



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(213)

CWP No. 20341 of 2023 (O&M)

Date of Decision : 19.03.2025

Chander Parkash Sharma alias Chander Prakash Sharma

...Petitioner

Versus

Deputy Commissioner-cum-Chairman Maintenance, Appellate
Tribunal, Rewari and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ajay Jain, Advocate for the petitioner.

Mr. Naveen Singh Panwar, Deputy Advocate General, Haryana.

Ms. Tejaswini, Advocate for respondent No. 3.

Harsimran Singh Sethi J. (Oral)

1. Vakalatnama of Ms. Tejaswini, Advocate on behalf of respondent No. 3 filed with no objection from other counsel. The same is taken on record.

2. Affidavit dated 13.03.2025 of petitioner-Chander Parkash Sharma alias Chander Prakash Sharma is also taken on record.

3. In the present petition, the challenge is to the orders passed by the authorities dated 31.01.2022 (Annexure P-4) and dated 09.08.2023 (Annexure P-6) by which the application filed by the respondent No. 3- senior citizen under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as '2007 Act') for cancellation of Vasika No. 1695 dated 20.01.2011, has been accepted.



4. Certain facts may be noticed for the correct appreciation of the issue in hand.

5. The respondent No. 3-senior citizen, namely, Chander Kalan Devi was owner in possession of agriculture land comprising of 39 kanals situated in the revenue estate of Village Tankri, Tehsil Bawal, District Rewari. The senior citizen after the death of her husband, especially when there was no child born out of the wedlock, adopted the petitioner Chander Parkash Sharma @ Chander Prakash Sharma son of Naresh Kumar Sharma vide adoption deed dated 24.06.2010. It may be noticed that Naresh Kumar Sharma is the son of the sister-in-law (Nanad) of the senior citizen.

6. Thereafter, the senior citizen transferred her land vide transfer deed dated 20.01.2011 in the name of the petitioner, who was minor in age at the relevant time. In the transfer deed, there was no Clause that the transferee, who was minor, will maintain the transferor nor the transfer of the property was made subject to the provisions of 2007 Act.

7. Thereafter, a petition was filed by the respondent No. 3-senior citizen under Sections 5 and 23 of 2007 Act claiming maintenance and for setting-aside the transfer deed dated 20.01.2011 so as to be declared as a fraud on the ground that the petitioner was not maintaining the senior citizen despite having been given assurance of serving the respondent-senior citizen and for providing her with the better life.

8. The Tribunal after hearing the parties, passed an order on 31.01.2022 allowing the application filed by the senior citizen on the ground that a false assurance was given of maintaining the senior citizen by the petitioner thereby playing a fraud and the allegation made against the father



of the petitioner was accepted by the Tribunal and the Vasika No. 1695 dated 20.01.2011 was set-aside. Against the said order dated 31.01.2022, an appeal was preferred by the petitioner which was also dismissed by the appellate authority while passing the order dated 09.08.2023 on the ground that the appellant (petitioner herein) is not looking after the senior citizen and the senior citizen has been harassed, hence, the present petition.

9. Learned counsel appearing on behalf of the petitioner argues that the twin conditions envisaged under Section 23 of 2007 Act need to be adhered while deciding the claim raised under Section 23 of 2007 Act, which has not been done and even the finding that the conditions required to accept the application filed under Section 23 of 2007 Act have been fulfilled, hence, the orders which have been passed by the authorities concerned under 2007 Act are totally cryptic and non-speaking. Learned counsel for the petitioner submits that at the time when the application under Section 2007 Act was filed by the senior citizen, the petitioner was minor and no claim can be raised against the minor under 2007 Act with regard to the non-maintenance so as to claim the transferred property back. Learned counsel for the petitioner further submits that the argument which has been taken into account by the authorities concerned while passing impugned orders is that the father of the minor petitioner was harassing the senior citizen, which cannot be taken as a ground to deprive the petitioner of the property. Hence, the impugned orders passed by the authorities exercising jurisdiction under Section 2007 Act are without any application of mind and are liable to be set-aside as the same is contrary to the settled principle of law settled by 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.

10. Learned counsel appearing on behalf of the respondent No. 3-senior citizen submits that once the property belongs to the senior citizen and the senior citizen is not able to bear the fruits of the said property and the same was transferred under allurement and now the senior citizen is in a hand to mouth situation and does not own any property, the orders passed by the authorities exercising jurisdiction under 2007 Act are perfectly valid and legal and are liable to be upheld.

11. Learned counsel for the respondent No. 3-senior citizen further submits that though the adoption was out of love and affection towards the petitioner but the transfer of the property was due to the allurements extended by the biological father of the petitioner i.e. Naresh Kumar hence, the transfer deed dated 20.01.2011 has rightly been cancelled by the authorities as the senior citizen has been deprived of her property with false promise extended by the biological father of the petitioner.

12. Learned counsel for the respondent No. 3-senior citizen further submits that the fruits of the property in question are being enjoyed by the biological father of the petitioner, the same should have been extended to the senior citizen. Learned counsel for the respondent No. 3-senior citizen further submits that as the 2007 legislation has been enacted for the betterment of the senior citizen, the same has to be read in a manner that the senior citizens are able to enjoy the fruits of the property and are protected in the manner required.



13. Learned counsel for the respondent No. 3-senior citizen argues that as the property is being taken care of by the biological father of the petitioner and even the petition filed by the senior citizen under 2007 Act has been defended by the biological father hence, it can be clearly seen that the property is in fact being enjoyed by the biological father of the petitioner and not even the petitioner hence, the same has rightly been reverted back to the senior citizen who was the actual owner of the property keeping in view the provisions of 2007 Act.

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

15. It is a conceded position that the petitioner was adopted by the senior citizen out of love and affection. It is further conceded that the property was transferred by the senior citizen vide transfer deed dated 20.01.2011 in the name of the petitioner, who was minor at that time. It is also a conceded fact that while transferring the property, there was no condition put by the senior citizen that the minor has to maintain by the senior citizen.

16. Now, the question which arises for determination is that whether under these circumstances, the orders passed by the authorities exercising jurisdiction under Section 2007 Act which have been impugned in the present petition are valid and justified keeping in view the provisions of 2007 Act coupled with the interpretation of the same by the Hon'ble Supreme Court of India.

17. Firstly, in order to appreciate these contentions, Section 23 of the 2007 Act needs to be read. The same 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 organization referred to in Explanation to sub-section (1) of section 5”

18. A bare perusal of the above reproduction would show that the twin conditions have been prescribed under Section 23 of 2007 Act in order to declare the transfer as fraud. The first condition is that transfer of the property should be subject to the condition of maintenance of the senior citizen by the transferee and the second condition is that the non-maintenance of transferor by transferee has to be alleged and proved in order to get the benefit under Section 23 of 2007 Act.



19. In the present case, while applying the twin conditions, the same are not satisfied as it is a conceded position that there was no Clause in the transfer deed that the transferee, who was minor, was required to maintain the transferor. Once, the said condition was not envisaged in the transfer deed dated 20.01.2011, the claim of the senior citizen that the said transfer is bad as, the transferee has not maintained the transferor, cannot be accepted.

20. Further, the transferor has to allege as well as prove that the transferee failed to maintain the transferor. In the present case, it is a conceded position that the transferee is a minor child. Even at the time of the transfer, the transferor knew that the minor cannot maintain a senior citizen. That is why, no such condition was put in the transfer deed. It is also a conceded position that when the application was filed under Section 2007 Act, the petitioner was minor and had no source of income of his own. That being so, nothing has come on record as to how, the transferee was required to maintain the senior citizen, in which duty he has allegedly failed. No such finding has been recorded by the authorities concerned while passing the orders exercising jurisdiction under 2007 Act on the application filed by the senior citizen. The said orders are totally cryptic and non-speaking.

21. Further, as per the settled principle of law settled by the Hon'ble Supreme Court of India in *Sudesh Chhikara's case (supra)*, the allegation that the senior citizen is not being maintained is to be alleged and proved. In the present case though, the same has been alleged but it has not been proved as to how the minor was required to maintain the senior citizen and no such finding has also been recorded by the authorities passing the impugned



orders on the application filed by the senior citizen under 2007 Act. Under these circumstances, it cannot be said that the twin conditions envisaged under Section 23 of 2007 Act to declare the transfer as a fraud, have been proved in the facts and circumstances of the present case. The relevant paragraphs 13 and 14 of the said judgment are 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.”



22. Further, the maintenance can be claimed by the parents or the senior citizen under Section 4 of 2007 Act by making an application under Section 5 of 2007 Act. Section 4 of the 2007 Act envisages obligations of the children or the relatives, as the case may be, to maintain the senior citizen. Section 4 is reproduced as under :-

“4. Maintenance of Parents and Senior Citizens :-

1. A senior citizen including parent who is unable to maintain himself from his own earning or property owned by him, shall be entitled to make an application under section 5 in case of -

- i. parent or grand-parent, against one or more of his children not being a minor*
- ii. a childless senior citizen, against such of his relative referred to in clause (g) of section 2*

2. The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

3. The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

4. Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.”

23. It is clear from the bare perusal of Section 4 of 2007 Act that the minors are excluded from being made liable to maintain the senior citizen.



24. Once, the minors are not to be brought to the Court even to claim the maintenance, the application filed by the senior citizen under Section 5 of 2007 Act was not at all maintainable though, the same has been allowed by the authorities exercising jurisdiction under 2007 Act. This fact clearly goes to show that the orders have been passed by the authorities in a mechanical manner without even appreciating the facts of the present case.

25. Now the question arises that keeping in view the provisions of 2007 Act, if the maintenance cannot be claimed from a minor, then whether, non-maintenance by the minor as being alleged by a senior citizen, can be a ground to set-aside the transfer of the property or not.

26. It may be noticed that in case the legislature has deemed it fit that the minors are not to be made liable to maintain the parents or the senior citizen, the allegation of the senior citizen in the present case that the petitioner, who was minor even at the time of the transfer and as well as when the litigation was initiated by the senior citizen under 2007 Act, was required to maintain the senior citizen, have been ignored by the authorities concerned while passing impugned orders under Section 5 or Section 23 of 2007 Act so as to grant the benefit of treating the transfer as void by stating that the senior citizen was not maintained by the petitioner.

27. The claim being raised by the senior citizen against the minor, is not supported by any of the provisions of 2007 Act and learned counsel for the senior citizen has also not been able to point out as to how a minor was required to support the senior citizen in the present case, in which duty the petitioner (minor) has failed so as to get the transfer deed dated 20.01.2011 cancelled.



28. As far as the argument of learned counsel for respondent No. 3-senior citizen that the property which has been transferred in favour of the petitioner-minor is being looked after by the biological father of the petitioner and, therefore, he will be liable. It may be noticed that the biological father of the petitioner is only looking after the property on behalf of the minor. The property was never transferred by the respondent No. 3-senior citizen in the name of the biological father of the petitioner. Any person looking after the property on behalf of minor, cannot be made liable under 2007 Act. The transfer of the property in the present case was only in the name of the minor-petitioner and hence, the claim can only be raised, in case permissible under 2007 Act against the minor only which the respondent No. 3-senior citizen has failed to prove.

29. Further, certain facts need to be noticed as to whether, the respondent No. 3-senior citizen wants maintenance so as to lead a dignified life or just wants the property back under any circumstances. It may be noticed that an affidavit dated 13.03.2025 has been filed by the petitioner, wherein, he has stated that the total income which is being generated from the property in question is ₹1,08,000/- per year. During the arguments, learned counsel on instructions from the petitioner, who is present in Court, submits that he has no objection in case, the total proceeds being generated out of the land is given to the respondent No. 3-senior citizen till she is alive.

30. Learned counsel for the respondent No. 3-senior citizen upon instructions from senior citizen, who is also present in Court, submits that the senior citizen is not interested in the proceeds but wants her property back, which belongs to her late husband and she wants to keep the said



property with her till her last breath. This fact goes to show that the intention was only to get the property back and not the maintenance. A very genuine offer made by the petitioner that he is ready to look after the respondent No. 3-senior citizen and will give all the proceeds of the property to the senior citizen till she is alive, once has not been accepted, the inference can be drawn by this Court that it is a property dispute as the senior citizen now has second thoughts about the transfer given in favour of the minor and 2007 Act has been used as tool to get the property back.

31. Keeping in view the totality of the circumstances, coupled with the provisions of 2007 Act as well as settled principle of law, not only that the twin conditions required under Section 23 of 2007 Act to get the transfer to be declared as fraud are not met but even otherwise, the claim being raised by the respondent No. 3-senior citizen against a minor so as to claim the property back is also not covered keeping in view the provisions of Section 4 of 2007 Act. The authorities have passed the impugned orders in favour of the respondent No. 3-senior citizen in a totally mechanical way only by recording that the senior citizen was the owner of the property and she has alleged that she is not being maintained without even appreciating the provisions of 2007 Act as to whether the same are applicable in the facts and circumstances of the present case or not. Hence, the orders which have been passed by the authorities, as impugned in the present petition are perverse not only to the provisions of the 2007 Act but also to the settled principle of law noticed here-in-before, hence, the same cannot be sustained and are accordingly set-aside.

32. Writ petition is allowed in above terms.



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

March 19, 2025
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No