

Punjab-Haryana High Court

Sumesh Anand vs Vinod Anand And Ors on 1 December, 2015

LPA No.1689 of 2015(0&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.1689 of 2015(0&M)

Date of decision:1.12.2015

Sumesh Anand

...Appellant

VERSUS

Smt. Vinod Anand and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. J.S. Toor, Advocate for the appellant.

HEMANT GUPTA, J.(Oral) The present Letters Patent Appeal under Clause X of the Letters Patent is directed against an order passed by learned Single Bench of this Court on 23.09.2015 whereby an order dated 15.10.2014 passed by the Deputy Commissioner-cum-Appellate Authority constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act') was set aside.

Learned Single Bench held that the transfer deed dated 24.04.2009 executed by respondent No.1 in favour of the present appellant is vitiated having been executed on account of fraud.

The respondents herein filed petition before the Sub Divisional Magistrate-cum-Maintenance Tribunal under Section 23 of the Act. The Maintenance Tribunal dismissed the same vide order dated 10.10.2012. An appeal filed before the Appellate Authority was dismissed GULATI DIWAKER 2015.12.03 16:36 I attest to the accuracy and authenticity of this document on 15.10.2014. The challenge in the writ petition was to these aforesaid orders passed by the Maintenance Tribunal and also by the Appellate Authority.

The learned Appellate Authority has recorded a finding that the gift deed dated 24.04.2009 has not been executed with the condition that beneficiary will take care of the transferor and in case the beneficiary is unable to do so the gift deed will be void. It is the said finding which has been set aside by learned Single Bench in the order impugned in the writ petition. The finding recorded by learned

Single Bench is that the present appellant is taking advantage of the weakness of his mother and got the property transferred in his name.

Learned counsel for the appellant has vehemently argued that the learned Single Bench has recorded a finding while remanding the matter for directions. Once the matter is being remanded, the learned Single Bench should not have recorded any finding which may prejudice the claim of the appellant. The argument of learned counsel for the appellant is that the respondents i.e. his parents are well to do; have rental income from 11 shops and therefore, it was a voluntary act of transfer of the property in favour of the appellant which does not satisfy the basic condition that the appellant has failed to provide any basic amenity and physical needs.

We have heard learned counsel for the appellant and find no merit in the present Letters Patent Appeal.

A perusal of the gift deed (Annexure P-1) shows that it was executed in lieu of the services of the appellant and love and affection. It GULATI DIWAKER 2015.12.03 16:36 I attest to the accuracy and authenticity of this document was not on payment of any monetary consideration. It was recorded therein that the document is being executed of her own will without any pressure.

Section 23 of the Act comes into play if any property is transferred by a senior citizen 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.

The transfer was affected in lieu of services of the appellant and love and affection. The mother has executed transfer deed in lieu of the love and affection and the services rendered. Such reason is not one time factor but continued hope that the appellant would continue same love and affection even after the property is transferred. The services rendered or the love and affection is not a completed action. The transfer was with a pious hope that son will continue to serve the parents as was being done prior to the execution of the document. Having failed to take care of physical needs and basic amenities of the parents in their old age, the appellant has made himself liable for avoidance of the transfer documents in terms of Section 22 of the Act. Such is the finding recorded by learned Single Bench.

Since a categorical finding was recorded by learned Appellate Authority that the gift deed is not vitiated, the learned Single Bench was perfectly justified to reverse the findings recorded in a writ of certiorari. Having returned that finding, the learned Single Bench has left the question GULATI DIWAKER 2015.12.03 16:36 I attest to the accuracy and authenticity of this document as to what relief the parents would be entitled from the Maintenance Tribunal. The issue of legality and validity of the gift deed stands settled and cannot be permitted to be re-opened by the Maintenance Tribunal or the Appellate Authority.

We do not find any error in the findings recorded by learned Single Bench which may warrant interference in the present intra-Court appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

DECEMBER 1, 2015
'D. Gulati'

(RAJ RAHUL GARG)
JUDGE

GULATI DIWAKER
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