

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 23rd October, 2019**

+ **CS(OS) 1502/2009**

MAYA DEVI

..... Plaintiff

Through: Mr. Deepak K. Vijay & Ms.
Neeru Sharma, Advs.

Versus

MAHESH KUMAR AND ANR.

..... Defendants

Through: Mr. Pradeep Desodhya, Adv. for
Mr. Amandeep Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

IA No.14874/2019 (of the plaintiff for declaring the settlement dated 27th January, 2014 as void and for restoration of the suit) and IA No.14875/2019 (of the plaintiff for condonation of 365 days delay in applying therefor)

1. The counsel for the applicant / plaintiff has been heard.
2. The applicant / plaintiff instituted this suit, for (i) cancellation of Gift Deed dated 17th May, 2008 in respect of property bearing No.E-1/82, Second Floor, Lajpat Nagar, New Delhi executed by the applicant / plaintiff in favour of defendants no.1 and 2; (ii) declaration of the applicant / plaintiff as owner of the said property; and, (iii) restraining the defendants no.1 and 2 from dealing with the property.
3. It was the case of the applicant / plaintiff in the plaint, that (i) the applicant / plaintiff is an illiterate lady and does not know English language; (ii) the defendant no.1 is the son of the applicant / plaintiff and the defendant no.2 is the wife of the defendant no.1; the

defendants no.3 and 4 are the mother and brother respectively of defendant no.2; (iii) the defendants no.1 and 2 were contemplating to go abroad and for the purpose of getting visa were required to show themselves as owner of some property to the Visa Authority; (iv) the applicant / plaintiff, with the permission and consent of her son and daughters, agreed to help the defendants no.1 and 2; (v) the defendants no.1 and 2 along with the plaintiff went to the deed writer and the applicant / plaintiff had given instructions to the deed writer to make documents pertaining to co-ownership of the property; (vi) the documents prepared were registered with the understanding that the same are co-ownership documents; (vii) subsequently it came to the notice of the applicant / plaintiff that the documents got executed and registered from the applicant / plaintiff were not co-ownership documents but of absolute gift of the said property to the defendants no.1 and 2; and, (viii) the applicant / plaintiff however continued to reside in the property along with defendants no.1 and 2.

4. The suit aforesaid came up before this Court first on 19th August, 2009, when while issuing summons / notice thereof, *status quo* qua the property aforesaid was directed to be maintained.

5. Vide order dated 18th November, 2013 issues were framed in the suit.

6. On 27th January, 2014 the following order was passed in the suit:

“Counsel for the parties submit that the defendant no.3 be deleted from array of parties. Ordered accordingly.

Parties are present in court and they are duly identified by their respective counsel. Parties submit that they have entered into an amicable settlement and pray that the present suit may be decreed on the following terms:

- (i) The Gift Deed dated 17.5.2007 in respect of property bearing No.E-1/82, Second Floor, Lajpat Nagar, New Delhi, in favour of the defendants no.1 and 2, be cancelled and declared as null and void.
- (ii) It is agreed that the plaintiff out of her own free will and without any pressure and coercion agrees that a decree may be passed in favour of defendants no.1 and 2 for 50% undivided rights in the property bearing No.E-1/82, Second Floor, Lajpat Nagar, New Delhi.
- (iii) It is agreed that since the property being No.E-1/82, Second Floor, Lajpat Nagar, New Delhi, cannot be divided by metes and bounds, the property will be sold mutually by the parties (plaintiff on the one part and the defendants no.1 and 2 on the other) and the sale proceeds will be divided equally.
- (iv) It is agreed that the shop bearing No.JB-1 (lower ground floor), Gupta Colony, Khirki Extension, Malviya Nagar, New Delhi -110 017 shall be the exclusive property of defendants no.1 and 2 and the plaintiff will have no right, title or interest in the same.
- (v) It is also agreed that the property shall be sold not later than six months from the date of passing of the decree to the highest offer.
- (vi) In case either of the parties does not cooperate, they will be free to get the decree executed.
- (vii) Till the property is sold, plaintiff and defendants no.1 and 2 will reside together peacefully and in a harmonious manner.

Counsel for the parties pray for an adjournment to move an application on the abovesaid lines. Parties will append their signatures on the ordersheet, as a token of acceptance.

List on 29.1.2014.”

7. On 29th January, 2014 the following order was passed:

“Counsel for the parties are present with parties in person. Counsel for the parties submit that the present suit may be decreed in terms of settlement recorded in the order dated 27.01.2014; the terms which were agreed upon by them and order sheet were duly signed and they submit that it is not necessary to make any further application in this regard as they affirm the settlement which they have entered into. Accordingly the present suit is decreed in terms of the order dated 27.01.2014. Parties to bear their own costs. Parties shall sign the order sheet. Decree sheet be drawn accordingly.”

8. These applications have been filed reiterating the case with which the applicant / plaintiff had instituted the suit and reproducing the settlement aforesaid arrived at between the applicant / plaintiff and the defendants no.1 and 2 and in terms whereof the suit was decreed and further pleading that, (i) the defendants no.1 and 2 were given right in the property being the son and daughter-in-law of the applicant / plaintiff and otherwise had no right over the property and had promised to take care of the applicant / plaintiff, which they failed to do; (ii) the defendants no.1 and 2 though husband and wife, are not having cordial relations and on application of the defendant no.2 in the matrimonial dispute, defendant no.1 has been declared absconder vide order dated 23rd February, 2018; (iii) the applicant / plaintiff is a senior citizen and entitled to protection under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Senior Citizens

Act); (iv) the applicant / plaintiff is entitled to benefit of Section 23 of the Senior Citizens Act; (v) thus the applicant / plaintiff wants this Court to declare the half share in the property in favour of the defendants no.1 and 2 under the decree aforesaid as void; (vi) the defendant no.2 filed an Execution Petition which is pending adjudication in the Court of the Additional District Judge, Saket, New Delhi; (vii) the defendant no.2 has no independent right over the property and the right given to her is liable to be declared as void as per Section 23 of the Senior Citizens Act; (viii) in view of Section 23 of the Senior Citizens Act, the Executing Court, vide order dated 3rd December, 2018, directed the applicant / plaintiff to file an affidavit with regard to immovable properties owned by her; (ix) the applicant / plaintiff moved an application under Section 23 of the Senior Citizens Act in the Executing Court and which application was disposed of vide order dated 19th July, 2019 holding as under:

“the Present Court is only an executing court entrusted with the responsibility of executing consent decree passed by the Hon’ble High Court dated 27.01.2014, hence, in view of Section 47 CPC, it has no power whatsoever to go behind the decree or look into the merits of the same, Hence, if at all, JD No.1 is inclined to challenge the same, it can only be done by the Tribunal by filing a separate petition in accordance with law. Even otherwise, same has been passed by a Superior Court of law, and hence this Court, cannot sit in appeal against the decree, exercising its jurisdiction as an executing Court. Assuming for the sake of arguments that this court could go into the merits of the decree, I find that the objective of Senior Citizens Act has been served in the present settlement agreement / consent decree and the welfare / interest of JD no.1 had been amply taken care of, as it was categorically stated in para (iii) of the terms of settlement

that the 50% proceeds of the property shall go to her. In such circumstances, decisions passed in *Shabeen Martin Vs. Muriel* passed by Kerala High Court on 11.07.2016 in WP(C) No.8193/2014 and *Darshana Vs. Govt. of NCT of Delhi* decided on 03.10.2018 in LPA 537/18, which were on the basis of distinct set of facts, where it was observed that the interest of Senior Citizen had been ignored and the transaction was set aside has no applicability to the instant case. Accordingly, the prayer of the JD No.1 that decree dated 27.01.2014 may be declared as null and void in terms of Section 23 of the Senior Citizen Act has no merits.”

and, (x) thus these applications.

9. The counsel for the applicant / plaintiff, without the Registry of this Court putting any objection as to the maintainability of the applications and without even this Court, enquiring about the maintainability of the applications before this Court has at the outset drawn attention to ***Gopal Lal Vs. Babu Lal*** 2004 SCC OnLine Raj 21 (DB).

10. However since the maintainability of the applications before this Court is not in issue, the reliance on the aforesaid judgment is misconceived.

11. The counsel for the applicant / plaintiff has contended that though the applicant / plaintiff in terms of the order dated 19th July, 2019 of the Executing Court i.e. Additional District Judge-01 (SE), Saket Courts, New Delhi, is to approach the Maintenance Tribunal constituted under the Senior Citizens Act but before doing that wants to seek setting aside of the decree from this Court.

12. However the counsel for the applicant / plaintiff has not been able to show, inspite of enquiry, as to how in law the grounds urged constitute a ground for setting aside of a consent decree.

13. As far as reliance placed on Section 23 of the Senior Citizens Act is concerned, the same is as under:

“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.”

14. The Senior Citizens Act came into force in the National Capital Territory of Delhi on 1st September, 2008. The subject suit was filed much thereafter and came up first before this Court as aforesaid on 19th August, 2009. However the transfer of property by the plaintiff by way of gift in favour of defendants no.1 and 2 was on 17th May, 2008 i.e. much prior to the coming into force of the Senior Citizens Act. Thus the subject transfer does not meet the first requirement of Section 23 of the Senior Citizens Act, of the transfer being after the commencement of the Act.

15. Not only so, for Section 23 of the Senior Citizens Act to be invoked, it is necessary that the transfer should be subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor. The applicant / plaintiff did not institute this suit making any such case and today also, it is not the contention of the applicant / plaintiff that the Gift Deed admittedly executed by the applicant / plaintiff in favour of the defendants no.1 and 2 was subject to any such condition or that the suit filed by the plaintiff was on such pleas. On the contrary, the applicant / plaintiff instituted this suit contending that though she intended to execute and get registered documents making defendants no.1 and 2 co-owners along with her, of the property but subsequently realized that the defendants no.1 and 2 had absolute rights in the property transferred in their favour. The same answers another contention of the counsel for the applicant / plaintiff, that the defendant no.2, as daughter-in-law, had no right whatsoever in the property and thus the rights created are void. On the date of the compromise which was arrived at, it was the defendants no.1 and 2 who were the owners of the property and the applicant / plaintiff who was contending that the document conveying 100% ownership rights in favour of defendants no.1 and 2 was void, as intent of the document was to make the defendants no.1 and 2 co-owners with herself in the property. Thus it cannot be said that by way of compromise, rights have been created for the first time in favour of defendant no.2. The defendant no.2, on the date of compromise, had rights under the Gift Deed in the property.

16. Thus reliance placed on Section 23 of the Senior Citizens Act is totally misconceived.

17. Else, though a consent decree can be set aside on establishing before the Court which passed the decree, that the terms were arrived at by practicing fraud on the applicant, but the applicant / plaintiff has not pleaded / made out any case of the compromise arrived at being fraudulent. *Gopal Lal* supra cited by the counsel for the applicant / plaintiff himself, on this aspect is against the applicant / plaintiff.

18. The counsel for the applicant / plaintiff has also referred to *Shabeen Martin Vs. Muriel* 2016 SCC OnLine Ker 24814 but without relying on any part thereof which may come to the rescue of the applicant / plaintiff.

19. There is no merit in the applications. The same are dismissed.

RAJIV SAHAI ENDLAW, J.

OCTOBER 23, 2019
'gsr'..