



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101)

CM-15848-CWP-2024 in/and
CWP-18373-2021 (O&M)
Date of Decision : 14.01.2025

Swaran Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajesh Bansal, Advocate for the petitioner.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

Mr. Gaurav Gaur, Advocate for respondent No. 5.

Mr. Vipin Kumar Sharma, Advocate for respondent No. 6.

Harsimran Singh Sethi J. (Oral)

CM-15848-CWP-2024

Present application has been filed for placing on record written statement filed on behalf of respondent No. 6.

Application is allowed and written statement filed on behalf of respondent No. 6 is taken on record with all just exceptions.

CWP-18373-2021

1. In the present petition, the grievance being raised by the petitioner is that the order dated 04.12.2020 (Annexure P-5) passed by the Tribunal, whereby the claim raised by the respondent No. 5 under The Maintenance and Welfare of Parents and Senior Citizen Act, 2007



(hereinafter referred to as '2007 Act') so as to cancel the transfer deed No. 106 dated 24.04.2015 was rejected and only direction was issued to pay ₹10,000/- per month to respondent No. 5 so as to maintain him, has been set-aside by the Appellate Authority vide order dated 26.08.2021 (Annexure P-1) and the transfer deed dated 24.04.2015 has been set-aside.

2. Learned counsel for the petitioner submits that the impugned order dated 26.08.2021 (Annexure P-1) which has been passed by the Appellate Authority is without appreciating the provisions of Section 23 of 2007 Act as well as the settled principle of law settled on the said issue by the Hon'ble Supreme Court of India in case titled as ***Sudesh Chhikara Vs. Ramti Devi and another***, 2023 (1) RCR (Civil) 226. Learned counsel for the petitioner further submits that in the present case, it is a conceded fact that the transfer of the land vide the transfer deed dated 24.04.2015 was not subject to the provisions of 2007 Act and further, nothing has been brought on record as to what amenities and physical needs of respondent No. 5 were not being fulfilled, especially when, the Tribunal has already granted the maintenance directing both the sons of respondent No. 5 to pay ₹10,000/- per month to respondent No. 5 hence, the order passed by the Appellate Authority dated 26.08.2021 (Annexure P-1) is liable to be set-aside.

3. Learned counsel appearing on behalf of respondent No. 5 submits that it is discretion of the respondent No. 5 to accept the maintenance or to get the transfer deed cancelled, hence, in an appeal filed by respondent No. 5 against the order of the Tribunal dated 04.12.2020 (Annexure P-5), the benefit of cancellation of the transfer deed dated 24.04.2015 has been passed



which is perfectly valid and legal. Learned counsel for respondent No. 5 submits that there is no requirement that the transfer deed should be subject to the provisions of 2007 Act and concede the factum that there are no pleadings with regard to the non-grant of the basic amenities or the basic physical needs in the application submitted under Section 23 of 2007 Act.

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

5. The claim raised by respondent No. 5 was under Section 23 of the 2007 Act. The said provision 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 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.”

6. A bare perusal of said provision would show that in order to get the relief under Section 23 of 2007 Act, the twin conditions that the transferee shall provide basic amenities and basic physical needs to the transferor and to receive maintenance out of an estate or part thereof and such transfer should be subject to provisions of 2007 Act, should be proved having not being fulfilled.

7. As per the judgment of the Hon’ble Supreme Court of India in ***Sudesh Chhikara’s case (supra)*** till the twin conditions are fulfilled, the benefit under Section 23 of 2007 Act cannot be granted. The relevant paragraph of the said judgment is 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. Learned counsel for respondent No. 5 has not been able to prove that there was any Clause in the transfer deed dated 24.04.2015 that the petitioner is liable to maintain respondent No. 5 keeping in view the provisions of 2007 Act. Further, there are no pleadings as to what basic amenities which respondent No. 5 was entitled for, have not been provided. Nothing has been proved on record with regard to the non-providing of basic amenities by the petitioner.

9. Further, once the maintenance was granted by the Tribunal keeping in view the facts recorded, the said order could not have been set-aside without pointing out the perversity in the said order. In the absence of any perversity being pointed out, the Appellate Court while exercising its ‘discretion’ has set-aside the order dated 04.12.2020 passed by the Tribunal, which order cannot be upheld, especially when the said order of the Appellate Authority is contrary to the settled principle of law settled by the Hon’ble Supreme Court of India in ***Sudesh Chhikara’s case (supra)***.



10. Keeping in view the above, the order passed by the Appellate Authority dated 26.08.2021 (Annexure P-1) is set-aside and the order dated 04.12.2020 (Annexure P-5) passed by the Tribunal is upheld to be complied with by the petitioner. Any arrears of maintenance required to be paid to the senior citizen under the order of the Tribunal dated 04.12.2020 (Annexure P-5) be paid within a period of eight weeks of the receipt of copy of this order.

11. Present petition is allowed in above terms.

12. Pending miscellaneous application, if any, also stands disposed of.

January 14, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No