



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(210)

CWP No. 29859 of 2019 (O&M)

Date of Decision : 16.01.2025

Jarnail Singh

...Petitioner

Versus

The Additional Deputy Commissioner-cum-Appellant Authority,
Rupnagar, Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jaideep Verma, Advocate for the petitioner.

Ms. Akshita Chauhan, Deputy Advocate General, Punjab.

Mr. Mohit Shukla, Advocate for respondents No. 3 and 4.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance being raised by the petitioner is that the transfer which has been effected by the transfer deed No. 2335 dated 02.03.2016 in favour of the petitioner by respondent No. 3-father has been set-aside by the Tribunal, which order has been upheld by the appellate authority vide order dated 18.07.2019 (Annexure P-7).

2. Learned counsel for the petitioner submits that in the application filed by respondent No. 3 father before the authorities concerned, respondent No. 3 father conceded the fact that the property is ancestral, hence, the claim being raised that he was the owner of the property in question so as to seek the benefit of cancellation of the same is not made out. Learned counsel for the petitioner further submits that without deciding the issue of the ownership



as raised by the petitioner before the authorities concerned, the transfer deed has been cancelled, which is arbitrary and illegal. Learned counsel further submits that respondent No. 3 father had initially filed an application under Section 23 of The Maintenance and Welfare of Parents & Senior Citizens Act, 2007 (hereinafter referred to as '2007 Act') in the year 2018 which was dismissed vide order dated 17.04.2018 (Annexure P-1) on the ground that respondent No. 3 father is not a senior citizen and was found to be 58 years old but within a period of three months of the said dismissal of the claim, a fresh application was filed by respondent No. 3 father which has been allowed and that too without valid justification.

3. Learned counsel for the respondents submits that after the decision of the first application in April, 2018, respondent No. 3 got a certificate describing his date of birth as 27.10.1956 and, therefore, a fresh application was filed.

4. Learned counsel for respondents No. 3 and 4 concedes the factum that as per the application filed, property was described as ancestral property.

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

6. Before granting the benefit under 2007 Act, the Tribunal as well as the appellate authority was required to record a finding that the property belonged the applicant-senior citizen, which was transferred with the condition that he/she will be maintained as envisaged under 2007 Act.

7. In the present case, no such finding has been recorded either by the Tribunal or by the Appellate Court.



8. Further, the respondent No. 3 in his application itself has mentioned the property as an ancestral property, which includes the share of the petitioner as well, hence, setting-aside the transfer without even dealing with the said issue, cannot be sustained in the eyes of law. The order passed by the Tribunal dated 28.11.2018 (Annexure P-5) as well as by the appellate authority dated 18.07.2019 (Annexure P-7) are set-aside and the case is remanded back to the Tribunal for fresh adjudication to decide the issue keeping in view the observation made in the present order.

9. Any action taken under the impugned orders which have been set-aside, will also deemed to have been set-aside subject to any order to be passed by the Tribunal henceforth on the application filed by respondent No. 3 father.

10. Writ petition is allowed in above terms.

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

January 16, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No