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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104+203

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CWP-17873-2024
Date of Decision :12.03.2025

Narain Singh and another

...Petitioners

Versus

Deputy Commissioner-cum-District Magistrate,
Patiala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Munish Gupta, Advocate for the petitioners.

Mr. Aakash Singla, Advocate with
Ms. Vaishali Singla, Advocate for the respondent No.3.

* * *

Harsimran Singh Sethi, J. (Oral)

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As prayed for, application is allowed.

Written statement filed on behalf of respondent No.3 along
with Annexure R-1 is taken on record.

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1. In the present petition, challenge is to order dated 12.06.2024 (Annexure P/13) passed by the Appellate Tribunal, whereby, the order dated 11.09.2023 (Annexure P/11) passed by Tribunal accepting the claim of the petitioners-senior citizen for cancellation of gift deed dated 24.09.2020 (Annexure P/1), has been set aside.



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2. As per the averments made in the petition, the petitioners-senior citizens had transferred the land measuring 32 kanals in favour of respondent No.3, who is the nephew of petitioner No.1 by way of gift deed dated 24.09.2020 (Annexure P/1). As per the allegations, after the transfer of the said property in favour of respondent No.3, the respondent No.3 stopped taking care of the petitioners-senior citizens due to which, the petitioners-senior citizens were left with no other option but to raise a grievance before the competent authority envisaged under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter referred to as, '2007 Act') and after appreciating all the facts and evidence, an order was passed by the Tribunal dated 11.09.2023 (Annexure P/11) accepting the pleas of the petitioners-senior citizens that as the respondent No.3 had failed to take care of the petitioners-senior citizens, the transfer of land measuring 32 kanals in favour of respondent No.3 by way of gift deed dated 24.09.2020 (Annexure P/1) was treated to be a fraudulent transfer and the same was set aside.

3. Thereafter, on an appeal preferred by respondent No.3 against the order dated 11.09.2023, the Appellate Tribunal accepted the said appeal vide order dated 12.06.2024 (Annexure P/13) holding that the twin conditions laid down in Section 23 of the 2007 Act for declaring the transfer deed as fraudulent has not been met as the same has not been even noticed by the Tribunal and the order passed by the Tribunal dated 11.09.2023 (Annexure P/11) has been set aside, which order is under challenge in the present petition.



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4. Learned counsel for the petitioners-senior citizen argues that once, it is a conceded fact that the petitioners are senior citizens and they have transferred their land in favour of the respondent No.3 and respondent No.3 was not maintaining the petitioners-senior citizen, the order dated 11.09.2023 (Annexure P/11) passed by the Tribunal is perfectly valid and legal and the same should not have been set aside by the Appellate Tribunal vide impugned order dated 12.06.2024 (Annexure P/13) hence, the impugned order dated 12.06.2024 (Annexure P/13) may kindly be set aside.

5. Upon notice of motion, respondent No.3 appeared and submits that once, the requirements of Section 23 of the 2007 Act have not been fulfilled by the petitioners-senior citizen, order passed by the Appellate Tribunal dated 12.06.2024 (Annexure P/13) setting aside the order dated 11.09.2023 passed by the Tribunal canceling the gift deed dated 24.09.2020 is perfectly valid and legal and the present writ petition is liable to the dismissed.

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

7. The claim of the petitioner-senior citizen is under Section 23 of the 2007 Act. For better understanding, same is reproduced 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



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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 organization referred to in Explanation to sub-section (1) of section 5.”

8. A bare perusal of the above reproduction would show that in order to get the relief for the transfer of the property to be declared as a fraudulent transfer under Section 23 of the 2007 Act, the transfer of the property should be subject to the condition that transferee will maintain the transferor and it is proved that the said condition has been violated by the transferee.

9. Learned counsel for the petitioners-senior citizens concedes that no such condition was mentioned in the transfer deed dated 24.09.2020. Once, no such condition was mentioned in the transfer deed, the requisite of Section 23 of the 2007 Act have not been fulfilled so as to grant the relief to the petitioners-senior citizens.

10. Learned counsel for the petitioners-senior citizen submits that the love and affection is inherent in the transfer, which is clear from the judgment of the Hon'ble Supreme Court of India in Civil Appeal No.174-2021, titled as, Sudesh Chhikara vs. Ramti Devi and another, decided on



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06.12.2022.

11. It may be noticed that the love and affection might be inherent but whether apart from love and affection, there is a condition that transferee will maintain the transferor should have also been mentioned. In the absence of any such condition imposed in the transfer deed, the petitioners-senior citizens cannot raise the grievance that they were not being maintained by respondent No.3

12. Not only this, it is a matter of fact that in the present petition, the petitioners-senior citizen never transferred total land belonging to them and it was only half of the land which was transferred in favour of respondent No.3 and hence, half of the land is available with the petitioners-senior citizen so as to take care of themselves. The daughters of the petitioners-senior citizen have already been married and the senior citizens are already living in the house which belongs to respondent No.3 even as of now. Once, the petitioners-senior citizen are living in the house belonging to respondent No.3, it cannot be said that the petitioners-senior citizen are not being maintained.

13. Further, with regard to the argument of the learned counsel for the petitioners-senior citizens that after the transfer of the property, the respondent No.3 was maintaining the petitioners-senior citizen for some time but after marriage of his son, his son went to Canada and respondent No.3 stopped taking care of the petitioners-senior citizen, it may be noticed that once, the petitioners-senior citizens are still residing in the house belonging to respondent No.3. though, the learned counsel for the



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petitioners-senior citizen is disputing the same but no cogent evidence has been brought on record to rebut the said fact, it cannot be said that respondent No.3 was not maintaining the petitioners-senior citizens.

14. At this stage, learned counsel for the respondent No.3 submits that in case, the petitioners-senior citizen are able to prove in any manner that the house where the petitioners-senior citizen are residing does not belong to respondent No.3, respondent No.3 is even ready to transfer the land in favour of petitioners-senior citizen which was gifted to him by petitioners-senior citizen.

15. Once, the petitioners-senior citizen are still living in the house which belongs to the respondent No.3 and nothing has come on record as to how the allegations that the petitioners-senior citizen are not being maintained by respondent No.3 has been proved by Tribunal. Said finding has rightly been set aside by the Appellate Tribunal.

16. During the course of arguments, an offer was made to the petitioners-senior citizen that whatever amount is being generated by the respondent No.3 from the land in question, 50% of the same will be given to them as financial assistance but learned counsel for the petitioners-senior citizens submits that he has specific instructions from the petitioners-senior citizens that they do not need financial assistance but want their land back, which fact clearly goes to show that the petitioner-senior citizens have changed their mind after gifting the land to respondent No.3 and they are not actually in the need of financial assistance but they want to give their land to their daughters instead of respondent No.3. This is clearly a property



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dispute between the parties after the change of heart of the petitioners-senior citizen.

17. It may be noticed that by the change of heart of the petitioners-Senior Citizens, the allegations of non-maintenance are being alleged against respondent No.3 so as to get the property in question back. The authorities which have been given the duty to decide the issue under the 2007 Act by adopting summary proceedings should be vigilant enough to adjudge as to whether the senior citizens actually are in need of the financial assistance which is not being provided to them or the said grievance is being raised as a camouflage so as to settle the property dispute by exercising the right under the 2007 Act. It has been seen that the orders are being passed by the authorities exercising jurisdiction under 2007 Act, which is a summary proceedings, in a mechanical way by recording the fact that land belongs to senior citizen and there are allegations of non-maintenance by senior -citizen without recording any finding on the basis of any evidence, order are being passed in a mechanical manner which fact should be looked into by the authorities exercising jurisdiction under 2007 Act.

18. Keeping in view the facts and circumstances of the present case, as it has already come on record that conditions envisaged under Section 23 of the 2007 Act are not fulfilled hence, the order dated 12.06.2024 (Annexure P/13) passed by the Appellate Tribunal needs no interference by this Court.

19. It may be noticed that though, this Court wanted to give



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financial assistance to the petitioners-Senior citizen but learned counsel for the petitioners-Senior citizen has informed this Court that no financial assistance is needed by petitioners-Senior citizen hence, this Court is not passing any order qua the grant of financial assistance to petitioners-Senior citizen.

20. Once, the order dated 12.06.2024 (Annexure P/13) passed by the Appellate Tribunal has been upheld by this Court, liability of respondent No.3 under the said order will be complied with by him and in case of failure to do so, the petitioner-Senior Citizen will be free to avail appropriate remedy under the law.

21. Present petition is dismissed in above terms.

March 12, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No