

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CWP No.17939 of 2024****Date of decision: 21.08.2025****Sh. Surinder Ahuja and another****.... Petitioners****Vs.****Deputy Commissioner-cum-Appellate Authority and another****.... Respondents****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Harsh Mehla, Advocate, with petitioners in person.

Mr. Tanmoy Gupta, Senior Standing Counsel with
Mr. Rakesh Sobti, Senior Standing Counsel
for the respondent-UT, Chandigarh.

Mr. Abhishek Sanghi, Advocate, for respondent No.2.

KULDEEP TIWARI, J (Oral)

1. The petitioner filed an application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter referred to, as 'the Act of 2007') for cancellation of transfer of share of 12.5% and 25% in Plot No.28, Industrial Area (Phase-I), Chandigarh, in favour of respondent No.2 vide transfer deed dated 18.12.2012 and 20.07.2017, respectively, and also sought cancellation of transfer deed dated 14.03.2018, where through, House No. 132, Sector 8-A, Chandigarh was also transferred.

2. The application was allowed, and the transfer deeds (supra) were declared null and void; the share of the property was ordered to be transferred back to the transferor. Furthermore, a direction was also passed upon respondent No. 2 to vacate the house in question within 30 days, as per a verdict dated 19.10.2023.

3. Fetching a grievance from the above said order, respondent No.2 preferred a statutory appeal under Section 16 of the Act 2007. The Appellate Authority concerned, vide order dated 16.07.2024, after considering the facts and circumstances of the case, set aside the order of the learned Tribunal concerned, and remanded the matter back to adjudicate the same afresh, after affording opportunity of hearing to the parties concerned,



and the decide the issue in the light of the provisions of Section 23 of the Act of 2007. To reach such conclusion, the learned Appellate Authority concerned, mainly relied upon the judgment passed by Hon'ble the Supreme Court in **Sudesh Chhikara vs. Ramti Devi & another**, 2023 (1) RCR (Civil) 226.

4. This caused grievance to the petitioners, and therefore, they filed the instant petition seeking quashing of the order dated 16.07.2024 passed by the learned Appellate Authority concerned. Learned counsel for the petitioners submits that the learned Appellate Authority has not appreciated the law in the right perspective; therefore, the impugned order is not sustainable in the eyes of the law. He further submits that the learned Appellate Authority exceeds its jurisdiction by remanding the matter back to the learned Tribunal concerned. While referring to the provisions of Section 16 of the Act of 2007, he submits that the learned Appellate Authority is empowered either to confirm, set aside, or modify the order of the learned Tribunal concerned; however, it cannot remand the matter.

5. The next argument raised before this Court is that the learned Appellate Authority, has heavily impressed upon the judgment of the Hon'ble Supreme Court, rendered in the case of **Sudesh Chhikara (supra)**. This reliance is a misplaced reliance as the factual matrix and legal principle underlined in *Sudesh Chhikara* case (*supra*) are markedly distinct from those in the present matter. The learned Appellate Authority's failure to base its concern on these critical differences has led to the misapplication of the legal precedent. He further submits that the contents of the application, which was preferred before the learned Appellate Authority, clearly invite the invocation of Section 23 of the Act of 2007, and which was duly and legally exercised by the learned Tribunal concerned. However, the same was erroneously, and illegally interfered with by the learned Appellate Authority concerned, through the impugned order.

6. On the other hand, learned counsel for the respondent has endeavoured to protect the order of the learned Appellate Authority concerned, and vicariously submits that the application is nothing but an abuse of provisions of the Act of 2007, and under the garb of the instant application, an endeavour is made to settle the ongoing family property



dispute. He further submits that numerous cases are pending between the parties concerned, and details of which are also mentioned by the petitioner in the instant petition. All these facts clearly reflect that the existing property dispute has been camouflaged as the transaction hit by Section 23 of the Act of 2007.

7. This Court has heard the submissions made by the learned counsel for the parties concerned and perused the entire record.

8. Before touching on the merits of the instant case, and embarking upon the legality of the verdict passed by the learned Appellate Authority concerned, this Court needs to examine, whether, the learned Appellate Authority can remand the *lis* back to the learned Tribunal for its adjudication afresh in view of Section 16 of the Act of 2007. At this stage, it is relevant to extract the provisions of Section 16 of the Act of 2007, which reads thus:

“16. Appeals: (1). Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal:

Provided further that the Appellate Tribunal may, entertain the appeal alter the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2). On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.

(3). The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal is preferred.

(4). The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.



(5). The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final:

Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a duly authorised representative.

(6). The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7). A copy of every order made under sub-section (5) shall be sent to both the parties free of cost.”

A close scrutiny of the above provisions makes it amply clear that the learned appellate authority is categorically vested with the powers only to confirm, set aside, or modify the order of the learned Tribunal. It does not vest with the power to remand the *lis* back to the learned Tribunal concerned. This Court got the strength of this view from the judgment rendered by the co-ordinate Bench of this Court in ***CWP No.25148 of 2018*** titled as ***Surindera Devi vs. State of Punjab and others***, decided on 14.07.2022, wherein it was held that the Appellate Authority has no power to remand the case back. The relevant paragraph Nos. 6 & 7 are extracted hereinafter:-

“6. In this background, the meaning and intent of Section 16 of the Act assumes even more significance inasmuch as a bare reading of the same would reveal that while the appellate authority has been specifically conferred the power to examine the appeal and the records and either call for same before it from the Tribunal and thereafter either to allow it or reject it. The words ‘remand’ are missing in Section 16 of the Act, unlike the case under Order 41 Rules 23 and 25 of CPC where the appellate Court is specifically conferred the power of remand. In that context, for better appreciation the said Rules are reproduced herein below:



“Order 41 Rule 23 of CPC

Remand of case by Appellate Court : Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.” XXXXXXXX

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from – Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate court essential to the right decision of the suit upon the merits, the Appellate court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; And such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor within such time as may be fixed by the Appellate Court or extended by it from time to time.”

7. In the totality of circumstances and as an upshot of the above discussion, I am of the view that the appellate Tribunal is not conferred with the power of



remand under Section 16 of the statute and upon entertaining the appeal must either reject or accept the same, wholly or partly as the case may be. Therefore, the impugned appellate order herein is not sustainable and is accordingly set-aside. The matter is remanded back to the appellate Tribunal for fresh consideration and adjudication. The parties are at liberty to move appropriate application before the appellate Tribunal.”

9. Further, while relying upon *Surindera Devi* case (supra), a co-ordinate Bench of this Court, in ***CWP No. 22898 of 2024***, titled as ***Kulwant Singh vs. Additional District Magistrate-cum-Appellate Tribunal, Amritsar, and others***, decided on 13.02.2025, has held that once the authority has been given to the Tribunal which is independent to decide the issue, the Tribunal cannot be directed to toe to the line of the Appellate Authority. The Appellate Authority should have decided the appeal on merits to decide the *lis* between the parties either way by giving due reasons for the conclusion arrived at.

9. Learned counsel for the respondent is unable to point out any judgment that carries a different view than that taken by the co-ordinate Bench of this Court in the *Surindera Devi* and *Kulwant Singh's* cases (supra).

10. In view of the positioned sketched out above, the instant petition is **allowed**, the order 16.7.2024 (Annexure P-1), passed by the learned Appellate Tribunal is set aside and the matter is remanded back to the learned Appellate Authority concerned, to decide the *lis* afresh, after giving due opportunity of hearing to the parties concerned.

(KULDEEP TIWARI)
JUDGE

21.08.2025
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No