



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

(219)

CWP No. 6366 of 2022 (O&M)

Date of Decision : 11.02.2025

**Smt. Neeraj Kaushik**

**...Petitioner**

**Versus**

**Appellate Tribunal of Maintenance and Welfare of Senior Citizen-cum-  
Deputy Commissioner, Jhajjar and others**

**...Respondents**

***CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

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

Mr. Daman Dhir, Advocate with

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

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**Harsimran Singh Sethi J. (Oral)**

1. In the present petition, the challenge is to the order dated 26.11.2021 (Annexure P-4) passed by the Tribunal envisaged under the Maintenance and Welfare of Senior Citizens Act, 2007 (hereinafter referred to as '2007 Act') by which, the Sale Deed No. 14200 dated 23.02.2012 was declared null and void, which order has been upheld by the appellate authority vide order dated 22.02.2022 (Annexure P-5).

2. Learned counsel for the petitioner argues that the house, which is being claimed by the respondent-senior citizen as her property, was purchased by the petitioner and it was not transferred by way of transfer deed. Learned counsel for the petitioner submits that the sale deed dated 23.02.2012 was registered at the amount of ₹4,40,000/- during the lifetime of



the husband of the petitioner as well as the husband of the respondent-senior citizen.

3. Learned counsel for the petitioner further submits that during the lifetime of the husband of both the parties, no grievance was raised qua the said sale deed by the respondent-senior citizen but after the death of the husband of the petitioner i.e. son of the respondent-senior citizen and her own husband, the claim was raised by the respondent-senior citizen that the house belongs to the respondent-senior citizen and the petitioner should vacate the same.

4. Learned counsel for the petitioner further submits that the cancellation of sale deed does not come under the purview of 2007 Act as, only the property which has been transferred without consideration i.e. by way of gift deed or by family transfer, the same can be made the subject matter of 2007 Act whereas, in the present case without appreciating the facts on record, even a registered sale deed, wherein, the petitioner had purchased the house in question from the respondent-senior citizen, has been set-aside.

5. Learned counsel for the petitioner further submits that even if, it is assumed for the sake of arguments that the 2007 Act will be applicable in the facts and circumstances of the present case still, the requirements of Section 23 of 2007 Act are not fulfilled in the present case, which facts have been ignored by the authorities concerned while exercising the power/jurisdiction under 2007 Act while passing the impugned orders.



6. Learned counsel for the petitioner further submits that the petitioner is the daughter-in-law of the senior citizen and is not covered under the definition of 'children' envisaged under 2007 Act so as to maintain the senior citizen, especially when two sons of the senior citizen are alive and can take care of her in a manner required in case, the senior citizen feels neglected or is in the need of maintenance from the children hence, the impugned orders dated 26.11.2021 (Annexure P-4) and 22.02.2022 (Annexure P-5) may kindly be set-aside.

7. Upon notice of motion, the respondents have stated that initially the house belonged to the senior citizen and during the lifetime of the husband of the petitioner herein i.e. the son of the senior citizen and the husband of the senior citizen and the selling of the said house to the petitioner for a sum of ₹4,40,000/- was by way of fraud, hence, the sale deed has rightly been set-aside as the senior citizen has not been maintained by the petitioner. Learned counsel for the respondent-senior citizen further submits that once, a duty has been cast upon the children to maintain the senior citizen, in the absence of the maintenance, the senior citizen had full right even to set-aside the sale deed, which was wrongly got done under the pretext of gift deed.

8. I have heard learned counsel for the parties and have gone through the record with their able assistance.

9. The question which arises in the present petition is whether, the authorities envisaged under 2007 Act for adjudicating the claim of the senior citizen have applied their mind as to whether, the claim of senior citizen qua



the cancellation of the sale deed dated 23.02.2012 is valid and is permissible keeping in view the provisions of 2007 Act or not.

10. First of all, the petitioner is the daughter-in-law of the senior citizen, who has purchased the property in question by way of a sale deed. A bare perusal of the sale deed would show that the same was for a consideration though, it is being claimed that the consideration was not paid but the same is being objected to by the learned counsel for the petitioner but even the non-payment of the consideration amount, will not rendered the sale deed illegal.

11. Further, the relief is being claimed against the daughter-in-law under 2007 Act so as to cancel the sale deed. It is a conceded position that as per the definition of 'children' envisaged under 2007 Act, the daughter-in-law is not included in the definition, hence, it cannot be said that in the present case that the property was 'transferred' to the children whereas, the case in hand relates to a sale deed in favour of the petitioner, who happens to be the daughter-in-law of the senior citizen, hence, cancellation of the sale deed cannot be claimed under 2007 Act on the ground that the senior citizen is not being maintained and, therefore, the authorities concerned have failed to appreciate the facts required to be noticed so as to pass an order in favour of the senior citizen as the same are perverse to the facts as well as the provisions of 2007 Act.

12. It may be noticed that in the present case, the senior citizen is not claiming that the house belongs to her and the daughter-in-law should be evicted from the premises concerned so as to claim relief under Section 23 of



2007 Act. The prayer of the senior citizen is for the cancellation of the sale deed. The eviction from the property belonging to a senior citizen and the cancellation of a sale deed involves different process and different provisions of 2007 Act. Once, the only claim raised is for cancellation of the sale deed, the requirements of the Sections envisaged under 2007 Act including Section 2A as well as Section 23 needs to be fulfilled.

13. Further, even if, it is assumed for the sake of argument that the sale deed can also be cancelled under 2007 Act then also, it may be noticed that the requirements of Section 23 needs to fulfilled. Section 23 of 2007 Act is as under :-

***“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.*



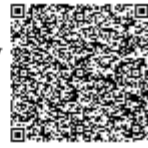
*(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.”*

14. Learned counsel for the respondents has not been able to point out that the sale deed was executed subject to the provisions of 2007 Act that the transferee will maintain the transferor in any manner. In the absence of any such condition when even the transfer in the family cannot be set-aside under Section 23 of 2007 Act, cancellation of a sale deed was beyond the jurisdiction of the authorities concerned while considering the claim of the senior citizen under 2007 Act.

15. Further, apart from this, the senior citizen has to aver and prove non-maintenance at the hands of the transferee so as to claim relief under Section 23 of 2007 Act. In the present case, neither maintenance is being claimed by the senior citizen nor it has been mentioned that she is not being maintained, hence, the ingredients of Section 23 of 2007 Act, keeping in view the judgment of the Hon'ble Supreme Court of India in case titled as ***Sudesh Chhikara Vs. Ramti Devi and another***, 2023 (1) RCR (Civil) 226, are not proved so as to grant the relief in favour of the senior citizen.

16. Further, with regard to the maintenance, it may be noticed that the same cannot be claimed from the daughter-in-law, especially when two sons of the senior citizen are alive but no such claim has been raised against them for maintenance and she is getting pension to maintain her.

17. Keeping in view the said position, it can be very well held that the proceedings under 2007 Act have been raised to get the property back



from the petitioner-daughter-in-law in one manner or the other. It may be noticed that today, during the hearing, both the parties were present in the Court and the senior citizen clearly told the Court that she wants to get the property back so as to be divided equally between the two sons alive as well as the petitioner. This shows that the modus operandi is to get the property back and not to claim maintenance under 2007 Act which involves summary proceedings.

18. With regard to the claim of the senior citizen that the sale deed is a fraud and the same has been obtained by playing fraud upon her. It may be noticed that at the time when the sale deed was executed, husband of the senior citizen as well as the husband of the petitioner was alive and for a period of approximately seven years, no action was taken by the senior citizen. Furthermore, if the challenge to a sale deed is on the ground that the same was executed by way of fraud, the same cannot be challenged under 2007 Act as, under 2007 Act, the fraud means non-maintenance of the senior citizen after giving due assurance before getting the property transferred, which is missing in the present case, hence, the senior citizen can only avail remedy before the Civil Court in case, she is of the view that the sale deed in favour of the petitioner was by way of fraud by availing appropriate remedy.

19. Keeping in view the above, the orders passed by the authorities concerned dated 26.11.2021 (Annexure P-4) and 22.02.2022 (Annexure P-5) respectively are set-aside. As of now, the petitioner is declared the exclusive owner of the property in question subject to any order to be passed by Civil



Court, in case any such remedy is availed by the senior citizen qua the sale deed dated 23.02.2012.

20. Present petition is allowed in above terms.

21. Pending miscellaneous application, if any, also stands disposed of.

**February 11, 2025**  
*kanchan*

**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

*Whether speaking/reasoned : Yes*

*Whether reportable : No*