



CWP-9185-2025

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

(210)

CWP-9185-2025

Date of Decision : 16.02.2026

Bhavesh and another

...Petitioners

Versus

Chairman, Appellate Authority cum
Deputy Commissioner, Bhiwani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sandeep Thakan, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Ashwani Bhardwaj, Advocate
for respondent No.3.

KULDEEP TIWARI, J. (ORAL)

1. The petitioners No.1 and 2, who are grand-son and son of respondent No.3/senior citizen, respectively, has knocked the door of this Court, wherethrough, they have challenged the legality of order dated 11.05.2023 (Annexure P-6), passed by the learned Maintenance Tribunal, Bhiwani (respondent No.2), and order dated 12.12.2024 (Annexure P-9), passed by learned Appellate Authority-cum- Deputy Commissioner, Bhiwani (respondent No.1).

2. Learned counsel for the petitioners, in an attempt to throw challenge to the orders (supra), submits that none of the transfer deeds carries any condition of maintenance, entitling the senior citizen (respondent No.3), to invoke the provisions of Section 23 of the Maintenance and Welfare of



submits that though in the application, it was mentioned that the transfer was subject to the condition of maintaining the senior citizen. However, no evidence was led by the petitioners to prove the said assertion, and therefore, in the absence of any recital in the transfer deed, and further, in absence of any evidence led before the learned Tribunal concerned, it has erroneously invoked the mischief of Section 23 of the Act of 2007. He also submits that in fact, respondent No.3, in a family transfer, has equally transferred the property in the name of his three sons, and in the case of the petitioners, it is not the son, rather it is the grand-son, with the consent of the petitioner No.2. Finally, he submits that the other two brothers, were not satisfied with the said family transfer, and in order to settle the family property dispute, through the senior citizen (respondent No.3), the instant application under Section 23 of the Act of 2007, has been filed, which is nothing but a misuse of provisions of the Act of 2007.

3. On the other hand, learned counsel for respondent No.3, has strongly opposed the submissions, as made by the learned counsel for the petitioners. He submitted before this Court that though there is no recital of any condition in the transfer deed, but there are specific pleadings in the application that this transfer was subject to the condition of maintaining the senior citizen. He further submits that in the instant case, when the entire land of respondent No.3/senior citizen, has been transferred in favour of the sons and the grand-son, then the natural presumption arises that senior citizen is expected at least maintenance from the transferee, therefore, on the basis of presumption, learned Tribunal has rightly invoked the mischief of Section 23 of the Act of 2007. He also submits that the senior citizen cannot be left at the mercy of the petitioners and the other two sons, who post transfer of the land,



stopped maintaining him. Therefore, in order to achieve the desired object of the Act of 2007, the orders impugned have rightly been passed in favour of the senior citizen (respondent No.3).

4. This Court has considered the submissions as made by learned counsel for the parties concerned, and has also gone through the orders (supra), and the available record.

5. It is apparent from the study survey of the transfer deed that it does not carry any condition of maintaining the senior citizen, or to cater his basic needs. However, in the application filed before the learned Maintenance Tribunal concerned, it was specifically pleaded that the said transfer was subject to the condition of maintaining the senior citizen.

6. This Court has examined the orders (supra), and a specific query was put to learned counsel for respondent No.3, as to whether, any evidence was led before the learned Tribunal concerned, to establish that the transfer deed was subject to the condition of maintenance, to which, he fairly concedes and answered in negative that no such evidence was led.

7. At this juncture, it is imperative to have a glimpse upon the provisions of Section 23 of the Act of 2007, which are extracted hereinafter :-

“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.

8. Two ingredients are essential to be established by leading the cogent evidence. First, that the transfer was subject to the condition that the transferee shall provide the basic amenities and needs; second, post the transfer or execution of the deed, the transferee failed to provide the basic amenities and physical needs.

9. 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 physical needs to 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.”

10. Similar observations were made by a Coordinate 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 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 hereinbelow:

“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.”

11. 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.”

12. *Per se* at the cost of repetition, the transfer deed in question contains no recital obligating the petitioner to provide the basic amenities and needs to the respondent No.3/senior citizen.

13. On the anvil of the above legal propositions and settled law, this Court finds that the application filed under Section 23 of the Act of 2007, without any evidence does not complete the ingredients to invoke the mischief 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. This Court has no hesitation in recording that not mentioning of this 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 to this effect has been done. It seems that family 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. Learned Maintenance Tribunal, as well as learned Appellate Authority concerned, has not considered this fact, therefore, the order(s) passed by them, requires interference of this Court.

14. From the record, it transpires that the property was transferred equally amongst all sons by respondent No.3/senior citizen, which *prima facie*



is a result of family transfer. The family property dispute cannot be allowed to be settled through invocation of provisions of Section 23 of the Act of 2007, therefore, on this ground also, the order(s) impugned requires interference of this Court.

15. At this stage, this Court has put a specific query to learned counsel for the petitioners, as to whether, petitioner No.2, is still ready to provide financial assistance for the purpose of maintenance of senior citizen/respondent No.3, to which, he fairly answered in affirmative and submits that petitioner No.2, is ready and willing to pay the maintenance to senior citizen, specifically in order to eradicate the presumption that after getting the land transferred, he does not want to maintain the senior citizen.

16. This Court finds that the senior citizen otherwise in view of the provisions of Section 23 (ii) of the Act of 2007, is entitled to seek maintenance against the estate, which was transferred in favour of the petitioners. Therefore, this Court directs the petitioner No.2, to pay Rs.10,000/-, as maintenance to the respondent No.3/senior citizen, till his life time, which shall be paid before 10th of every month. This Court before closing the instant writ petition, grants liberty to respondent No.3/senior citizen, to get the instant writ petition revived, in case, there is any default on the part of the petitioner No.2, with regard to maintenance amount, as imposed by this Court.

17. Consequently, the instant writ petition is **allowed**, and order dated 11.05.2023 (Annexure P-6), passed by the learned Maintenance Tribunal, Bhiwani (respondent No.2), as well as, order dated 12.12.2024 (Annexure P-9), passed by learned Appellate Authority-cum- Deputy Commissioner, Bhiwani (respondent No.1), are hereby **set aside**, *qua*

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petitioners, and the transfer deed is ordered to be **restored** to its original status.

(KULDEEP TIWARI)
JUDGE

February 16, 2026
Manpreet

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