



CWP-111-2019

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

(202)

CWP-111-2019

Date of Decision : 20.04.2026

Dimple and others

...Petitioners

Versus

Deputy Commissioner cum Chairman
Maintenance Appellate Tribunal, Rewari and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

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

Mr. Bhupender Singh, Addl. AG, Haryana.

Mr. Sanjay Mittal, Advocate
for respondent No.3.

KULDEEP TIWARI, J. (ORAL)

1. The legality of order(s) dated 08.02.2018 (Annexure P-2), passed by learned Maintenance Tribunal, Rewari, and the order dated 09.10.2018 (Annexure P-3), passed by learned Maintenance Appellate Tribunal, Rewari, under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act of 2007'), have been put to challenge, by filing the instant writ petition, cast under Article 226/227 of the Constitution of India.

FACTS

2. Learned Maintenance Tribunal concerned, through its verdict dated 08.02.2018 (Annexure P-2), had set aside the transfer deeds No.576 and 577 dated 25.03.2015, invoking mischief of Section 23 of the Act of 2007.



The statutory appeal preferred by the petitioners did not yield any fruit, and the same was also dismissed, vide order dated 09.10.2018 (Annexure P-3).

SUBMISSIONS BY LEARNED COUNSEL FOR THE PETITIONERS

3. Learned counsel for the petitioners in an attempt to throw a challenge to the legality of orders (supra), has drawn the attention of this Court towards Exhibit R-1, which is the transfer deed, to submit that the said transfer was given effect to, in lieu of a family settlement. Secondly, he submits that at the time of transfer, the petitioners No.1 and 2, were of four and eight years of age, respectively, and therefore, there cannot be any possibility of presumptions in the favour of senior citizen, that she had executed the transfer deed with the condition of being maintained by the minor children, who were themselves dependent upon their mother/petitioner No.3. He further submits that all these aspects have not been appreciated in its right perspective, rather a mechanical order has been passed by learned Tribunal concerned, invoking the mischief of Section 23 of the Act of 2007. Finally, he submits that there is no recital of any condition in the transfer deed, requiring the learned Tribunal concerned, to invoke the provisions of Section 23 of the Act of 2007, to conclude that the said transfer was a result of fraud.

4. Furthermore, as per the instructions, both the decrees were never challenged, and thus, have now attained finality. Finally, he submitted that there was no condition whatsoever mentioned in the transfer deed, that the said transfer was subject to the condition of maintaining the senior citizen. In the absence of any evidence, mere pleadings ought not to have been given weight by the learned Maintenance Tribunal concerned. Therefore, the impugned award suffers from illegality and requires interference of this Court.

***SUBMISSIONS BY LEARNED COUNSEL FOR THE RESPONDENT***

5. On the other hand, learned counsel for respondent No.3/senior citizen strongly opposed the submissions made by learned counsel for the petitioners. He submits that the conduct of petitioner No.3, who is mother of petitioners No.1 and 2, needs to be examined before this Court, to test the legality of impugned order(s). He further submits that the sale deed was executed by the senior citizen. However, the sale consideration was not transferred in her account rather it was transferred in the account of mother of petitioner No.3, who by co-incident, was having the same name. Finally, he submits that petitioners No.1 and 2, minor grand children, post the transfer deed, did not serve the senior citizen and therefore, learned Tribunal concerned, has rightly cancelled the transfer deed.

6. No other arguments were raised by learned counsel for the respondent No.3, before this Court.

7. This Court has heard the rival submissions as made by learned counsel for the parties concerned, and has examined the impugned order(s).

ANALYSIS

8. Before this court embarks upon the submissions made by learned counsel for both the parties, it is imperative to have a glimpse upon the undisputed facts, *qua* which there is no wrangle amongst the parties concerned.

9. The respondent No.3/senior citizen, had executed two transfer deeds, on 25.03.2015. It is apposite to note here that respondent No.3, was blessed with six children (five sons and one daughter). Sanjeev Kumar, father of petitioners No.1 and 2 and husband of petitioner No.3, had died on 02.09.2014, and thereafter, for welfare of the minor grand children, the



property was transferred in their favour, in lieu of a family settlement, which was put to challenge in 2019, by filing an application on the sole ground that the grand children (petitioners No.1 and 2), took undue advantage of ill health of the senior citizen/respondent No.3, and assured to maintain her and provide her all basic amenities, and got executed the transfer deed, in question, and immediately after execution of the deed, they stopped providing her basic amenities.

10. This Court finds that the application under Section 23 of the Act of 2007, has been filed by the respondent No.3/senior citizen, in order to settle family disputes, to which learned counsel for respondent No.3, is referring to. The respondent No.3/senior citizen, cannot possibly have any expectation to be maintained by her minor grand children, who at the time of execution of the transfer deed were only four and eight years of age, respectively. Even, there is no recital in the transfer deed that the said transfer was subject to maintaining the senior citizen/respondent No.3.

11. At this stage, in order to appreciate, as to whether, the application (supra), attracts the mischief of Section 23 of the Act of 2007, let us have a glimpse of Section 23 of the Act of 2007.

“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 organisation referred to in Explanation to sub-section (1) of section 5.”

12. Sub-clause (1) of Section 23 of the Act of 2007, creates a legal fiction, and empowers the learned Tribunal concerned, to presume that the transfer is the result of fraud, coercion or undue influence, in case, the transfer is subject to the condition that the transferee shall provide the basic amenities and basic needs to the transferor, and post the execution of the transfer deed, the transferee fails to keep the promise.

13. Hon’ble Supreme Court, in case titled ‘**Sudesh Chhikara vs. Ramti Devi and another**, Civil Appeal No.174 of 2021, decided on 06.12.2022, has held that, to attract the provisions of Section 23 of the Act of 2007, the condition of providing basic amenities and basic needs to the transferor-senior citizen is *sine qua non* for its applicability. The relevant paragraphs are extracted hereunder:-

“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.”

14. Similar observations were made by a Co-ordinate Bench of this Court, in case titled '**Tilak Raj vs. State of U.T. Chandigarh and others**', CWP-414-2025, decided on 13.01.2025, wherein, after considering the ratio laid down in **Sudesh Chhikara's case (supra)**, it was held that the condition requiring the transferee to maintain the senior citizen by providing basic amenities and basic needs must not only be expressly stipulated in the transfer deed, but must also be specifically pleaded before the learned Tribunal concerned, in order to establish a breach thereof. It is only upon fulfillment of these conditions that the relief under Section 23 of the Act of 2007, can be granted. The relevant observations of the Co-ordinate Bench are extracted



“12. A bare perusal of the above paragraphs of the judgment in Sudesh Chhikara (supra) makes it clear that not only the condition that the senior citizen will be maintained by the transferee qua his basic amenities and basic physical needs must be there in the document concerned but, the said part needs to be pleaded before the Tribunal also so as to prove the violation of the said condition and it is only under that circumstances, the relief can be granted. In the absence of the condition that the transferee is liable to maintain the senior citizen in the deed sought to be recalled, the requirement of Section 23 of the 2007 Act are not fulfilled and the interpretation being given by the petitioner to the paragraphs 13 and 14 of the judgment cannot be accepted.

13. Even otherwise, on being asked to read from the pleadings as to what basic amenities and the basic physical needs were demanded by the petitioner before the Tribunal and how they were proved, learned counsel for the petitioner has not been able to show that any such factual averment was made or any evidence was brought on record with regard to any basic amenities or the physical needs of the petitioner, not being fulfilled by the respondent. Hence, even if the interpretation being given by the petitioner is accepted for the sake of argument, then also, the requirements of the judgment in Sudesh Chhikara (supra) are not fulfilled in the facts and circumstances of the present case.”

15. The legality of the hereinabove expressed observations was tested by the aggrieved by filing LPA No.1012 of 2025. However, the same were affirmed by the Division Bench of this Court, by drawing an order dated 09.05.2025. The relevant paragraphs of this order are extracted hereunder:-

“10. A perusal of the said judgment indicates that transfer must be made subject to the condition that transferee shall provide basic amenities and basic physical needs to the transferor and only then if the transferee refuses or fails to provide such amenities or physical needs to the transferor Section 23 (1) of the 2007 Act can be brought into motion. Only if both the



conditions are satisfied by a legal fiction, then transfer shall be deemed to have been made by way of fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of transferor and the Maintenance Tribunal would have the jurisdiction to declare the transfer void.

11. It was further observed in Sudesh Chhikara's case (supra) that when a petition under Section 23 of the 2007 Act does not reveal that the deed was executed subject to the obligation of maintenance stipulated under Section 23 of the 2007 Act and no such finding is recorded by the Maintenance Tribunal or no oral evidence is adduced by the parties, then the order of the Tribunal could not be held to be maintainable.”

16. *Per se* at the cost of repetition, the transfer deed in question contains no recital obligating the petitioners No.1 and 2, to provide the basic amenities and basic needs to the respondent No.3/senior citizen. Moreover, the application preferred by the senior citizen, before the learned Maintenance Tribunal concerned, does not carry any of the ingredients, requiring to invoke the mischief of Section 23 of the Act of 2007.

17. On the anvil of the above legal propositions and settled law, this Court finds that the application under Section 23 of the Act of 2007, does not carry any ingredients giving jurisdiction to learned Maintenance Tribunal concerned, to invoke the provisions of Section 23 of the *ibid* Act. Neither, it is alleged, nor proved by leading any cogent evidence that the transfer deed was executed out of love and affection, and with a condition that the beneficiary will maintain the senior citizens. The respondent No.3/senior citizen, cannot possibly have any expectation to be maintained by her minor grand children, who were themselves dependent upon their mother/petitioner No.3, at the time of said execution. This Court has no hesitation in recording that non-mentioning of condition of maintenance in the transfer deed would not



fetter the case of the senior citizen, provided existence of such condition is alleged in the application and proved by leading evidence to this effect. Unfortunately, nothing of such kind has been done. It seems that the property dispute amongst the parties concerned, is sought to be settled by invoking the provision of the Act of 2007. It is now a common phenomenon that the provisions of the Act of 2007, are being misused only for this purpose, and this practice cannot be appreciated, at all.

18. So far as the submissions made by learned counsel for respondent No.3/senior citizen is concerned, this Court does not find any merit, thereof. The conduct of petitioner No.3, has no relevancy with regard to cancellation of the transfer deed by learned Tribunal concerned, by invoking the provisions of Section 23 of the Act of 2007. Rather, this Court is of the considered opinion that a dispute has arisen between the respondent No.3/senior citizen and the petitioner No.3 (daughter-in-law), and therefore, the instant application has been filed.

DECISION

19. In summa, this Court finds merit in the submissions made by the learned counsel for the petitioners, and accordingly, the instant writ petition is **allowed**.

20. The impugned order(s) dated 08.02.2018 (Annexure P-2), passed by learned Maintenance Tribunal, Rewari, and the order dated 09.10.2018 (Annexure P-3), passed by learned Maintenance Appellate Tribunal, Rewari, are ordered to be **set aside**, as the same does not pass the test of legality, and the **transfer deed** is ordered to be **restored** to its original status.

21. Since this Court has observed that the transfer deed was the result of a family settlement, therefore, in case, the respondent No.3/senior citizen,

still has any legal standing, to challenge the impugned transfer deed, she is at liberty to challenge the same, by moving apt motion before apt Court/forum.

(KULDEEP TIWARI)
JUDGE

April 20, 2026
Manpreet

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