

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WP(C).NO. 20134 OF 2012 (N)

PETITIONER:

SUNITHA VETTAKKUNNON, AGED 45 YEARS,
W/O RAMESHAN, SURYA BHAVANAM, CHALAD,
PALLIKUNNU, KANNUR

BY ADVS.SRI.B.KRISHNAN
SRI.R.PARTHASARATHY
SRI.RAJESH V.NAIR
SMT.SEEMA

RESPONDENT(S) :

1. VETTAKKUNNON NARAYANI,
W/O. ACHUTHAN, RESIDING KOMOTH HOUSE, KADIRUR,
THALASSERY, KANNUR 670101
2. THE SUB COLLECTOR,
(MAINTENANCE TRIBUNAL) THALASSERY, KANNUR 670101

R1 BY ADV. SRI.M.SASINDRAN
R2 BY ADV. GOVERNMENT PLEADER, SRI. V.K. RAFAEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXT P1 A TRUE COPY OF THE PETITON M.C.C 7/11 FILED BEFORE THE
 MAINTENANCE TRIBUNAL (SUB COLLECTOR), THALASSERY
- EXT P2 A TRUE COPY OF THE COUNTER STATEMENT FILED IN M.C.C.
 7/11W BEFORE THE MAINTENANCE TRIBUNAL (SUB COLLECTOR),
 THALASSERY
- EXT P3 PHOTOCOPY OF THE GIFT DEED PRODUCED BEFORE MAINTENANCE
 TRIBUNAL
- EXT. P4 COPY OF THE ORDER PASSED BY M.C.C 7/2011 DATED 04-07-2012
 BY THE MAINTENANCE TRIBUNAL, (SUB COLLECTOR), THALASSERY

RESPONDENTS' EXHIBITS :

- EXHIBIT R1(A) : A TRUE COPY OF THE F.I.R. NO. 49 OF 2011 DATED
 3.2.2011.
- EXHIBIT R1(B) : A TRUE COPY OF THE DEPOSITION MADE BY THE MOTHER
 OF THE PETITIONER NAMELY 'JANAKI' DATED 1.6.2012.
- EXHIBIT R1(C) : A TRUE COPY OF THE DEPOSITION MADE BY THE
 RESPONDENT DATED 11.5.2012.
- EXHIBIT R1(D) : A TRUE COPY OF THE DEPOSITION MADE BY THE
 PETITIONER WHILE CROSS EXAMINATION.

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.20134 of 2012

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Dated this the 18th day of November, 2015

J U D G M E N T

The petitioner is the respondent in M.C.C. No.7 of 2011 on the files of Maintenance Tribunal (Sub Collector), Thalassery. The above petition was filed by the 1st respondent herein, claiming maintenance allowance at the rate of Rs.7,000/- from the petitioner and to cancel Ext.P3 gift deed, executed by the 1st respondent in favour of the petitioner. After considering the evidence on record, the Tribunal passed Ext.P4 order, setting aside Ext.P3 gift deed. The legality and propriety of the findings, whereby the Tribunal set aside Ext.P3 gift deed, is under challenge in this Writ Petition.

2. The petitioner filed Ext.P2 counter statement, stating that no pre-condition was imposed on the petitioner in the gift deed to maintain the respondent

-: 2 :-

and the gift was one made voluntarily. So also, she denied all the averments in the petition as regards ill-treatment, cruelty, coercion etc., alleged to have been meted out to the 1st respondent by her. The 1st respondent is acting at the hands of other relatives, who also have rival claims and interests over the property.

3. The petitioner, 1st respondent and one witness were examined before the Tribunal. After analysing the oral evidence and documents, the Tribunal found that the 1st respondent has no income, her husband already dead, had no progeny and further as per police report, the 1st respondent had not maintained by the petitioner and on the basis of the said finding, the Tribunal have come to a conclusion that the petitioner had not maintained the 1st respondent since the gift deed in contravention to the reservation of life estate over the property. It is with this view, the Tribunal passed Ext.P4 order, cancelling Ext.P3

-: 3 :-

gift deed, executed by the respondent, invoking jurisdiction and power under Section 23 of the Parents and Senior Citizen Act,2007 (*hereinafter referred to as 'the Act'*). The legality and propriety of the finding, whereby the Tribunal cancelled Ext.P3 gift deed, are subjected to judicial review of this Court under Article 226 of the Constitution of India, in this Writ Petition.

4. Heard the learned counsel for the petitioner and learned counsel for the respondents.

5. Learned counsel for the petitioner advanced arguments, contending that the Tribunal cancelled the gift deed in the absence of a condition as envisaged under Section 23 of the Act. According to the learned counsel, the Tribunal should have taken note of the fact that there is no condition in the gift deed that the donee will maintain the donor, after the execution of the gift deed. Moreover, the gift deed reserves the right in favour of donor to collect

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income and the right of residence till death of the respondent. When, the right of the donor was protected in the gift deed itself, the gift deed could not have been cancelled by the Tribunal, alleging violation of pre-condition. Thus, the Tribunal had exercised power beyond the jurisdiction and power conferred on him under Section 23 of the Act.

6. *Per contra*, the learned counsel for the 1st respondent advanced arguments to justify the findings, whereby the Tribunal cancelled gift deed No.1665 of 2009. According to the learned counsel for the 1st respondent, the reservation of life estate and right of residence in the gift deed and subsequent deprivation of that right would constitute violation of the condition and the oral evidence given by the petitioner and another witness would convincingly prove that the donor was thrown away to the road in contravention to the right of residence and the life

-: 5 :-

estate specifically provided in the gift deed. Therefore, according to the respondent, the 2nd respondent is justified in setting aside the disputed gift deed executed by the respondent in favour of the petitioner.

7. In view of the rival contentions raised in this Writ Petition, the point to be considered is, whether the 2nd respondent is justified in setting aside the disputed gift deed, invoking jurisdiction under Section 23 of the Act. The sum and substance of the case put forward by the petitioner is that there is no condition in the gift deed that the donee will maintain the donor, after the execution of the gift deed. Moreover, the gift deed reserves the right to collect income and the right of residence, till the death of the donor and the same cannot be deemed to be a condition preceding execution of the gift. Thus, in the absence of a condition stipulated under Section 23 of the Act, the 2nd respondent is not justified in setting aside Ext.P3

-: 6 :-

gift deed. Going by Ext.P3, it is seen that the respondent has reserved her right of residence and right to take yield from the property. So also, in the gift deed, it is observed that the petitioner has been maintaining the respondent and the gift deed is executed in consideration of love and affection towards the petitioner. In short, the life estate is seen reserved in favour of the donor though title has been transferred in favour of the donee.

8. In my view, in a gift deed, the reservation of right of residence and right to take income from the property till the death of the donor, would constitute a precondition imposing the liability and reciprocal obligation on the donee to allow the donor to enjoy the reserved rights, without any disturbance or obstruction, till the death of the donor. The reservation of such rights is deemed to be a condition for transferring the title to the donee, even if, the transfer is made voluntarily. So in such cases, even if, the gift was

-: 7 :-

made voluntarily, the transfer is subject to the reservation of the life estate and it is presumed to be intended to preserve amenities and physical needs of the donor. If that be so, if the donor is forcefully deprived of enjoying the life estate reserved in his favour, by the act of donee that would amount to a refusal to provide amenities and physical needs, as contemplated under Section 23 of the Act and the transfer shall be deemed to have been made by fraud and misrepresentation. In short, deprivation of life estate reserved in a gift deed would constitute the circumstances warranting interference under Section 23 of the Act.

9. Coming to the instant case, the case of the respondent is that even though, the recitals in Ext.P3 contain reservation of right of residence and right to take yield from the property, after the execution of Ext.P3 gift deed, the petitioner has taken possession of the gift deed, her valuable gold ornaments and money by force and

-: 8 :-

thereafter, thrown away the respondent to the street. She was not allowed to reside in the house and also to take yield from the property. According to the respondent, the gift deed was effected by employing coercion, undue influence and fraud and the respondent was forced to transfer the property by the petitioner. RW2, who was examined, as a witness of the respondent is none other than the mother of the petitioner and she narrated the cruelties shown by the petitioner towards the respondent. In the deposition, given by RW2, she deposed that the petitioner took the respondent to her home and made to live there for 1½ years with an intent to get the gift deed executed and thereafter, left her in the road. The deposition of RW2 has much weight, in view of the fact that it has been made by none other than the mother of the petitioner herself.

10. During the course of cross-examination, the petitioner herself admitted that the respondent has no

-: 9 :-

property other than the property gifted to her and she has no other source of income. In this respect R1(a), First Information Report, registered by the Police against the petitioner under Sections 420, 406 read with 34 IPC also assumes significance and relevancy. In the First Information Statement, the respondent has stated that petitioner has obtained valuables, including gold ornaments and documents from the respondent by cheating and thereafter, thrown away her to the street and she was taken to the house of RW2 by the neighbours in the locality. On an analysis of the evidence given by RW1 and RW2, in view of the recitals in the gift deed, I have no hesitation to hold that the transfer of property by way of gift has been made subject to the condition that the petitioner shall provide basic amenities and physical needs to the respondent by not disturbing with the life estate reserved in favour of the respondent and thereafter, the petitioner has violated the

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obligation cast on her, by depriving the respondent from exercising the rights reserved and the same is sufficient circumstance to set aside the gift deed in favour of the petitioner, invoking jurisdiction and power under Section 23 of the Act. There is no illegality or impropriety in any of the findings and I do not find any kind of perversity in the appreciation of evidence also.

This Writ Petition is dismissed accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge