



CWP-14855-2022

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

(210)

CWP-14855-2022

Date of Decision : 21.01.2026

Babli Rani

...Petitioner

Versus

District Magistrate, Rohtak and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Jitender Nara, Advocate and
Mr. Davinder Kaliraman, Advocate
for the petitioner.

Mr. Kulbhushan Sharma, Advocate
for LR's of respondent No.3 and respondent No.4.

KULDEEP TIWARI, J. (ORAL)

1. The petitioner, who is daughter-in-law of respondents No.3 and 4 (since deceased), has knocked the door of this Court, by filing instant writ petition cast under Article 226/227 of the Constitution of India, wherethrough, the legality of order dated 24.02.2021 (Annexure P-6), passed by the learned Maintenance Tribunal concerned, and the order dated 24.06.2022 (Annexure P-8), passed by the learned Appellate Authority concerned, wherethrough, the application dated 23.08.2018 (Annexure P-5), preferred by the respondents No.3 and 4, seeking cancellation of transfer deed, in question was allowed and the statutory appeal preferred by the petitioner was dismissed.

FACTS

2. Learned counsel for the petitioner while opening his arguments, has drawn the attention of this Court towards the contents of application dated



23.08.2018 (Annexure P-5), as filed under Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act of 2007') to submit that the allegation as alleged therein, does not carry any ingredients of Section 23 of the Act of 2007, to bestow jurisdiction upon learned Maintenance Tribunal concerned, to cancel the transfer deed in question. He further submits that on an earlier occasion as well, the brother-in-law (brother of the husband of the present petitioner), contested the legality of the transfer deed/gift deed, by filing a civil suit before the learned Civil Court concerned. In the said civil suit, Hawa Singh (Respondent No.3) stepped into the witness box and deposed in favour of the transfer deed and categorically submitted that he, being the owner of the land and competent to transfer the deed, had executed the same voluntarily. He also submits that the legality of transfer deed was evaluated by learned Civil Court concerned, and civil suit preferred by the brother-in-law, who is now representing respondents No.3 and 4 as their LR, was dismissed. The statutory appeal preferred against the decree passed by the learned Civil Court concerned, before First Appellate Court, was also dismissed. Furthermore, as per the instructions, both the decrees were never challenged, and thus, attained finality. Finally, he submitted that there was no condition whatsoever mentioned in the transfer deed, that transfer was subject to the condition of maintaining senior citizen. However, despite taking this plea in the application (supra), no efforts were made to prove this by leading any cogent evidence, and 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 LRS OF RESPONDENTS

3. On the other hand, learned counsel for LR's of respondents No.3 and 4, has put a fierce defence to the submissions as made by learned counsel for the petitioner, and submits that it is not necessary that the transfer deed carries a condition of maintenance, rather this fact can be alleged by filing an application and same can be proved before the learned Maintenance Tribunal concerned. For this he places reliance upon the Division Bench judgment of this Court in CWP-5086-2016, decided on 03.05.2018, titled '***Smt. Raksha Devi versus Deputy Commissioner-cum-District Magistrate, Hoshiarpur and others***' 2018(4) RCR (Civil) 218; Apex Court judgment in Civil Appeal No.10927 of 2024, decided on 02.01.2025, titled '***Urmila Dixit versus Sunil Sharan Dixit and others***' 2025 (2) SCC 787, and Division Bench judgments of Madras High Court, titled '***S. Mala versus District Arbitrator and District Collector and others***' 2025(2) MLJ 530; '***K. Yoganand versus The District Collector of Kancheepuram and others***' decided on 02.04.2025, and Single Bench judgment of Madras High Court titled '***Mohamed Dayan versus The District Collector and others***' 2023 SCC Online Mad 6079.

4. He further developed his arguments to the effect that the decree as passed by the learned Civil Court concerned, does not debar a senior citizen to invoke the provisions of Section 23 of the Act of 2007, in case condition of transfer is violated by transferee. He, in addition, submitted that contentions made in Paragraph No.4 of the application (supra), wherethrough, the allegation of fraud has been levelled for execution of transfer deed, may not be read rather only the contents of Paragraph No.6, is to be considered to



transfer deed, it is specifically mentioned that the deed in question was executed out of love and affection. And in Paragraph No.6 of the application (supra), it is specifically mentioned that post the execution of the transfer deed, the petitioner refused to maintain the senior citizen.

ANALYSIS

5. Before this court embark upon the arguments made by learned counsel for the petitioner, and counsel appearing on behalf of LR's of respondents No.3 and 4, it is important to have a glimpse upon some facts, *qua* which there is no wrangle amongst the parties concerned.

6. The respondent No.3-Hawa Singh (since deceased) executed a transfer deed in favour of the present petitioner, on 29.04.2011, and respondent No.3, and his wife respondent No.4, both preferred an application under Section 23 of the Act of 2007, on 23.08.2018, i.e. 07 years after the execution of transfer deed. It is also not disputed that in the said time period, the brother-in-law, who is now representing the senior citizens being their LR, has already contested legality of the transfer deed by filing a civil suit, which was dismissed by learned Civil Court concerned, and the decree passed by learned Civil Court, has now attained finality.

7. It is also not disputed that Hawa Singh (respondent No.3) stepped into the witness box before Civil Court, and deposed in favour of the transfer deed and categorically submitted that it was suffered out of sheer will, and without any coercion.

8. No evidence, whatsoever, was led by the senior citizen, to prove said allegation. The learned Maintenance Tribunal concerned, proceeded to cancel the transfer deed vide order dated 24.02.2021 (Annexure P-6), only on the basis of the contents of the application dated 23.08.2018 (Annexure P-5),



to the effect that the petitioner has failed to maintain the senior citizen post execution of the transfer deed. The statutory appeal preferred by the petitioner was also dismissed. However, the same was dismissed in the most perfunctory manner.

9. At this juncture, this Court feels apt to have glimpse upon the relevant contents of the application dated 23.08.2018 (Annexure P-5), preferred by the respondents No.3 and 4, which became the basis for the learned Maintenance Tribunal and the learned Appellate Authority concerned, to adjudicate the claim of the senior citizens. The relevant is extracted hereinafter :-

“3. That all the three sons of applicants are married. The applicants used to resided in their ancestral house at Village Kultana with respondent No.3 and 4. The respondent No.1 and 2 are residing in their own self acquired house at Sampla.

4. That applicant No.1 fell seriously ill in April 2011 and when he was ill and then respondent No.3 had taken applicant to the Tehsil Sampla, on the pretext of making will but he got executed fraudulently gift deed in favour of his wife (respondent No.4) of my ancestral agricultural land in Khewat No. 14 Khatoni No.15, Kitte 23 total land 62 Bigha 8 Biswa, wherein my share is 1/9th measuring land 6 Bighe 18 Biswa. He even did not call his wife respondent No.4 in Tehsil so that applicant No.1 may not get suspicious. He told lie that the will is being made in favour of all the three respondents. In this way, respondent No.3 while telling lie to applicant NO.1 that the Will is being made in favour of respondents No.1 to 3 and he procured gift deed in favour of respondent No.4.

5. That the above said agricultural land in ancestral land of applicant No.1 and which all his three sons are entitled



to get after his death, but respondent No.3 and 4 got executed gift deed from applicant No. 1 fraudulently.

6. That respondent No.3 and 4 started harassing the applicants and started beating them. They stopped providing meals in time. This is going on from 2012 and in 2018 they have snatched Rs.4 Lac and household articles and refused to get treatment for applicants. In the end, they ousted the applicants from the house which was even purchased by applicant No. 1. The applicants have been left as beggars. The respondent No.3 is a strong headed persons and anti-social elements are there in his company and thus he has grabbed the whole property of the applicants. He threatened to eliminate if action is taken against him.”

10. A collective reading of the above relevant paragraphs makes it clear that the senior citizens alleged that the transfer deed is a result of fraud. Neither before the learned Maintenance Tribunal, nor learned Appellate Court concerned, did the senior citizens maintains that the transfer deed was made out of love and affection. In order to better appreciate 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.”

11. 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 made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor, and post the execution of the transfer deed, the transferee fails to keep the promise.

12. Two ingredients, which 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 basic physical needs; second, post the transfer of execution of the transfer deed, the transferee failed to provide the basic amenities and physical needs.

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 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.”

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 physical 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.”

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 petitioner to provide the basis amenities and basis physical 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 the 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. 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 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. In summa, this Court finds merit in the submissions made by the learned counsel for the petitioner, and accordingly, the instant writ petition is **allowed**. The impugned order dated 24.02.2021 (Annexure P-6), passed by the learned Maintenance Tribunal, and the order dated 24.06.2022 (Annexure P-8), passed by the learned Appellate Authority concerned, are ordered to be **set aside**, and the **transfer deed** is ordered to be **restored** to its original status.

(KULDEEP TIWARI)
JUDGE

January 21, 2026
Manpreet

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