

NAVEEN KUMAR v. RAM RATI

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice H.S. Madaan.

NAVEEN KUMAR – Petitioner,

Versus

RAM RATI and another – Respondents.

CWP-5553-2019(O&M)

(i) Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (50 of 2007) Section 23(1) - She had executed a transfer deed in his favour hoping that he would take care of her and maintain her and continue doing so in future, but she was careful in getting a clause inserted in the transfer deed that if he did not do so, then the transfer would stand cancelled - That the stand of the petitioner was that he has spent lacs of rupees on raising construction and if he is ordered to be dispossessed from the house, he shall be greatly prejudiced - However, I am not impressed by this contention - The petitioner having been transferred a plot by his grandmother, on the condition that he would take care of her and maintain her, failing in that duty and the transfer being conditional, the property was reverted back to the transferor, whatever money was spent by the petitioner on raising construction was at his own risk - He should have been aware of all these things while spending money on raising construction - As it comes out from the record, after the transfer of property in his favour, he had been neglecting to maintain her - As such he is liable to face the consequences. [Para 14]

(ii) Maintenance and welfare of Parents and Senior Citizens Act, 2007 (50 of 2007) Section 23(1), (2) - Distinction - Sub-section (1) of Section 23 covers a situation where property has been transferred after the enactment of the legislation by a senior citizen (by gift or otherwise) subject to the condition that the transferee must provide the basic amenities and physical needs to the transferor - In other words, Sub-section (1) deals with a situation where the transfer of the property is accompanied by a specific condition to provide for the maintenance and needs of a senior citizen - Sub-section (2) of Section 23 envisages a situation where a senior citizen has a right to receive maintenance out of an estate - Where such a right exists, the right of maintenance can be enforced where the estate or a portion of it, is transferred against a transferor who has notice of the right; or if the transfer is gratuitous - The right however cannot be enforced against a transferee for consideration and without notice of the right. [Para 13]

Cases referred to:-

1. (2021-3)203 PLR 684, *Sudershan Kumar v. State of Haryana*.

Mr.Kamal Sharma, for the petitioner. *Mr.C.B.Goel*, for respondent No. 1.

H.S. Madaan, J. (*Reserved on:-24.11.2021 Date of Pronouncement:-29.11.2021*) -

1. Briefly stated, the facts of the case are that Smt.Ram Rati wife of late Sh.Ram Mehar, resident of village Pitampura, Tehsil Rai, District Sonapat had brought an application under Maintenance and welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the Act) against her grandson Naveen Kumar son of Sh.Sajjan, resident of village Pitampura, Tehsil Rai, District Sonapat seeking ejectment of the latter from one plot measuring 100 square yards with construction standing thereon. According to the applicant -first party, she was allotted a plot measuring 100 square yards by Gram Panchayat of village Rai, District Sonapat, which she had transferred in favour of her grandson Naveen - respondent - second party vide deed No.2979/1 dated 7.12.2016; before the transfer the respondent - second party had assured applicant - first party that he would take care of her and maintain her but soon after the transfer of property, attitude of Naveen Kumar towards the petitioner changed and he started misbehaving and quarrelling with the applicant going to the extent of giving beatings to her; Prem a son of applicant - first party had filed a complaint against Naveen Kumar - second party in that regard with Police Station Kundli, on the basis of which formal FIR was registered; the respondent- second party was arrested and released on bail in that case, as such, the applicant - first party had brought the application in question.

2. On notice being issued, the respondent - second party put in appearance and submitted written reply denying the allegations with regard to his misbehaving with the applicant, quarrelling with her or giving thrashings to her. According to him, the applicant had filed the application at the instance of her son Prem by concocting a false story; as a matter of fact son of applicant namely Prem had caused fracture on the leg of Ram Rati and assaulted Jyoti, sister of respondent Naveen regarding which FIR No.610 of 2015 was registered with Police Station Kundli, District Sonapat; the matter is pending trial in the Court; that when applicant Ram Rati had suffered injuries, the respondent - second party had got her treated from Dua Hospital, Sonapat bearing all the expenses; he has been treating the applicant with due respect; on the other hand the applicant is a quarrelsome lady due to which her children did not wish to keep her with them; the respondent - second party has been residing with applicant - first party for more than 10 years; both of them are having a joint ration card; that after registration of the transfer deed in question, the respondent - second party had constructed a residential house on the plot by spending more than Rs.25 lakhs; Prem son of applicant with an intention to get that construction demolished had got filed a false complaint from applicant against the respondent; the respondent second party offered to maintain the applicant by giving monthly maintenance amount and prayed for dismissal of the application.

3. After hearing arguments, Sub-Divisional Magistrate - cum - Chairman, Maintenance

Tribunal, Sonapat vide order dated 4.1.2019 allowed the application. For ready reference, the operative part of the said order is being reproduced as under:

During arguments, the Id. Counsel for the second party submitted that the applicant with common intention and conspiracy with her son Prem filed the false and concocted complaint against the second party for unnecessary harassing him and for giving undue benefits to her son, Prem. After the registration of Deed No.2979, dated 07.12.2016 the second party invested more than 25 lakhs approximately, had constructed the residential house on the said plot. The son of the applicant, Prem by alluring the applicant with the bad intention for demolishing the constructed house filed this complaint on wrong facts. The second party is ready to maintain and serve the applicant with him by giving her monthly maintenance amount. Therefore, the Id. Counsel for the second party requested that the application of the applicant be dismissed.

After hearing the Id. Counsel of both the parties and on examination the records available in the file, it is found that the Gram Panchayat has allotted 100 sq. plot in name of the applicant. The applicant has got transferred the plot vide deed No.2979/1, dated 07.12.2016 to her grandson, second party Naveen Kumar. According to the statement in this court, the applicant Ram Rati did not want to take maintenance. It appears that before the registration of the documents, there was no ill-will between the parties. After registration of the documents by the applicant in favour of the second party and due to the differences arisen between them, the second party, Naveen Kumar is not maintaining and looking after the applicant/Ram Rati properly. Therefore, on considering the all above facts, there is a force in this application of the applicant and is hereby accepted. It is ordered that the documents Deed No.2979/1 dated 07.12.2016 registered in favour of the second party by the applicant is cancelled. The copy of it is send to Joint Sub Registrar, Rai with the orders to ensure the documents/Deed No.2979 dated 07.12.2016 be entered in the copy of office.

4. Feeling aggrieved by the said order, respondent- second party has brought the present civil writ petition praying for quashing of the impugned order dated 4.1.2019 and for restoring the ownership of plot on which residential house is standing.

5. Notice of that writ petition was given to respondents including Smt. Ram Rati applicant and she has put in appearance through counsel.

6. I have heard learned counsel for the parties besides going through the record.

7. Learned counsel for the writ petitioner has contended that Naveen Kumar petitioner has been residing with Ram Rati since long and he has been looking after and serving her despite the fact that she is a quarrelsome lady, having bad temperament having divorced her husband and not enjoying good relations with her children. On account of being happy with such services Ram Rati had executed the transfer deed, which she wants to get cancelled now under the influence of her son Prem and further transfer deed cannot be cancelled and possession taken from Naveen Kumar as per orders passed by the Maintenance Tribunal. In support of that contention, learned counsel for the writ petitioner

has referred to various judgments, first being *Sudershan Kumar v. State of Haryana and others*¹ (2021-3)203 PLR 684, in which a Co-ordinate Bench of this Court had observed that neither the Tribunal nor the Appellate Authority provided under the Act have jurisdiction to pass an order of eviction and the only power, which lies with them is to grant the maintenance by taking into consideration the facts of each and every case and also to set aside the transfer of property in case senior citizen is able to prove that a fraud was played by the children while the deed with regard to transfer of property was executed. He has further referred to judgment by the Apex Court in case *Smt. S.Vanitha v. The Deputy Commissioner, Bengaluru Urban District & Ors* in Civil Appeal No.3822 of 2020 arising out of SLP (C) No.29760 of 2019 in support of his assertions. He has further placed reliance upon judgment by a Single Judge of this Court in CWP-4744- 2018 decided on 23.1.2020 in case titled *Simrat Randhawa v. State of Punjab and others* observing that the Maintenance Tribunal is not an Eviction Tribunal and eviction can take place only in accordance with procedure established by law and by reading in the Act rights to property under Article 300-A of the Constitution as explained by the Supreme Court in K.T. Plantation case as a ground of challenge.

8. On the other hand, learned counsel appearing for the respondent Ram Rati has defended the order passed by the Maintenance Tribunal submitting that the transfer was made by Ram Rati in favour of her grandson Naveen Kumar, who is writ petitioner before this Court on his giving assurance that he would look after her and maintain her but subsequently his behaviour changed altogether and he started misbehaving and quarrelling with the applicant, giving her beatings, therefore, the property is to revert back to Ram Rati and a clear recital in that regard is there in the transfer deed itself.

9. Learned counsel for the respondent has referred to judgment by a Division Bench of this Court delivered in LPA No.483 of 2021(I&M) titled *Ramesh @ Pappi v. Ishwar Devi and others*, wherein while affirming the order passed by the Single Judge upholding the order passed by SDM-cum-Maintenance Tribunal canceling the transfer deed and directing that property in question be transferred back in the name of the senior citizen – mother and possession be granted back to her, it was observed as under:-

10. Section 23(1) of the Act of 2007 explicitly stipulates that in case the children fail to take care of their parents after transfer of their parent's property in their favour, 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. The provision under Section 23(1) of the Act 2007 attempts to provide a dignified existence to the elderly people. It is often seen that after receiving the property from their parents, the children abandon them. In such situation, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is an enabling lifeline for such old aged parents and senior citizens who are not looked after by their children and become neglected lots. Section 23 of the Act of 2007 is a deterrent to this and hence is beneficial for the elderly old aged people who are incapable of taking care of themselves in their last phase of life. The children are expected to look after their elderly parents properly which is not only a value based principle but a bounden duty as enshrined within the mandate of the Act of 2007.

10. After hearing the rival contentions and going through the judgments referred to by learned counsel for the parties, I find that the writ petition is doomed for failure.

11. Admittedly and as it comes out from the record Smt. Ram Rati is an aged, widowed woman, a senior citizen and petitioner Naveen Kumar is her grandson. A perusal of the transfer deed executed by Smt. Ram Rati in favour of Naveen Kumar, copy Annexure p-4, is very crucial. It is specifically mentioned therein that the transferor could cancel the transfer deed if the transferee did not maintain and take proper care of the transferor. It is specific case of Smt. Ram Rati that after execution of the transfer deed, transferee Naveen Kumar has not been taking care of her and maintaining her although such allegations are controverted by Naveen Kumar stating that he has been living with Smt. Ram Rati since long, having joint ration card with her; that he has been taking care of her paying her ration bills and taking care of her other needs and suddenly at the instance of one of her sons, she is seeking cancellation of the transfer deed. Learned counsel for the writ petitioner has pointed out to copy of the ration card available on the record, as well as, affidavit of one Sanjay a Kiryana merchant, to the effect that Naveen Kumar has been paying ration bills of Smt. Ram Rati. Firstly, it is not disputed that Naveen Kumar had been residing with Smt. Ram Rati and for that reason pleased with the services rendered by him, she had executed a transfer deed in his favour hoping that he would continue doing so in future, but she was careful in getting a clause inserted in the transfer deed that if he did not do so, then the transfer would stand cancelled. Even otherwise, if Naveen Kumar had been taking care of Smt. Ram Rati, then there was no occasion for Smt. Ram Rati to approach SDM-cum-Maintenance Tribunal, Sonapat, seeking cancellation of the transfer deed. The affidavit of Sanjay placed on record does not inspire much confidence, since it is quite vague, lacking in material details, as to since when Naveen Kumar has been clearing the ration bills of Smt. Ram Rati; the amounts so paid by him to Sanjay; the period for which it was so given etc. Therefore, it is not established that Naveen Kumar had been taking care of Smt. Ram Rati after transfer by the latter in the favour of former. Therefore, in terms of Section 23 (1), it is to be taken that the transfer was got made by fraud or coercion or under undue influence and it can be declared to be void by the Tribunal at the option of the transferor.

12. Learned counsel for the petitioner has referred to judgments, by the Single Benches of this Court, in support of his contention that Maintenance Tribunal cannot pass any order with regard to eviction of the petitioner from the premises in question. Such judgments being *Sudershan Kumar v. State of Haryana and others* (Supra) and *Simrat Randhawa v. State of Punjab and others* (Supra). Whereas counsel for the respondent – Smt. Ram Rati has placed reliance upon a judgment delivered by a Division Bench of this Court, wherein the judgment passed by the Single Bench, upholding the decision by the Maintenance Tribunal, cancelling the transfer deed and directing that shops in question be transferred back to the transferor and possession be granted to her, was affirmed. Faced with such situation, the view taken by the Division Bench is to be followed.

13. Furthermore, as regards the judgment of Apex Court, relied upon by learned counsel for the petitioner, i.e. *Smt.S.Vanitha v. The Deputy Commissioner, Bengaluru Urban District & Ors* (Supra). , that had different facts and the context in which such observations had been made was also quite distinct, in as much as, there the parents-in-law had filed a petition

under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 against their son and his estranged wife, for eviction from the residential house. That petition had been accepted by the Tribunal. Such order passed was upheld by the Single Bench as well as Division Bench of the High Court. However, the Apex Court came to the conclusion that the claim of the appellant that the premises constitute a shared household within the meaning of Protection of Women from the Domestic Violence Act, 2005, would have to be determined by appropriate forum and she cannot be evicted in exercise of the summary powers entrusted by the Senior Citizens Act, 2007. However, such distinction is to be made between transferor under Sub-Section (1) and Sub-Section (2) of Section 23 of the said Act. Relevant para No. 16 makes it clear :-

PART C

16. Of particular relevance to the facts of the case at hand is Chapter V, which enacts provisions for protecting the life and property of a senior citizen. Section 23 proceeds in the following terms:

“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.”

Sub-section (1) of Section 23 covers a situation where property has been transferred after the enactment of the legislation by a senior citizen (by gift or otherwise) subject to the condition that the transferee must provide the basic amenities and physical needs to the transferor. In other words, Sub-section (1) deals with a situation where the transfer of the property is accompanied by a specific condition to provide for the maintenance and needs of a senior citizen. In such an event, if the transferee fails to provide the maintenance and physical needs, the transfer of the property is deemed to have been vitiated by fraud, coercion or under undue influence. Sub-section 1, in other words, creates a deeming fiction of the law where the transfer of the property is subject to a condition and the condition of providing for maintenance and the basic needs of a senior citizen is not fulfilled by the person upon whom the obligation is imposed. Then, at the option of the transferor, the transfer can be declared as void by the Tribunal. On the other hand, Sub-section (2) of

Section 23 envisages a situation where a senior citizen has a right to receive maintenance out of an estate. Where such a right exists, the right of maintenance can be enforced where the estate or a portion of it, is transferred against a transferor who has notice of the right; or if the transfer is gratuitous. The right however cannot be enforced against a transferee for consideration and without notice of the right. Now, Sub-section (1) of Section 23 envisages a situation where the transfer of property is by the senior citizen. This is evident from the language of sub-Section (1) namely "where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property...". On the other hand, sub-Section (2) of Section 23 does not confine itself to a transfer by a senior citizen, unlike sub-Section (1). Sub-Section (2) uses the expression "such estate or part thereof is transferred". Where a senior citizen has a right to receive maintenance out of the estate and any part of it is transferred, subsection 2 permits the enforcement of the right to receive maintenance out of the estate against a transferee with notice or against a gratuitous transferee. Sub-Section (2), in other words, may cover a situation where the transfer of the estate (in which a senior citizen has a right to maintenance) is by a third party, in which event, the provision provides the right to enforce the claim of maintenance against such transferee (other than those transferees for consideration or without notice of the preexisting right). Arguably, the language of sub-section (2) is broad enough to also cover a situation where the transfer is by the senior citizen, in which event the transferee with notice of the right; or a gratuitous transferee, can be made subject to the enforcement of the right against the transferred estate. Another distinction between sub-Section (1) and sub-Section (2) of Section 23 must also be noticed. Under sub-Section (1), where a transfer has been made by a senior citizen subject to the condition that the transferee will provided for basic amenities or physical needs of the transferor and if there is a failure of the transferee to fulfil the condition, two consequences follow: (i) the transfer of property shall be deemed to have been made by fraud or coercion or under undue influence; and (ii) the transfer shall, at the option of the transferor, be declared to be void by the Tribunal. The deeming consequence which is provided for in sub-Section (1) is not incorporated in sub-Section (2). Sub-Section (2), in contradistinction, stipulates that the right to receive maintenance can be enforced against a gratuitous transferee or a transferee with notice of the pre-existing right of a citizen to receive maintenance out of an estate notwithstanding who is the transferee of the estate. In keeping with the salutary public purpose underlying the enactment of the legislation, the expression „transfer" would include not only the absolute transfer of property but also transfer of a right or interest in the property. This would also be in consonance with the provisions of Section 2(f) which defines the expression property to include "rights or interests in such property". The expression "transfer" not having been defined specifically by the legislation, it must receive an interpretation which would advance the beneficent object and purpose of its provisions. Sub-section (2) of section 23 speaks of the enforcement of the "right to receive maintenance" which is more comprehensive in its nature, than merely enforcing an order for maintenance passed under Section 9 of the Act."

The present case is covered under Sub-Section (1), whereas, the observations by the Apex Court had been made in a different context, therefore, does not help the petitioner in any manner.

14. Another contention put forward by learned counsel for the petitioner was that he has spent lacs of rupees on raising construction and if he is ordered to be dispossessed from the house, he shall be greatly prejudiced. However, I am not impressed by this contention. The petitioner having been transferred a plot by his grandmother Smt. Ram Rati, on the condition that he would take care of her and maintain her, failing in that duty and the transfer being conditional, the property was reverted back to the transferor, whatever money was spent by the petitioner on raising construction was at his own risk. He should have been aware of all these things while spending money on raising construction. Even if his such version is believed then he should have shown proper devotion in serving and looking after his grandmother Ram Rati, if he wanted to ensure that the transfer is not withdrawn or got cancelled. As it comes out from the record, after the transfer of property in his favour, he had been neglecting to maintain Smt. Ram Rati, as such he is liable to face the consequences. The order passed by the Maintenance Tribunal is quite detailed, well reasoned and does not suffer from any illegality or infirmity.

15. There is no merit in the writ petition. The same stands dismissed accordingly.

R.M.S.

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Petition dismissed.