

2025:PHHC:136786



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

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CWP No.38119 of 2018
Date of decision: 29.09.2025

BALBIR SINGH

....PETITIONER

VS.

STATE OF PUNJAB AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. M.S. Longia, Advocate
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

Mr. Mohit Jaggi, Advocate
for respondent No.4.
(Through Video Conferencing)

KULDEEP TIWARI, J.(ORAL)

1. A senior citizen has approached this Court by filing an instant writ petition, as cast under Article 226 of the Constitution of India, assailing the order dated 28.06.2017 (Annexure P-3), passed by learned Maintenance Tribunal, Kharar, vide which, his application, under Section 5 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, the Act of 2007), was dismissed, however, with a direction upon Kirandeep Kaur-respondent No. 4, and Harpreet Singh-son of the petitioner, to maintain him. Further, the order dated 14.11.2017 (Annexure P-6), is also put to challenge, whereby, his appeal against the order (supra), has been dismissed by the learned Appellate Authority.

2. In brief, the facts, as set out in the application as well as in the instant writ petition, are that the petitioner, who is a retired government

employee, was blessed with five children, out of whom, two daughters had since expired. He, out of love and affection, gifted a piece of land, situated at Kurali, to his elder son, namely Jagdev Singh, vide a registered transfer deed dated 29.03.2016, upon which, a shop was got constructed. Unfortunately, Jagdev Singh passed away on 26.03.2017, and consequently, the shop in question was inherited by his wife, namely Kirandeep Kaur (respondent No.4), and his minor children, by way of natural succession. However, post demise of Jagdev Singh, behavior of respondent No.4 towards the petitioner changed, as she used to pick fights with the family members. Further, she brought her father-Gurmit Singh to live with her, and also started harassing the petitioner on daily basis. Not only that, whenever anyone came to meet the petitioner, she would create a ruckus in the premises, with the aid of her brother, and father. In this backdrop, the application (supra), was preferred by the petitioner, thereby, seeking cancellation of the transfer deed in question.

3. Upon notice, Kirandeep Kaur-respondent caused appearance before the learned Maintenance Tribunal, and submitted that she was living with her two minor children at Village Mudho Sangtian, whereas, her mother-in-law and father-in-law (petitioner) were living separately, along with their younger son (Harpreet Singh). The land, upon which a Photostat shop in question was constructed at Kurali-Siswan Road was the only source of income, which has now been locked by his father-in-law, and no other property was transferred by the petitioner either in her favour, or in the name of her husband. It was further pleaded that the petitioner had given the said shop to her husband, whereas, a plot, which is situated in front of the said shop, was given to his younger son, on account of a family partition. However, some valuable goods, which belonged to her husband, are still in

possession of the petitioner. She specifically pleaded that she never had any objection in paying an adequate amount as maintenance to the petitioner, but in absence of any source of income, she is not in a position to provide him any monetary assistance.

4. After considering the facts and circumstances of the case, the Maintenance Tribunal concerned dismissed the application, specifically observing that the petitioner is living with his younger son, and as he is a retired Government employee, he is receiving a pension, making his both ends meet. Aggrieved by the order (supra), the petitioner preferred a statutory appeal, but that too, met with the same fate, and was dismissed, vide order dated 14.11.2017. Hence, the present writ petition.

5. Learned counsel for the petitioner submits that learned Appellate Tribunal has failed to take into consideration the report (Annexure P-5), submitted by the Committee, which was constituted to ascertain the actual position, wherein it was specifically recommended to cancel the transfer deed dated 29.03.2016. While referring to the contents of the application (supra), he submits that it was specifically pleaded by the petitioner that post death of his son Jagdev Singh, his daughter-in-law refused to maintain him, rather started harassing him by interfering in his day-to-day life. He takes support from a decision rendered by the Division Bench of this Court in *Smt. Raksha Devi vs. Deputy Commissioner-cum-District Magistrate, Hoshiarpur and Others, 2018(4) RCR(Civil) 218*, to contend that there is no necessity of recital in the transfer deed to the effect that the transfer is a conditional transfer. Rather, an inference, in this regard, can be drawn from the circumstances obtaining in the matter, and the contents of the application that the transfer is made with a pre-condition of maintaining the transferee.

6. On the other hand, learned counsel for the contesting respondent submits that the petitioner failed to establish that the transfer in question was made with a condition that the transferee shall provide basic amenities and basic physical needs to the senior citizen. He further submits that, in fact, after the death of her husband, the petitioner did not intend to allow the respondent to live in the matrimonial house. He concludes by submitting that since the petitioner is receiving a handsome pension, being a retired Government employee, he is not dependent upon his daughter-in-law, who, along with minor children, has been left in lurch.

7. This Court has examined the submissions of both the parties concerned, and perused the records.

8. It is not under dispute that the plot in question, upon which the husband of respondent No.4, constructed a shop, was transferred way back on 29.03.2016, vide a transfer deed (supra), and there is no recital of any condition, that the transferee shall provide the basic amenities and physical needs to the transferor. Further, post death of Jagdev Singh on 26.03.2017, the property in question devolved upon his wife (Kirandeep Kaur), and children, on account of natural succession. A close scrutiny of the factual aspects obtaining in the matter goes to show that apparently, the petitioner has failed to establish before the authorities below, as well as this Court that he is solely dependent upon the income being derived from the shop in question. Rather, it is a matter of record, which is not denied by the petitioner, that he is receiving a pension, and is living with his younger son, in a separate accommodation.

9. In the wake of the abovesaid conceded position, albeit, this Court is not required to proceed any further with the matter, still it is deemed apt to delve into the scope 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.”

10. The provisions, referred to above, empower the senior citizens to seek cancellation of any transfer of property executed by them, either by way of gift deed, or otherwise; with a condition that the transferee has undertaken the obligation to provide basic amenities and maintenance to them. In case, the transferee fails to adhere to the promised maintenance, the transfer of property shall be deemed to have been made by fraud, coercion or undue influence.

11. Sub-clause (1), 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 are essential to be established by leading the cogent evidence. The first ingredient is that the transfer was subject to the condition that the transferee shall provide the basic amenities and basic physical needs; and the second is, post execution of the transfer deed, the transferee fails to provide the basic amenities and physical needs.

13. In the instant case, as demonstrated above, there is no indication that petitioner is dependent on her daughter-in-law. Further, after the death of the petitioner's son, he has not maintained a good relationship with his daughter-in-law. Rather, it seems that, in order to settle his personal score, the instant petition has been filed. Pertinently, the petitioner has also transferred a piece of land in favour of his younger son, but no such petition has been filed against him. Therefore, the application preferred by the petitioner does not fulfill the requisite ingredients, as enumerated under Section 23 of the Act of 2007, requiring this Court to interfere with the impugned orders.

14. The Hon'ble Supreme Court, in **Sudesh Chhikara vs. Ramti Devi and another**, (Civil Appeal No.174 of 2021, decided on 06.12.2022), has interpreted that, to attract the wisdom enshrined in 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.”

15. A Co-ordinate Bench of this Court in **‘Tilak Raj vs. State of U.T. Chandigarh and others’**, (CWP-414-2025, decided on 13.01.2025), after referring to the ratio laid down in ***Sudesh Chhikara’s case (supra)***, emphasized 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.”

16. The legality of the hereinabove expressed observations had been tested by the aggrieved party by filing **LPA No.1012 of 2025**, but, the same were affirmed by the Division Bench of this Court, by drawing an order dated 09.05.2025. The relevant paragraphs are extracted hereinbelow:-

“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."*

17. As a sequel of the discussion, coupled with the reasons aforementioned, the instant writ petition is **dismissed**.

September 29, 2025
Poonam Sharma/ AK Sharma

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes/No