



CWP-16339-2018

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

(212)

CWP-16339-2018

Date of Decision : 11.08.2025

Gurdev Singh

...Petitioner

Versus

Appellate Tribunal-cum-District Magistrate
(Deputy Commissioner), Ferozpur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARIPresent: Mr. Sanjeev Kumar Arora, Advocate
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

Ms. K.T. Rau, Advocate
for respondent No.3.

KULDEEP TIWARI, J.(ORAL)

1. Through the instant writ petition, challenge is thrown to the order dated 27.12.2017 (Annexure P-5), passed by the Learned Maintenance Tribunal concerned, wherethrough, an application preferred by the petitioner under Section 23 read with Section 9 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter to be referred as 'the Act of 2007'), for setting aside/cancellation of the transfer deed dated 06.08.2013 (Annexure P-1), was dismissed. The statutory appeal preferred by the petitioner before the learned Appellate Authority, was also dismissed vide order dated 27.04.2018 (Annexure P-7).

2. Succinctly, the petitioner filed an application under Section 23, read with Section 9 of the Act of 2007, seeking declaration that the transfer deed dated 06.08.2013, executed in favour of his son, Kulwant Singh



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(respondent No.3), be set aside, and has also sought that a *mandamus* be passed upon the respondent No.3, to refund the amount of ₹12 lakhs, along with interest thereon, to the petitioner. The said application was defended by the respondent No.3, by filing a detailed reply, and a specific stand was taken that the petitioner is a man of resources and the instant application has been filed, at the behest of his brother, Satpal Singh, therefore, the provisions of Section 23 of the Act of 2007, has been misused, in order to settle the family property dispute.

3. The learned Maintenance Tribunal concerned, after examining the contents of the transfer deed, dismissed the application, vide order dated 27.12.2017 (Annexure P-5). The statutory appeal preferred by the petitioner under Section 16 of the Act of 2007, was also met with the same fate, vide order dated 27.04.2018 (Annexure P-7), and therefore, the instant writ petition, under Article 226/227 of the Constitution of India, has been filed by the petitioner.

4. Learned counsel for the petitioner would submit that the property, in question, was transferred in favour of the respondent No.3, with the hope that he will pay the petitioner ₹40,000/- per month as maintenance, and he will also take care of him. Though, he paid the maintenance for some time, but thereafter, he stopped making the payment. Not only this, he also started misbehaving with the petitioner. Therefore, the property in question, was got transferred upon a false promise. Therefore, in view of the provisions of Section 23 of the Act of 2007, such transfer is deemed to have been declared null and void. This issue ought to have been considered by the learned Tribunal concerned, in its right perspective. He further submits that the petitioner does not have any source of income and wife of the petitioner is also



residing with him. All these aspects have been ignored by the learned Tribunal concerned, while dismissing the instant application.

5. On the other hand, learned counsel for the respondent No.3, while protecting the legality of the impugned order has submitted that it is purely a case of property dispute between the respondent No.3, and his brother, which has been camouflaged and given a different colour, to invite the mischief of Section 23 of the Act of 2007. This is one of the example of misuse of these provisions. He draws the attention of this Court towards the contents of the transfer deed, and submits that the transfer deed is the result of family partition. The property was never transferred with the expectation or prior condition of maintaining the senior citizen.

6. While continuing with his arguments, learned counsel for respondent No.3, submits that his brother, Satpal Singh, has grabbed the share in the property, in connivance with the petitioner and other persons, because he was employed with the Electricity Board, Bathinda, at relevant time, so the orally distributed share of one half of one third property, was illegally possessed by him. Even, the petitioner has given the assurance for the right of one half of one third property, situated within the revenue estate of Deep Singh Wala, Tehsil and District Faridkot, has not been kept. He submitted that the petitioner is having two sons and both of them were government servant. Finally, he submits that the petitioner is having a land measuring 81 *kanals* 03 *Marlas*, which is sufficient source of income, and he is residing with his younger brother, Satpal Singh.

7. This Court has heard the rival submissions made by the learned counsel for the parties concerned, and has also gone through the paper book and the available record.



8. Before this Court, examine the validity of the impugned order, let us have a glimpse upon the contents of the transfer deed, in question, which finds mention in the impugned order, passed by the learned Maintenance Tribunal concerned, which is extracted hereinafter:-

“I have two sons namely Kulwant Singh and Satpal. I have no daughter. My son Kulwant Singh has been residing separately from me at Bathinda since 1988 and Satpal takes care of me. Now we have made family settlement and it has been decided to give land to Kulwant Singh i.e. land measuring 19 Kanals 04 Marlas out of the land purchased by me, 04 Kanals of land out of the land purchased by Satpal Singh and 20 Kanals of land purchased by Harjinder Kaur, mother of Kulwant Singh and with our consent 1/3rd share of ancestral land measuring 85 Kanals 06 Marlas to my other son Satpal Singh through transfer deed and transfer deed regarding land measuring 105 Kanals 09 Marlas purchased at Saide Ke total land 133 Kanals 17 Marlas has been executed in favour of Satpal Singh. Now land measuring 19 Kanals 04 Marlas, out of the land purchased by me, comprised of Rect. No. 20 Killa No. 9/1 (3-13), 10/1/1 (5-0), 10/2/1 (2-9), Rect. No. 21 Killa No. 13/3/1 (1-0), 15/1 (7-2), Khewat No. 47/35, Khatoni No.123, as per jamabandi for the year 2009-10, situated in the area of Village Chugha, Tehsil Guruharsahai, District Ferozepur has been transferred alongwith all rights such as irrigation, trees, passage, water course, turn of canal water etc. in favour of Sh. Kulwant Singh son of Gurdev Singh son of Bachittar Singh, resident of Model Town, Phase-3, Kothi No. 1495, Bathinda through transfer deed and the possession of the same has been delivered at the spot to Kulwant Singh.”

9. The above extracted contents of the transfer deed, reflects that the transfer was on account of the *interse* family partition. Now, it is important to



have glimpse upon the application preferred by the petitioner under Section 23 of the Act of 2007, which carries the ground, seeking cancellation of the transfer deed.

10. The perusal of the application reflects that the petitioner has sought cancellation of the transfer deed, on the ground, that respondent No.3, got the transfer deed executed, under the pretext that the petitioner is just allowing him the right to cultivate the suit land, and also gave assurance that he will pay ₹40,000/- per month, as expense to the petitioner. It is further alleged in the application that respondent No.3, has fraudulently obtained ₹12 lakhs, in three parts from the senior citizen/petitioner, i.e., in the last week of the month of October, 2013, and this was the only money in the hands of the petitioner. The petitioner came to know about the transfer deed, in question, when respondent No.3, stopped paying the expense of ₹40,000/-. **It is also alleged that the transfer deed, is a result of manipulation, as the petitioner never wanted to execute any transferred deed, in favour of the respondent No.3, therefore, the same is void ab initio.** The relevant paragraphs of the application are extracted hereunder:-

“4. That as stated earlier there was no necessity for the petitioner to alienate his property but as petitioner is old aged person and the respondent gave assurance to the petitioner that he will pay Rs. 40,000/- per month as expenses to the petitioner in case the petitioner will allow to the respondent to cultivate the suit land and petitioner under this impression that he is just allowing the respondent to cultivate the suit land execute certain document in favour of the respondent.

7. That thereafter the petitioner came to know that the transfer deed in question has been manipulated by the respondent and he has got sanctioned the mutation to his



name due to which he has stopped paying anything to the petitioner. The aforesaid amount to Rs. 12,00,000/- which was received by the respondent from the petitioner for the purpose of purchase of some land and he promised to repay the same with interest @18% PA but till today he has not paid even a single penny to the petitioner either towards principal amount or towards interest thereon and petitioner also pray to direct the respondent to pay this amount to the petitioner.

8. *That the transfer deed in question is void, ab-initio and mutation sanctioned on the basis of aforesaid transfer deed is also null and void, having no effects qua the rights of the petitioner and petitioner still continue to be the absolute owner in possession of the land in question.*

9. *That there was no intention of the petitioner to execute the transfer deed in favour of the respondent and the petitioner never received any amount of sale consideration from respondent as such the said transfer deed is liable to be set aside and even otherwise the respondent has not performed his duties as agreed and is not paying anything to the petitioner, as such the transfer deed in question is liable to be set aside.”*

11. Now, this Court has to examine, as to whether, these averments in the application are sufficient to invoke the provisions of Section 23 of the Act of 2007, and for this, it is relevant to have a glimpse of the same, which is 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.

(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. The above extracted provisions empowers the senior citizen to seek cancellation of any transfer of property executed by them, either by way of gift deed, or otherwise; provided that the transferee has undertaken the obligation to provide basic amenities and maintenance to the senior citizen and such transferee failed to provide the promised maintenance, in that eventuality, such transfer of property shall be deemed to have been made by fraud, coercion or undue influence.

13. 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.

14. 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 basic physical needs; second, post the transfer of execution of the transfer deed, the transferee failed to provide the basic amenities and physical needs.

15. In the instant case, the allegations as alleged in the instant application are that respondent No.3/son, had got the transfer deed executed by misrepresenting the petitioner that he is only granting him the right of cultivation, upon the suit land, and he never intends to transfer the deed, therefore, the allegations are of cheating with the petitioner, and this does not invite the invocation of Section 23 of the Act of 2007. None of above two basic conditions are satisfied.

16. 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 subsection (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.”

17. 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.”*

18. 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.”

19. Reiteratedly, in the instant case, the transfer deed in question contains no recital of any condition obligating the respondent No.3, to provide basic amenities or physical needs to the petitioner, a senior citizen. Moreover, the petitioner, failed to adduce any evidence before the learned Maintenance Tribunal, to establish that the transfer was made subject to such a condition **(emphasis supplied)**. Consequently, the impugned order cannot withstand judicial scrutiny and does not satisfy the test of legality. Furthermore, even from the pleadings, the mischief of Section 23 of the Act of 2007, is not invited, and no attempt whatsoever was made to lead any cogent evidence, before the learned Tribunal concerned, to substantiate the pleadings.

20. From the facts, as explained above, coupled with the pleadings and the contents of the transfer deed, it seems that the property in question was transferred to the respondent No.3, on account of family pension. The petitioner has preferred the application under Section 23 of the Act of 2007, at the behest of his son, Satpal Singh.

21. The other reasons for declining the prayer of the petitioner is that he is also having a land measuring 22 *bighas*, situated in village Loonkha, Tehsil Chattargarh, District Bikaner, Rajasthan, apart from the land measuring 81 *kanals* 03 *Marlas*, situated within the revenue estate of Deep Singh Wala, Tehsil and District Faridkot, which is a sufficient source of income, and he is residing with his younger son, Satpal Singh. The petitioner has also deposited the money with the firm in the name of his wife Mukhtiar Kaur, son Satpal Singh and daughter-in-law Baljinder Kaur. Earlier, the wife of the petitioner has also filed the application under the Act of 2007, to which, respondent



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No.3, filed his response, and now, the instant application was filed to harass the respondent No.3.

22. In view of the above peculiar facts and circumstances of the case, this Court, does not find any reasons to interfere in the impugned order dated 27.12.2017 (Annexure P-5), passed by the learned Maintenance Tribunal concerned, which is squarely passed considering the scope of Section 23 of the Act of 2007, and the same does not requires any interference of this Court.

23. In summa, with the aforesaid observations, the present writ petition is **dismissed**.

(KULDEEP TIWARI)
JUDGE

August 11, 2025
Manpreet

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