



**CM-2383-CWP-2025 in/and
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(104+222)

**CM-2383-CWP-2025 in/and
CWP-19523-2024
Date of Decision : February 17, 2025**

Mahindra and Mahindra Financial Service Limited .. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anand Chibbar, Sr. Advocate, with
Mr. Raghav Agnihotri, Advocate,
Ms. Pooja Agnihotri, Advocate,
Mr. Vaibhav Sahni, Advocate, for the petitioner.

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

Mr. I.P. Singh, Advocate, for respondent No.5.

Mr. Pankaj Gupta, Advocate, with
Mr. Paras Jain, Advocate, for respondent No.6.

HARSIMRAN SINGH SETHI J. (ORAL)

Learned counsel appearing on behalf of respondent No.5 submits that unfortunately, respondent No.5 has died during the pendency of the present writ petition and that accordingly his legal heirs shall be impleaded as party upon his oral request.

Learned senior counsel appearing on behalf of the petitioner does not dispute about the said fact.

Keeping in view the above said factual aspect on the oral submission of the learned counsel for respondent No.5, Balwinder Kaur



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wife of Hardeep Singh and Sapinder Kaur daughter of Hardeep Singh are being impleaded as legal heirs of respondent No.5- Hardeep Singh. Bhupinder Singh, who is also the legal heir of Hardeep Singh is already party as respondent No.6, who is being represented by the counsel.

Main case

1. In the present writ petition, the challenge is to the order passed by the Tribunal dated 08.09.2021 (Annexure P-15) under the Welfare of Parents and Senior Citizen Act, 2007 (hereinafter referred as '2007 Act') by way of which, the application filed by respondent No.5 to cancel the transfer deed under Section 23 of the 2007 Act against respondent No.6 qua the property transferred vide transfer deed dated 23.02.2016 (Annexure P-1) has been allowed and the said transfer deed in favour of respondent No.6 has been cancelled so as to vest the rights qua the property in question with the respondent No.5.

2. Learned senior counsel appearing on behalf of the petitioner argues that the said proceedings which have been undertaken under 2007 Act is not a bona fide exercise of rights provided under 2007 Act by respondent No.5 as the property in question transfer deed of which has been cancelled by the Tribunal vide order dated 08.09.2021 in favour of respondent No.5, had already been mortgaged with the petitioner-Bank by respondent No.6 who is actually a guarantor in a loan, which loan is extended to respondent No.7.

3. Learned senior counsel for the petitioner submits that without making the petitioner as a party in the proceedings carried on relating to the

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property in question, an order has been procured by respondent No.5 in connivance with respondent No.6 to cause financial prejudice to the petitioner qua the property in question as, the said property, is being demanded back by respondent No.5 which demand is backed up by way of the impugned order dated 08.09.2021 (Annexure P-15) passed by the authorities concerned as envisaged under 2007 Act.

4. Learned senior counsel for the petitioner further submits that the application for cancellation of the transfer deed qua the property in question filed by respondent No.5 against respondent No.6 is in connivance with each other without there being any prejudice being caused to respondent No.5 under 2007 Act, even though it has been mortgaged.

5. The last argument which has been raised by the learned senior counsel for the petitioner is that at the time of when property was mortgaged with the petitioner-Bank by respondent No.6, an affidavit was submitted by the senior citizen beforehand, copy of which has been appended as Annexure P-6 in which affidavit, the senior citizen agreed to mortgage the said property with a further condition putforth which condition stipulated that the transfer deed in favour of respondent No.6 will not be revoked under any circumstances but without impleading the petitioner, the petition was filed by respondent No.5 in connivance with respondent No.6 under 2007 Act to fulfil the purpose of getting the property back and to cause financial loss to the petitioner hence, the order dated 08.09.2021 (Annexure P-15) which has been passed by the Tribunal under 2007 Act is liable to be set aside on this ground alone as the same has been obtained by way of



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fraud by not impleading a necessary party in the proceeding by the parties and not in a bona fide manner as is envisaged under Section 23 of the 2007 Act.

6. Upon notice of motion, the respondents have appeared.

7. Learned counsel appearing on behalf of respondent No.6 does not dispute the fact that the property in question which was transferred in his name by senior citizen-respondent No.5 is shown to be mortgaged but the same fact is being seriously disputed that the property was ever mortgaged with the petitioner-Bank.

8. Learned counsel for respondent No.6 submits that though he was a guarantor but he is challenging even the said deed wherein he is shown to be a guarantor.

9. Learned counsel appearing on behalf of respondent No.5-senior citizen submits that respondent No.5 is not concerned with the fact that whether the property has been mortgaged by respondent No.6 in any manner or not but as he was not being maintained by respondent No.6, thus in accordance of the provisions of 2007 Act, particularly Section 23, he had sought back the property which was allowed in his favour vide the impugned order which order should be maintained as the property belongs to respondent No.5 and as such has been rightly given back to him by the authorities exercising power under 2007 Act.

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

11. The dispute relates to a property which was initially owned by

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the senior citizen-respondent No.5 (now deceased) and was transferred in favour of respondent No.6 vide transfer deed dated 23.02.2016 (Annexure P-1). Out of the total area of 414.23 sq. yards of the transferred property, 66 sq. yards was sold by respondent No.6 after getting the said property from the senior citizen and the dispute in the present petition at the hands of the petitioner is qua the remaining 348.23 sq. yards which according to the petitioner has been mortgaged with the petitioner-Bank by respondent No.6 being a guarantor in a loan extended to respondent No.7.

12. The claim of the senior citizen is that he was not being maintained by respondent No.6 and only on the said ground, the provisions of 2007 Act were invoked to cancel the said transfer deed. The notice was issued to respondent No.6 but he never came present to defend the same and as a consequence he was proceeded ex parte and ultimately, an order was passed at the behest of respondent No.5 on 08.09.2021 (Annexure P-15) canceling the said transfer deed which was in favour of respondent No.6 before the conclusion of the said proceedings.

13. It may be noticed that on one hand the petitioners are claiming that the property was mortgaged to them whereas, on the basis of the impugned order passed by the Tribunal, the property's ownership is claimed by respondent No.5 so as to be the independent owner of the same without there being any encumbrance.

14. Learned counsel for respondent No.5 submits that he did not have any knowledge about any encumbrance upon the said property and even if, he had any such knowledge, the same will not create any

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impediment so as to bind him under 2007 Act not to get the property back.

15. Qua the said argument, it is worthwhile to notice that while adjudicating a claim of a senior citizen under 2007 Act, the Tribunal exercising power under the said Act or even this Court, have to be extremely careful to ascertain the fact that whether, the litigation under 2007 Act is bona fide or it is just and to defeat the claim of a third party. In the present case, keeping in view an undisputed and material fact that respondent No.6 who had mortgaged the property did not even pursue to defend his title under the proceedings initiated by his father (senior citizen) under 2007 Act, a prima facie conclusion can be drawn that the parties were hand in gloves so as to secure the said impugned order in order to defeat claim of a third party i.e. petitioner.

16. Not only this, learned senior counsel appearing on behalf of the petitioner submits that there is an affidavit which has been given by the respondent No.5-senior citizen wherein it has been categorically stated that he will not claim back the property under the provisions of 2007 Act keeping in view the fact that the transfer of the property by respondent No.5-senior citizen in favour of respondent No.6 was conditional, copy of which affidavit has been appended as Annexure P-6, which clearly shows that respondent No.5 knew about the mortgaging of the property in favour of the petitioner. It shall also be noted that though, the veracity and authenticity of the same is being contested at the hands of respondent No.5 but still, the adjudicating authority under 2007 Act needs to be extremely cautious and assured that the property in question is not being taken back in

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a fraudulent manner so as to cause financial loss to third party, hence, even though the said affidavit (Annexure P-6) is being disputed, prima facie, the petitioner has been able to show that the order secured by respondent No.5 under 2007 Act was not a bona fide litigation but it was done with the intent to take back the property from respondent No.6 so as to absolve him of the liability which he faced at the hands of the petitioner-Company.

17. Keeping in view all these facts, which needs to be ascertained and have not been violated while passing the impugned order, the impugned order passed by the Tribunal on 08.09.2021 (Annexure P-15) is set aside. The case is remanded back to the Tribunal for fresh adjudication between all the necessary parties concerned and by giving due opportunity to the petitioner to present their case so as to retain the property keeping in view the various averments made that the same was mortgaged by respondent No.6 with the petitioner.

18. Parties are directed to appear before the Tribunal envisaged under 2007 Act on 24.03.2025.

19. It is hereby made clear that this Court is not making any opinion on the affidavit (Annexure P-6) which is being disputed and the same will depend upon the evidence produced by the parties concerned to prove their respective assertion before the authorities concerned.

20. Learned counsel appearing on behalf of respondents No. 5 and 6 submits that there is a dispute whether the property was mortgaged with the petitioner-Bank or not and the same question also needs to be adjudicated by the authorities concerned under 2007 Act.



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21. Learned senior counsel for the petitioner submits that the original document of the property are still in the possession of the petitioner even as of now and despite the said fact, the factum of mortgage is being disputed which gives the indication as to what was the intent for which the proceedings under Section 2007 Act were initiated by respondent No.5.

22. Keeping in view the above, it may be clarified that as of now, the property will be treated as ownership of respondent No.6 and not of respondent No.5 till any fresh order is passed by the Tribunal on the application filed by respondent No.5 under Section 23 of the 2007 Act.

23. However, all the options available to respondent No.6 to rebut his liability with the petitioner are open and the same may be taken before the appropriate authority in accordance with law as the same is not to be decided by this Court in the present petition.

24. The present writ petition is disposed of in above terms.

25. Civil miscellaneous application pending if any, also stands disposed of.

February 17, 2025
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No