

**CWP-14299-2023 (O&M)****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****(102)****CWP-14299-2023 (O&M)
Date of Decision : 24.04.2026**

Bhagwan Kaur and another

...Petitioners

Versus

District Magistrate, Bathinda and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Judgepreet Singh Warrang, Advocate and
Mr. Kuldeep Kumar, Advocate
for the petitioners.

Mr. Tejinder Pal Singh Walia, AAG, Punjab.

Mr. Ravish Bansal, Advocate
for respondent No.3.

KULDEEP TIWARI, J.(ORAL)

1. Challenge is thrown to the orders dated 14.11.2022 (Annexure P-4), passed by learned Maintenance Tribunal, Bathinda (respondent No. 2), and the order dated 11.05.2023 (Annexure P-5), passed by learned District Magistrate, Bathinda (respondent No.1). By filing the instant writ petition, the petitioners/senior citizens have challenged the legality of two transfer deeds dated 07.03.2018 (Annexures P-1 & P-2), on the ground, that the same have been executed by fraud and, by invoking the provisions of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, the 'Act of 2007') and prays that the transfer deeds (supra), should be cancelled and restored back to them.

**CWP-14299-2023 (O&M)*****FACTS***

2. Learned Maintenance Tribunal while refusing to invoke the provisions of Section 23 of the Act of 2007, had passed a direction upon the respondent No.3, to pay maintenance of ₹10,000/- per month, to each senior citizen, i.e. total ₹20,000/-. The transfer deeds (Annexures P-1 & P-2), were executed by petitioners/senior citizens in favour of respondent No.3, on 07.03.2018. Thereafter, the petitioners filed two separate civil suits No. CS/1679/2020 and CS/1680/2020, challenging both the transfer deeds, alleging that the same were got executed by fraud, and they never intended to execute the same. The petitioners filed an application No.56 dated 31.03.2021 (Annexure R-3/3), under Section 4 (10) (a) of the Act of 2007, before learned Maintenance Tribunal, seeking maintenance only. During the pendency of the said civil suits and maintenance application, the petitioners filed application dated 10.11.2021 (Annexure P-3), under Section 23 (i) of the Act of 2007, seeking cancellation of execution of transfer deeds (supra). The first maintenance application (Annexure R-3/3) preferred by the petitioners was allowed, vide order dated 22.03.2022 (Annexure R-3/4), and a direction was passed upon the respondents to pay ₹10,000/- each, per month for maintenance of each of the senior citizen. Thereafter, the above said civil suits filed by the petitioners were simply withdrawn, vide order dated 05.04.2022 (Annexure R-3/1), without any liberty. The second application preferred by the petitioners, under Section 23 (i) of the Act of 2007, was dismissed by learned Maintenance Tribunal, Bathinda, vide order dated 14.11.2022 (Annexure P-4), and the statutory appeal preferred by the petitioners, also met with the same fate and it was dismissed on 11.05.2023 (Annexure P-5).



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SUBMISSIONS BY LEARNED COUNSEL FOR THE PETITIONERS

3. Learned counsel for the petitioners, in an attempt to throw challenge to the orders (supra), submits that the transfer deeds (supra), were a result of fraud, as post the said transfer, the respondent No.3, has refused to maintain the senior citizens, who are now more than 85 years of age. Therefore, the learned Maintenance Tribunal concerned, ought to have cancelled the transfer deeds, in question. He further submits that there is no embargo for the senior citizens, to maintain the second application, for the purpose of invoking Section 23 of the Act of 2007, when the earlier application was only for maintenance. He also submits that respondent No.3, has made a statement before the learned Tribunal, that he is ready and willing to bear the medical expenses etc. and take care of the basic needs and also to take back the senior citizens at home. However, no such direction was passed, and the said undertaking of respondent No.3, was totally ignored by learned Tribunal.

SUBMISSIONS BY LEARNED COUNSEL FOR THE RESPONDENT

4. Learned counsel for the respondent No.3, on the other hand, while joining the issue on merits, opposed the submission made by learned counsel for the petitioners, and submits that the offer made by the respondent No.3, was not accepted by the petitioners/senior citizens, rather, they insisted for cancellation of the transfer deeds (supra), and this fact was duly recorded in the impugned order, itself. He further submits that since inception, the entire application is based on the pleading of commission of fraud, and therefore, the mischief of Section 23 of the Act, cannot be invoked.

5. No other arguments were raised by learned counsel for the respondent No.3, before this Court.

**CWP-14299-2023 (O&M)****ANALYSIS**

6. This Court has heard the rival submissions made by learned counsel for the parties concerned, and has examined the impugned orders, as well.

7. In order to better appreciate, the respective submissions made by learned counsel for the parties concerned, it is imperative to have a glimpse upon the original application (Annexure P-3), through which, the transfer deeds in question, are sought to be cancelled. The grounds, which are spelled out in the application are in fact, of fraud and that the transfer deeds were not executed willingly with the expectation that the respondent No.3, will take care of petitioners/senior citizens. The relevant of the application is extracted hereinafter :-

“5. That the applicants were willing to execute the Registered Wills in favour of the respondent and they never wanted to execute the transfer deed in favour of the respondent. Moreover at the time of execution of the abovesaid documents it was told by the respondent that the same are two separate registered wills but later on when the respondent declared himself to be owner of the properties of the applicants and when the applicants made enquiries they came to know that a fraud has been played with the applicants and that the respondent instead of getting the Registered Wills executed has got the transfer deeds executed from the applicants.

6. That after coming to know about the fraud committed by the respondent, the applicants also filed civil suits i.e. civil suit titled as Mal Singh versus Parinder Singh and suit titled as Bhagwan Kaur in the civil Court which are fixed for 27.09.2021 and the same will be withdrawn by the applicants on the date fixed.”

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8. From perusal of the above, it is clearly depicted that the senior citizens wanted to execute the Will only, and not the transfer deed, and therefore, there does not arise any occasion, whatsoever, to invoke the provisions of Section 23 of the Act, by learned Maintenance Tribunal. To arrive at such a conclusion, as to whether, the application (supra), attracts the mischief of Section 23 of the Act of 2007, or not, at this stage, it is imperative to have a glimpse of Section 23 of the Act of 2007.

“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.”

9. 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

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is subject to the condition that the transferee shall provide the basic amenities and basic needs to the transferor, and post the execution of the transfer deed, the transferee fails to keep the promise.

10. 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 needs to the 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 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 arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to

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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.”

11. 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 basic 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

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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.”

12. 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.”

13. *Per se* at the cost of repetition, the transfer deed in question contains no recital obligating the respondent No.3, to provide the basic

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amenities and basic needs to the petitioners/senior citizens. Moreover, the application preferred by the senior citizens, before the learned Maintenance Tribunal concerned, does not carry any of the ingredients, requiring to invoke the mischief of Section 23 of the Act of 2007.

14. On the anvil of the above legal propositions and settled law, this Court finds that the application under Section 23 of the Act of 2007, does not carry any ingredients giving jurisdiction to learned Maintenance Tribunal concerned, to invoke the provisions of Section 23 of the *ibid* Act. Neither, it is alleged, nor proved by leading any cogent evidence that the transfer deed was executed out of love and affection, and with a condition that the beneficiary will maintain the senior citizens. This Court has no hesitation in recording that non-mentioning of condition of maintenance in the transfer deeds would not fetter the case of the senior citizens, provided, existence of such condition is alleged in the application, and proved by leading evidence to this effect. Unfortunately, nothing of such kind has been done. It seems that the property dispute amongst the parties concerned, is sought to be settled by invoking the provision of the Act of 2007. It is now a common phenomenon that the provisions of the Act of 2007, are being misused only for this purpose, and this practice cannot be appreciated, at all.

15. So far as the submissions made by learned counsel for the petitioners/senior citizens is concerned, this Court does not find any merit, thereof. The conduct of respondent No.3, has no relevancy with regard to cancellation of the transfer deeds, by learned Tribunal concerned, by invoking the provisions of Section 23 of the Act of 2007. Rather, this Court is of the considered opinion that a dispute has arisen between the petitioners/senior

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citizens and the respondent No.3 (grandson), and therefore, the instant application has been filed.

DECISION

16. In summa, this Court does not find any merit in the submissions made by the learned counsel for the petitioners. Consequently, the instant writ petition is **dismissed**. However, the respondent No.3, shall continue to pay the maintenance amount to the petitioners/senior citizens, as awarded by learned Maintenance Tribunal.

17. The impugned order dated 14.11.2022 (Annexure P-4), passed by learned Maintenance Tribunal, Bathinda (respondent No.2), and the order dated 11.05.2023 (Annexure P-5), passed by learned District Magistrate, Bathinda (respondent No.1), are ordered to be **upheld**.

18. Pending applications, if any, stands disposed of accordingly.

(KULDEEP TIWARI)
JUDGE

April 24, 2026
Manpreet

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