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SUDESH CHHIKARA

v.

RAMTI DEVI & ANR.

(Civil Appeal No. 174 of 2021)

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DECEMBER 06, 2022

[SANJAY KISHAN KAUL AND ABHAY S. OKA, JJ.]

Maintenance and Welfare of Parents and Senior Citizens Act, 2007:s. 23 – Transfer of property to be void in certain circumstances

- C – *Applicability of s. 23(1) – When – Held: 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 s. 23 – When transferee refuses or fails to provide such amenities and physical needs to the transferor, the transfer shall be deemed to have been made by fraud or coercion*
- D – *or undue influence, and becomes voidable at the instance of the transferor and the Maintenance Tribunal – Very often, senior citizen executes a gift or a release or otherwise in favour of his or her near and dear ones, out of love and affection without any expectation in return, a condition of looking after the senior citizen is not necessarily attached to it – Thus, when it is alleged that the conditions mentioned in s. 23(1) are attached to a transfer, existence of such conditions must be established before the tribunal – Perusal of the petition u/s. 23 filed by respondent no.1-senior citizen shows that it was not even pleaded by respondent no.1 that the release deed was executed subject to a condition that the transferees-daughters of*
- E – *senior citizen would provide the basic amenities and basic physical needs to the senior citizen – No such finding was recorded by the tribunal – It was merely pleaded that the daughter had no intention to take care of her mother – Thus, the order of the tribunal and the High Court cannot be sustained and, set aside.*
- F – *CIVIL APPELLATE JURISDICTION: Civil Appeal No. 174 of 2021.*

From the Judgment and Order dated 21.05.2019 of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 16581 of 2018.

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Kanhaiya Singhal, Chetan Bhardwaj, Prasanna, Udit Bakshi, Priyal A
Garg, Ajay Kumar, Advs. for the Appellant.

Sunil Fernandes, P. Ramesh, Ms. Nupur Kumar, Ms. Diksha Dadu,
Surya Nath Pandey, Divakar Kumar, Gagan Gupta, Advs. for the
Respondents.

The Judgment of the Court was delivered by B

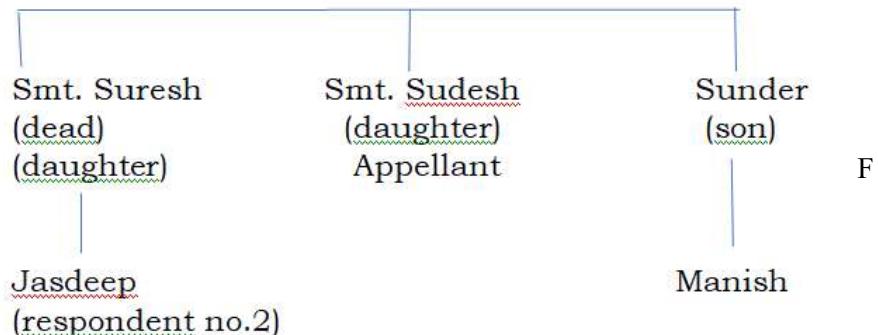
ABHAY S. OKA, J.

FACTUAL DETAILS

1. This appeal arises out of a petition filed by respondent no.1 under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the 2007 Act'). C

2. Respondent no.1 acquired a land bearing Khewat no.87, Khatoni no.124, Khasra no.315 measuring 1 bigha 18 biswa. She also acquired a land bearing Khewat No.247, Khasra No.269 (4 bighas 0 biswa) totally measuring 5 bighas and 3 biswa in Village Basai, Tehsil and District Gurugram, Haryana. She claimed that the acquisition was by way of inheritance from her father. The family tree of the parties is as under:

Ramti Devi w/o late Sukh Lal
(respondent no.1)



3. Respondent no.1 executed a release deed in respect of a part of the subject property in favour of her daughters (the appellant and second respondent's mother). The said release deed (no.18151) was executed on 14th November 2008 and was duly registered. As per the said release deed, the daughters became the owners of one-third share each in the property subject matter of the release deed. It is also brought G

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- A on record that on 24th March 2009, the respondent no.1 executed another release deed (no.25502) in respect of one-fourth share in the lands bearing Khasra No.269. The said release deed was executed by respondent no.1 in favour of her son Sunder. Another release deed (no.25504) was executed by respondent no.1 in favour of her son Sunder on the same day in respect of one-half share in the lands bearing Khasra No.315, Khasra No.314 and Khasra No.341. Both the release deeds were registered. Respondent no.1, the appellant and the second respondent's mother filed Civil Suit no.175 of 2010 in the Civil Court essentially for challenging the release deed dated 24th March 2009 (no.25504). The Civil Court by judgment and decree dated 17th July 2015 declared the release deed dated 24th March 2009 as null and void. The Civil Court held that the release deed shall not bind respondent no.1, the appellant and the mother of respondent no.2. Civil Suit no.234 of 2010 was filed by respondent no.1, the appellant and the second respondent's mother for the same relief in respect of the other release deed (no.25502). A similar decree was passed in this suit on 19th March 2015.
- B 4. According to the case of respondent no.1, her son Sunder and grandson Manish preferred appeals against the aforesaid decrees. During the pendency of the appeals, they sold the property subject matter of the release deeds dated 24th March 2009 to a third party.
- C E 5. Respondent no.1 filed a petition under Section 23 of the 2007 Act before the Maintenance Tribunal (Sub-Divisional Magistrate). In the petition, respondent no.1 stated that her relationship with her son and daughters was strained and therefore, her son and daughters were not maintaining her. The contention of respondent no.1 was that the release deed executed by her in favour of her two daughters on 14th November 2008 was illegal and void. Accordingly, a prayer was made in the petition under Section 23 for cancellation of the said release deed dated 14th November 2008.
- D F G H 6. The petition under Section 23 filed by respondent no.1 was contested by the appellant. The Maintenance Tribunal finally decided the petition by judgment and order dated 22nd May 2018. It was held that the release deed dated 14th November 2008 was null and void. The Maintenance Tribunal recorded a finding that respondent no.1's children were not willing to take her care.

7. The present appellant along with respondent no.2 challenged the order of the Maintenance Tribunal by way of a writ petition before the High Court. By the impugned judgment, the order of the Maintenance Tribunal has been confirmed.

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SUBMISSIONS

8. The learned counsel appearing for the appellant urged that the High Court has not adverted to the facts of the case at all. He pointed out that respondent no.1's son withdrew the appeals preferred by him against the decrees passed in the civil suits filed by respondent no.1 by which release deeds executed in his favour were held to be null and void. His submission is that respondent no.1's son has joined hands with her and under his pressure that respondent no.1 filed the petition under Section 23. He submitted that there is no material placed on record before the Maintenance Tribunal and the High Court to even indicate that the execution of the release deed was vitiated by fraud or coercion or undue influence. Another submission is that the Maintenance Tribunal did not hold any inquiry as contemplated by the 2007 Act. He submitted that the ingredients of Section 23 were not established.

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9. The learned counsel for the appellant further submitted that the fact that the appellant is a widow and was not residing with respondent no.1, has been completely overlooked by the Maintenance Tribunal. He submitted that it was obvious that the petition under Section 23 was filed by respondent no.1 at the instance of her son. He pointed out that in the civil suits filed by respondent no.1, both the appellant and her sister (respondent no.2's mother) were co-plaintiffs with respondent no.1. The learned counsel submitted that the High Court has not even adverted to the merits of the challenge while passing the impugned judgment.

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10. The learned counsel appearing for respondent no.1 invited our attention to the findings recorded by the Maintenance Tribunal. He pointed out that the property obtained by the appellant and her sister under the release deed was sold by them to one Shri Anil Gahlot. He submitted that even the said purchaser has filed an affidavit before the Tribunal recording his no objection for the grant of the relief sought by respondent no.1. He submitted that as noted by the Maintenance Tribunal, respondent no.1 filed an affidavit unequivocally stating that she will not transfer by way of gift or release any property in favour of her son or daughter. The learned counsel submitted that this shows that respondent

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- A no.1 - mother has not acted at the instance of her son. He urged that the Tribunal after holding due inquiry has held in favour of respondent no.1 who is more than 80 years old. He submitted that High Court has rightly not interfered in writ jurisdiction.

CONSIDERATION OF SUBMISSIONS

- B 11. We have given careful consideration to the submissions. Before dealing with the factual aspects, it is necessary to advert to the legal aspects. The Sub-Divisional Magistrate acting as the Maintenance Tribunal under the 2007 Act has invoked the power under Section 23 to declare that the subject release deed was void. The 2007 Act has been enacted for the purposes of making effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution of India. The Maintenance Tribunal has been established under Section 7 to exercise various powers under the 2007 Act. Section 8 provides that the Maintenance Tribunal, subject to any rules which may be framed by the Government, has to adopt such summary procedure while holding inquiry, as it deems fit. Apart from the power to grant maintenance, the Tribunal exercises important jurisdiction under Section 23 of the 2007 Act which reads thus:

- E "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.
- G (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.
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(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.”

(emphasis added)

12. Sub-section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression “by way of gift or otherwise”. For attracting sub-section (1) of Section 23, the following two conditions must be fulfilled:

- a. The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and
- b. the transferee refuses or fails to provide such amenities and physical needs to the transferor.

If both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void.

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

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- A 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.
- B 15. We have perused the counter affidavit filed by respondent no.1. Even in the counter, it is not pleaded that the release was subject to such a condition. It is merely pleaded that the appellant had no intention to take care of her mother. Thus, the order of the Maintenance Tribunal cannot be sustained as the twin conditions incorporated in sub-Section (1) of Section 23 were not satisfied. Unfortunately, the High Court has not adverted to the merits of the case at all.
- C 16. There is an application for intervention on behalf of a developer. The intervenor claims that he is a *bona fide* buyer of a part of the land subject matter of the release deed from the appellant and that he has carried out substantial work of development. It is not necessary for us to deal with the rights claimed by the intervenor. All questions regarding the rights claimed by the intervenor are left open to be decided in appropriate proceedings.
- D 17. Hence, for the reasons recorded above, the appeal is allowed.
- E The impugned order dated 22nd May 2018 passed by the Maintenance Tribunal as well as the order dated 21st May 2019 passed by the High Court are hereby set aside and the petition filed by respondent no.1 under Section 23 of the 2007 Act stands dismissed. There shall be no order as to costs.

Nidhi Jain

Appeal allowed.