

(Proceedings through V.C.)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No. 483 of 2021 (O&M)

Ramesh @ Pappi

...Appellant

Versus

Ishwar Devi and others

... Respondents

Date of Decision: 08.07.2021

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Rakesh Gupta, Advocate
for the appellant

Mr.Abhimanyu Batra, Advocate
Caveator- respondent No. 1

ASHOK KUMAR VERMA, J.

1. We have heard the learned counsel for the appellant as also learned counsel for caveator-Ishwar Devi, respondent No.1 and have gone through the paper-book.

2. Brief facts as culled out from the paper book are that Ishwar Devi is an unfortunate widow aged more than 76 years old. Her deceased husband gave four Killas of land each to his both sons

and one house each and two shops outside the house and the house is also behind the shop. Out of these, one shop was also given in writing to his younger son and the land measuring four Killas, one house and one shop were left for maintenance of respondent no.1- Ishwar Devi. After two years of the death of her husband, her younger son-Ramesh @ Pappi who is appellant herein asked his mother to transfer the second shop in his name and by playing fraud with her with the excuse of transfer of the shop, he also transferred her own house in his name and she came to know this fact only after two years when he installed the shutter in the passage of road and closed the passage from that side. It is the case of old aged widow mother that her son-Ramesh, the appellant herein ousted her from the house and Ramesh alongwith his sons also gave beatings to her. Even efforts for compromise were made before the Panchayat two-three times, but of no avail. Ultimately, she approached the SDM exercising the powers of Presiding Officer, Maintenance Tribunal, Tohana (for short 'the SDM') by filing application under Section 5(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short the 'Act of 2007') to get the registry of the house and one shop to be returned to her and for protection of her life, liberty and property and for grant of maintenance alongwith allowing her to live in the house with dignity. The SDM allowed the application of the mother and ordered to cancel the transfer deed dated 04.09.2015 vide which two shops measuring area 32.32 square yards and transferred again in favour of the mother and allowed to live the mother in the house in question till her age and till she is alive and also ordered her son,

Ramesh to give Rs. 2,000/- per month as subsistence allowance to his mother vide order dated 19.08.2019 (Annexure P-4).

3. Aggrieved against the aforesaid order of the SDM, Ramesh filed appeal before the Appellate Tribunal, chaired by District Collector, Fatehabad (for short 'the Appellate Tribunal'). The Appellate Tribunal by passing an order dated 11/12.02.2020 (Annexure P-1) partly reversed and set aside the well reasoned findings of the SDM with regard to cancellation of the transfer deed and only maintained grant of maintenance and the right to live in her house.

4. Aggrieved against the aforesaid order passed by the Appellate Tribunal, the mother approached this Court by filing writ petition under Articles 226 / 227 of the Constitution of India praying for setting aside the order dated 11/12.02.2020 passed by the Appellate Tribunal. The writ petition filed by the mother has been allowed by the learned Single Judge of this Court vide impugned order dated 20.04.2021 thereby maintaining the order in toto passed by the SDM. Consequently, appellant-Ramesh has filed this LPA before this Court against the said order of the learned Single Judge of this Court.

5. Learned counsel for the appellant, inter alia, submits that the learned Single Judge erred in law by over-looking the fact that even the order passed by the SDM is beyond the relief asked for by respondent no.1-Ishwar Devi. In support of this submission, learned counsel refers to the application dated 26/11/2018 (Annexure P-2) filed by respondent No. 1-Ishwar Devi. Learned counsel further

submits that the learned Single Judge has erred erroneously by observing that the order passed by the Appellate Tribunal is non-speaking. Learned counsel contends that even if this is the situation, the normal course is that the learned Single Judge ought to have remanded the matter to the Appellate Tribunal for fresh decision so that it can be decided on merits. But without adopting this course, the learned Single Judge restored illegally the orders passed by the SDM.

6. We have given our thoughtful consideration to the submissions of the learned counsel for the appellant. We find no substance in the submissions of the learned counsel for the appellant.

7. The submission of the learned counsel for the appellant with regard to granting relief beyond the relief asked for by respondent-Ishwar Devi is misconceived. A perusal of the application dated 26.11.2018 (Annexure P-2) filed under the provisions of the Act of 2007 by respondent No.1- Ishwar Devi before the SDM itself shows that her property has been transferred by the appellant by playing fraud with her. Even she stated in the application that the appellant and his son gave beatings to her and ousted her from the house. Another aspect of the matter is that Section 5 (1) (c) of the Act of 2007 even empowers the SDM to take cognizance suo moto. In the presence of such enabling provisions, it cannot be said that the SDM has acted arbitrarily beyond its jurisdiction and granted relief beyond the relief asked for by respondent No.1- Ishwar Devi.

8. The Parliament enacted the Senior Citizens Act to uphold the dignity and respect of a senior citizen at the time of old age. State had serious concern about the challenge faced by the people in their

old age. Apart from physical vulnerabilities, they face emotional and psychological challenges. On account of these frailties, they are totally dependent. The moral law formulated through the legislation is necessary to rationalise the well being of all in the society. The moral values that prevailed in the society in the past have been accepted as universal values. The State in its wisdom, considering the acceptance of these values, seeks to promote the common good through the Senior Citizens Act. These values carried duties and obligations.

9. We are also not impressed with the argument of the learned counsel for the appellant that the learned Single Judge should have remanded the matter to the learned Appellate Tribunal. The fact remains that the SDM passed a detailed, well-reasoned and speaking order. On 03.06.2019, spot inspection was conducted by the SDM in the presence of the parties. It was found that appellant has a separate house measuring 220 square yards in the south of the house of respondent No.1 i.e. his mother, Ishwar Devi, besides the two shops in question. The SDM has even interacted with the parties and came to the conclusion that the conduct of the appellant herein was not above board and he neglected his mother and not provided the basic amenities despite the fact that the property was transferred in his name. In the presence of such well-reasoned and speaking order passed by the SDM, the learned Single Judge of this Court has rightly maintained the said order. The order passed by the Appellate Tribunal is evasive, non-speaking and erroneously bad in the eyes of law and such an exercise of power is to be deprecated. As such when speaking and well-reasoned order is available on record that order can be

maintained for delivering speedy justice to an unfortunate mother who is more than 76 years old suffering from various ailments. The learned Single Judge of this Court has rightly maintained the speaking and well-reasoned order passed by the SDM. The SDM has rightly exercised his jurisdiction available under Section 23 of the Act of 2007 and cancelled the transfer deed and directed that the shops in question be transferred back in the name of the mother and possession be granted back to her.

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 of 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.

11. In view of the above, we are of the considered opinion that the impugned order passed by the learned Single Judge of this Court is well-reasoned and we find no valid ground to interfere with the findings of the learned Single Judge of this Court. Consequently, this LPA is dismissed *in limni*. Consequent upon the dismissal of the LPA, Miscellaneous Applications for leading additional evidence and stay i.e CM Nos. 1197-LPA-2021 and 1199-LPA-2021, respectively and Caveat No. 204518-2021 shall stand disposed of accordingly.

(ASHOK KUMAR VERMA) (AUGUSTINE GEORGE MASIH)
JUDGE JUDGE

08.07.2021
MFK

Whether speaking/reasoned

Yes

Whether Reportable

Yes

सत्यमेव जयते

