

(2025) 10 P&H CK 1435
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3380 Of 2002

Sultan Singh

APPELLANT

Vs

Deputy Commissioner-Cum-Maintenance Tribunal,
Mahendergarh And Others

RESPONDENT

Date of Decision : 09-10-2025

Acts Referred:

Maintenance And Welfare Of Parents And Senior Citizens Act, 2007 — Section 23

Citation : (2025) 10 P&H CK 1435

Hon'ble Judges : Kuldeep Tiwari, J

Bench : Single Bench

Advocate : Ketan Antil, Bhupender Singh, Akash Vashisth, Neeraj Goel, Sumit Sangwan

Final Decision : Dismissed

Judgement

Kuldeep Tiwari, J

1. The present writ petition has been instituted by an octogenarian assailing the order dated 16.09.2021, whereby the Appellate Tribunal concerned has allowed the statutory appeal preferred by Kamla Devi (respondent No.2) against the order dated 23.12.2020, passed by the Maintenance Tribunal concerned.
2. Before proceeding to gauge the legality of the impugned order, this Court deems it imperative to capture a concise and compendious factual backdrop germane to adjudication of the present writ petition.
3. The petitioner instituted an application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "Act of 2007"), seeking a declaration that the General Power of Attorney No. 78 dated 17.10.2003 and the consequent Gift Deeds bearing Nos. 553 and 554 dated 16.08.2017, and No. 960 dated 08.12.2017, are null and void, being the outcome of fraud practiced upon him.

4. In the application (supra), the petitioner pleaded that he and his wife, being issueless, were residing with the petitioner's elder brother, Dayanand (respondent No.3). The petitioner's nephew, Hawa Singh (respondent No.4), was attending to their needs and persuaded the petitioner to execute a Will dated 15.01.2001 bequeathing his entire property in favour of respondent No. 4. For some time, the petitioner was treated well, however, on 17.10.2003, Hawa Singh took him to Mahendergarh under the pretext that the petitioner was required to attest a General Power of Attorney to be executed by Dayanand in favour of Hawa Singh. On this pretext, Hawa Singh and Dayanand obtained the petitioner's signatures and thumb impressions on documents prepared by them, without affording him an opportunity to consult any advocate or deed writer. Subsequently, in 2017, Dayanand and his family members (private respondents) started harassing and taunting the petitioner and his wife, and even stopped providing them with basic necessities such as food. Aggrieved by such conduct, the petitioner revoked the Will on 22.05.2017. Upon learning of the revocation of the Will, the private respondents started harassing the petitioner and his wife even more and ultimately ousted them from their residence.

5. The petitioner further averred that, on the strength of the forged General Power of Attorney, Hawa Singh executed the Gift Deeds (supra), thereby transferring the petitioner's properties in favour of his wife- Kamla Devi. Mutation was also sanctioned on the basis of these fraudulent gift deeds. Upon discovering this fraud, the petitioner convened a panchayat on 24.01.2019 comprising relatives and respectable members of the community. In the said panchayat, it was resolved that Subhash Chand (respondent No. 5) would look after the petitioner and his wife and pay them ₹ 1,00,000/- per annum. It was further decided that the petitioner would reside in half portion of his old house, and the land owned by the petitioner and his brother Dayanand would devolve upon Subhash Chand and Hawa Singh respectively, in equal shares. This panchayati settlement was also reduced into writing. However, despite the passage of a year, the private respondents failed to give effect to it, compelling the petitioner to file the application under Section 23 of the Act of 2007.

6. The Maintenance Tribunal, vide order dated 23.12.2020, declared the Gift Deeds (supra) null and void. Aggrieved by such declaration, Kamla Devi preferred a statutory appeal before the Appellate Tribunal, which, by its impugned order dated 16.09.2021, allowed the appeal and set aside the order of the Maintenance Tribunal.

7. Learned counsel for the petitioner contends that the findings of the Appellate Tribunal are patently erroneous and perverse. It is submitted that once the private respondents were found to have failed in maintaining the petitioner after execution of the Gift Deeds, the Maintenance Tribunal had rightly invoked Section 23 of the Act of 2007 to annul the gift deeds. It is further submitted that although the General Power of Attorney was challenged on grounds of fraud, specific averments were made in the application under Section 23 asserting that

the Gift Deeds were executed out of love and affection. Even the gift deeds themselves record that Kamla Devi was taking care of the petitioner.

8. Continuing with his submissions, learned counsel for the petitioner submits that even if the validity of the General Power of Attorney could not be examined under Section 23, the validity of the Gift Deeds should have been independently gauged by the Appellate Tribunal, which it failed to do. It is further argued that, despite specific pleadings that Kamla Devi refused to maintain the petitioner and denied him basic amenities after execution of the Gift Deeds, the Appellate Tribunal overlooked this material aspect.

9. Per contra, learned counsel for respondents No. 2 and 4 vehemently oppose the petition. They submit that the application under Section 23 must be read in its entirety, which reveals that the petitioner's case is premised on allegation of fraud and concealment of material facts in the execution of the gift deeds. It is not a case of voluntary transfer made out of love and affection. They further contend that Subhash Chand, with whom the petitioner presently resides, has been instigating the petitioner to initiate these proceedings, and the application under Section 23 was filed at his behest. To substantiate this claim, they rely on the family settlement wherein it is recorded that half share of the property recorded in the gift deeds is to be transferred in favour of Subhash Chand.

10. This Court has considered the submissions advanced by learned counsel for the parties and carefully examined the record. In order to adjudicate the dispute at hand, it is deemed imperative to begin with examining Section 23 of the Act of 2007, which is reproduced hereunder:-

"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."

11. The Act of 2007 was enacted to uphold the traditional norms of Indian Society emphasizing the duty of children and relatives to provide for senior

citizens. Accordingly, its provisions must be interpreted to achieve the legislative intent, while ensuring that the Act is not misused for the resolution of ordinary civil or property disputes within families.

12. A perusal of Section 23 reveals that where a senior citizen has, after commencement of the Act, transferred his property by way of gift or otherwise, subject to the condition that the transferee shall provide for his basic amenities and physical needs, and such transferee fails or refuses to do so, the Maintenance Tribunal is empowered to declare such transfer to have been made by way of fraud, coercion, or undue influence.

13. In the present case, the petitioner filed the application under Section 23 asserting that the General Power of Attorney, which formed the basis for execution of the Gift Deeds, was obtained through fraud and misrepresentation. It was averred that his signatures were procured under the false pretext of attesting the execution of a Power of Attorney by Dayanand in favour of Hawa Singh. Thus, the petitioner did not voluntarily execute the General Power of Attorney out of love and affection or authorize Hawa Singh to transfer his land in favour of Kamla Devi.

14. The contention of learned counsel for the petitioner that the plea with regard to the General Power of Attorney being a result of fraud may be ignored, and only the validity of the Gift Deeds should be examined independently, is misconceived. The reason for drawing this inference is that the Gift Deeds were executed solely on the strength of the said General Power of Attorney and without the petitioner's knowledge as alleged. Hence, it cannot be said that the petitioner voluntarily executed or consented to the said Gift Deeds. Furthermore, the reliance, as placed on the recital enclosed in the Gift Deeds, is equally misplaced. Firstly, according to the petitioner himself, the Gift Deeds were executed without his consent; secondly, the recital is merely to the effect that since Kamla Devi was taking care of the petitioner, the property was transferred in her favour. There is no recital in the gift deeds that such transfer of land was subject to the condition that Kamla Devi shall continue to maintain the petitioner. Although an application under Section 23 may still lie in the absence of an express condition, the facts and circumstances of the present case do not warrant invocation of Section 23.

15. Moreover, the pleadings reveal that the root of the dispute lies in a subsequent family settlement executed after the Gift Deeds, whereby half of the property covered under the Gift Deeds was to be transferred to Subhash Chand (respondent No.5). It thus appears that the application under Section 23, and the present writ petition, are being pursued at the instance of respondent No. 5 to settle an underlying property dispute, which clearly falls outside the ambit of the Act of 2007. This inference garners strength from the written statement of respondent No.5, wherein he admits the averments made by the petitioner.

16. In summa, this Court does not find any merit in the present writ petition and

the same is accordingly dismissed. The impugned order dated 16.09.2021 passed by the Appellate Tribunal is upheld.