24 Kanals of the land of which the senior citizen was in ownership, only 02 acres had been transferred to the petitioner and that too without any stipulation envisaged under the 2007 Act and further, nothing has come on record as to how, the petitioner was to take care of the senior citizen especially when he had more means than the petitioner to look after himself having 8 Kanals to his credit even after transferring of the land other than 12 acres land that he has in Rajasthan. Learned counsel for the petitioner further argues that the ingredients of Section 23 of the 2007 Act have not been fulfilled. He further submits that the facts and circumstances of this case have not been even taken into consideration by the authorities while passing an order on the application filed by the senior citizen.



4. Learned counsel for the respondent submits that as of now the senior citizen has already died but, he had sold the land after the decision dated 26.02.2016 to one of the sister-in-law of the petitioner and therefore, now as the land has been purchased from the senior citizen by Sukhwinder Kaur i.e. sister-in-law of the petitioner, no benefit can be granted in favour of the petitioner.

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

6. The question which arises in the present petition is whether, the requisites of Section 23 of 2007 Act are fulfilled so as to cancel the transfer of land which was executed by the senior citizen in favour of the petitioner.

Section 23 of the 2007 Act is reproduced herein below:-

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.

7. The Section 23 of 2007 Act has been interpreted by the Hon'ble Supreme Court of India in the judgment in Civil Appeal No. 174 of 2021 titled as "***Sudesh Chhikara vs Ramti Devi***" decided on 06.12.2022, the relevant paragraphs No.13 and 14 of the judgment are reproduced 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."



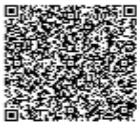
8. A bare perusal of the above shows that in order to get a transfer deed cancelled under Section 23 of 2007 Act, two criteria need to be fulfilled, firstly that the senior citizen is required to prove that the transfer was conditional subject to the provisions of 2007 Act and secondly that the senior citizen has to plead and prove that he was not being taken care of.

9. In the present case, both the ingredients are missing which facts the authorities while passing the impugned order have failed to notice. In the present case, there is no provision in the transfer deed that the same is subject to Section 23 of the 2007 Act. Further, nothing has come on record to show as to how, the petitioner was supposed to maintain the senior citizen as no such pleading is visible on record and the same has not been proved.

10. It may be noticed that senior citizen has more land to his credit than the petitioner even after the transfer of the land. Once, the senior citizen has more property to take care of himself, the authorities concerned should have looked into whether the senior citizen required any maintenance at the hands of the transferee or not.

11. All these facts have been ignored and the findings which have been recorded by the authorities on exercising power under 2007 Act is perverse to the evidence on record.

12. Keeping in view of the above, the impugned orders passed by the authorities concerned dated 30.11.2015 (Annexure P-4) and 26.02.2016 (Annexure P-5) are set aside. The petitioner remains the owner of the property which was transferred to him by the senior citizen vide transfer deed No. 550 dated 05.07.2012, irrespective of the transfer of the property by the senior citizen after the order of the appellate authority dated



26.02.2016 as the said order is set aside in the order as land in question was transferred during the pendency of litigation.

13. As far as, respondent No.5 is concerned, who is stated to have purchased the property during the pendency of the litigation from senior citizen, she can claim appropriate relief in case she is aggrieved in any manner before the Civil Court.

03.02.2025
Nisha Yadav

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No