



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

(288)

CWP No. 21800 of 2024

Date of Decision : 07.05.2025

Master Parichay

...Petitioner

Versus

**Chairman Appellate Tribunal, Collector (IAS) and District Magistrate,
Bhiwani (Haryana) and others**

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. Balraj Gujjar, Advocate for respondent No. 3.

Ms. Shweta Bawa, Advocate for respondent No. 4.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the challenge is to the order dated 09.09.2021 (Annexure P-4) passed by the authorities exercising jurisdiction under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as '2007 Act') by which, the transfer deed No. 205 dated 16.04.2019 by which, the senior citizen, namely, Subhash (respondent No. 3) had transferred the land measuring 11 kanals and 0.45 marla in favour of his son, Rinku-respondent No. 4 as well as the transfer deed No. 4128 dated 07.11.2019 by which respondent No. 4-Rinku further transferred 08 kanals out of the land in question, in the name of the petitioner, has been set-aside with the direction that the same should be



reverted back to the respondent No. 3-senior citizen. Further challenge is to the order 21.03.2024 (Annexure P-6) by which the appeal filed against the order dated 09.09.2021 (Annexure P-4) has been rejected.

2. Certain facts need to be noticed for the correct appreciation of the issue in hand.

3. Respondent No. 3-senior citizen transferred the land measuring 11 kanals and 0.45 marla in favour of his son Rinku-respondent No. 4 vide transfer deed No. 205 dated 16.04.2019. Out of the total land 11 kanal transferred by the respondent No. 3-senior citizen in favour of his son Rinku, respondent No. 4-Rinku further transferred 08 kanal of land in favour of his minor son, Parichay, vide transfer deed No. 4128 dated 07.11.2019, who is the petitioner in the present petition.

4. There was a matrimonial dispute between Rinku i.e. son of the senior citizen as well as Smt. Sunil Kumari i.e. the wife of Rinku. Ultimately, by a mutual consent, the divorce was granted and Rinku and Smt. Sunil Kumar parted ways and as per the conditions of Divorce, minor Parichay started living with his mother, which was as per the decree of divorce (Annexure P-1).

5. After the divorce, the senior citizen filed a petition under Section 23 of 2007 Act challenging the transfer deed No. 205 dated 16.04.2019 by which he had transferred 11 kanals of land in favour of his son, Rinku as well as the transfer deed No. 4128 dated 07.11.2019 by which Rinku had further transferred the 08 kanals land in favour of his minor son i.e. petitioner herein.



6. The authorities exercising jurisdiction under 2007 Act set-aside both the transfer deeds on the ground that Rinku failed to take care of his father. Further, Rinku who was also made party, raised no objection for the grant of relief to the senior citizen, which shows that Rinku wanted the transfer of land in favour of his father as being claimed by the senior citizen.

7. Without recording as to how, the non-maintenance of the senior citizen by respondent No. 4 was proved, which is an essential ingredient to be proved so as to claim relief under Section 23 of 2007 Act, the transfer deeds were cancelled by the Tribunal exercising jurisdiction under 2007 Act vide impugned order dated 09.09.2021 (Annexure P-4).

8. Against the said order, the minor Parichay filed an appeal before the appellate authority which has also been dismissed vide order dated 21.03.2024 (Annexure P-6) only by recording the fact that no material evidence has been brought to the notice of the Court to change the order dated 09.09.2021 (Annexure P-4) hence, the present petition.

9. Learned counsel appearing on behalf of the petitioner argues that the petition filed by respondent No. 3-senior citizen is not bona fide, which fact has not been appreciated by the authorities concerned while passing the impugned orders. Learned counsel for the petitioner further argues that keeping in view the provisions of 2007 Act, no relief can be claimed against the minor, which is clear from the definition of 'Children' under Section 2(a) of 2007 Act hence, the land which was in the name of minor has been directed to be reverted to respondent No. 3-senior citizen by authorities without even appreciating the said aspect.



10. Learned counsel for the petitioner submits that the orders which have been passed by the authorities have been passed without even noticing as to how, the twin conditions required to prove the ingredients of Section 23 of 2007 Act, have been proved in the facts and circumstances of the case hence, the impugned orders dated 09.09.2021 (Annexure P-4) as well as 21.03.2024 (Annexure P-6) are liable to be set-aside.

11. Learned counsel appearing on behalf of the respondent No. 3-senior citizen submits that respondent No. 3-senior citizen transferred the land in favour of his son i.e. respondent No. 4 with the hope that he will be maintained by his son but as respondent No. 3-senior citizen has not been maintained by his son, hence, he only exercised his right under 2007 Act to get the land back so that he can live a dignified life. Learned counsel for respondent No. 3 further submits that there is no other land with the senior citizen except 11 kanal of the land, which was transferred in favour of the son and now, neither the son nor anybody else is looking after the senior citizen which fact has rightly been appreciated by the authorities exercising jurisdiction under 2007 Act so as to cancel the transfer deeds in question and direct the reversion of the land in favour of the senior citizen, which orders are perfectly legal and in accordance with 2007 Act.

12. Learned counsel appearing on behalf of respondent No. 4-son submits that respondent No. 4-son has been taking care of his father but, the authorities did not agree with the said fact so as to revert the land in question back to the respondent No. 3-senior citizen. Learned counsel for respondent No. 4-son further submits that prior to the filing of the petition under 2007 Act by the senior citizen, the land was not with the respondent No. 4 but was



with the minor son-Parichay of respondent No. 4 and even after the passing of the impugned orders, the land will vest with respondent No. 3 hence, the issue as of now is between the petitioner and the respondent No. 3-senior citizen.

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

14. Once, a power has been given to the authorities under 2007 Act that by adopting a summary proceedings, a transfer of a land by a senior citizen in favour of his/her children or relative can be treated as a fraud transfer, the said jurisdiction/power should be exercised with due care and by considering all the facts as to whether, the plea being raised by the senior citizen is genuine or, with some ulterior motive and is covered by the provisions of 2007 Act. In case, the plea is with any ulterior motive, the said motive has also to be appreciated while considering the claim of the senior citizen as raised under 2007 Act.

15. In the present petition, the land was transferred by the senior citizen in favour of his son-Rinku i.e. respondent No. 4 in April, 2019. At that time, all the parties were living together in the same house and the land which was transferred by the senior citizen in favour of his son, was further transferred by the respondent No. 4/son in favour of his minor son, namely, Parichay, who is the petitioner herein, in November, 2019 i.e. within a period of six months. Despite the said transfer, the senior citizen never raised any grievance either with regard to the transfer of land in favour of grandson of the senior citizen or that the senior citizen is not being maintained so that he can claim the land back.



16. Thereafter, the son, namely, Rinku who was having a matrimonial dispute, got a mutual divorce from his wife, namely, Sunil Kumari. As per the terms of the mutual divorce, the petitioner i.e. the minor son of Rinku was to live with his mother. Along with the minor son, the land which was transferred by Rinku in favour of his own minor son also went out of the control of the senior citizen as well as Rinku. Sunil Kumari after the divorce, again got married in the neighbourhood and the land which was given by the senior citizen in favour of his own son, was now being maintained by the neighbours of the senior citizen as well as his son Rinku.

17. Feeling aggrieved against the said action, by invoking 2007 Act, the senior citizen challenged the transfer deed by which the land was initially transferred by the senior citizen in favour of his son-Rinku and also the transfer deed by which son-Rinku further transferred the land in favour of the minor grandson of the senior citizen, namely, Parichay, who is the petitioner herein. The said jurisdiction was only invoked in the year 2021 much after the divorce of Rinku with Sunil Kumari.

18. This fact clearly go to show that for a period of two years, after the transfer of the land in the name of Rinku and further transfer in the name of the petitioner-Parichay, no grievance was raised by the senior citizen at any given point of time. The modus operandi was to get the land back from the petitioner-Parichay and only option was to claim the said land by making allegations of non-maintenance against his own son. The respondent No. 4-son though claimed having maintained the senior citizen but did not oppose the plea of the senior citizen so as to get the transfer deeds cancelled, which



order was ultimately passed by the authorities exercising jurisdiction under 2007 Act.

19. The totality of the facts and circumstances go to show that the motive of the senior citizen to invoke 2007 Act, was not the maintenance but was to get the land back within the family which was being maintained by the neighbours after his Ex-daughter-in-law got married in the neighborhood. The authorities have failed to appreciate the said modus operandi and have passed the orders only on the asking of the senior citizen by believing his pleas which is incorrect and cannot be accepted.

20. Further, in order to pass an order of cancellation of the transfer deeds, the authorities have to ensure that the twin conditions envisaged under Section 23 of 2007 Act are fulfilled i.e. there was a condition in the transfer deeds that the transferee will maintain the transferor and the said condition has not been fulfilled by the transferee. Not even a single reason has been given by the authorities as to how the senior citizen was not being maintained by respondent No. 4-Rinku. In the absence of any reason being given, merely on the asking of the senior citizen, the order cannot be passed in a mechanical manner so as to cancel the transfer deeds in question.

21. 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, the non-maintenance has to be proved by the senior citizen by bringing on record due evidence to support the said allegation. No such record/evidence has been brought on record by the senior citizen so as to claim the relief under Section 23 of 2007 Act which aspect has totally been ignored by the authorities exercising jurisdiction



under 2007 Act hence, the orders dated 09.09.2021 (Annexure P-4) and 21.03.2024 (Annexure P-6) passed by the authorities under 2007 Act impugned in the present petition are contrary to the settled principle of law noticed here-in-before and, therefore, the same cannot be upheld.

22. Further, the authorities exercising jurisdiction under 2007 Act were also required to ensure as to whether the transfer of the land in favour of the minor can be reverted back to the senior citizen or not. The definition of the 'Children' against whom the claim can be raised under 2007 Act has been defined in Section 2(a) of 2007 Act. The said definition of 'Children' is as under :-

“2(a) “children” includes son, daughter, grandson and granddaughter but does not include a minor;

23. Keeping in view the fact that the claim under 2007 Act can only be raised against the Children and the petitioner is a minor who was holding the land after being transferred to him by his father, hence, the authorities failed to appreciate that the ultimate order was being passed against the minor which could not have been passed while exercising jurisdiction under 2007 Act. This aspect has not even been noticed by the authorities concerned much less discussed or dealt with while passing the impugned orders.

24. Further, in the claim petition filed by the senior citizen, the minor was impleaded through the father i.e. Rinku. The said claim petition was filed in the year 2021. By the said date, the divorce between Rinku and Sunil Kumari had already been finalized on mutual terms and conditions. As per the terms and conditions, the minor Parichay was to live in the custody



of the mother. Once, the minor was living in the custody of the mother, minor son could not have been impleaded through his father i.e. Rinku who was not a legal guardian keeping in view the terms and conditions of the divorce.

25. Further, giving a statement on behalf of the minor by the respondent No. 4-Rinku, was not at all appreciated by the authorities concerned as on the day when minor was being represented by Rinku, Rinku was not the legal guardian keeping in view the fact that he had already agreed that Parichay i.e. minor will live in the custody of the mother and except through mother, Parichay could not have been made party to the said litigation even otherwise. Hence, even on this aspect also, any order passed against the minor by the authorities concerned is incorrect and cannot be sustained.

26. Keeping in view the above, the orders dated 09.09.2021 (Annexure P-4) and 21.03.2024 (Annexure P-6) passed by the authorities under 2007 Act impugned in the present petition are perverse to the facts and the evidence as well as 2007 Act and the settled principle of law noticed here-in-before and hence cannot be sustained and are accordingly set-aside.

27. Keeping in view the totality of circumstances, the land which was transferred vide transfer deed dated 4128 dated 07.11.2019 in favour of the minor, will continue to remain the property of the minor and in case, after the passing of the impugned order, any action has been taken by the senior citizen qua the said property, the same will be treated as illegal and without jurisdiction and the ownership of the said property will remain with the minor.



- 28. Petition is allowed in above terms.
- 29. Pending miscellaneous application, if any, also stands disposed of.

May 07, 2025
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No