

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

%

Delivered on: 10th October, 2017

+ W.P.(C) 9422/2015 & CM No. 22021/2015

MOHD. ZAKARIA

..... Petitioner

Versus

INAMUL HAQUE & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. S.C. Singhal, Adv.

For the Respondents : Mr. Naushad Alam, Adv. with Respondent no. 1 in person.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. The Petitioner impugns the order dated 31.08.2015 passed by the Maintenance Tribunal (under Maintenance & Welfare of the Parents and Senior Citizens Act, 2007) (hereinafter referred to as the Act).

2. Respondent No. 1 is the father of the Petitioner and Respondent nos. 2 and 3. Respondent No. 1 was the Petitioner before the Maintenance Tribunal.

3. By the impugned order dated 31.08.2015 the Maintenance Tribunal has directed as under:

- 1) *That the relinquishment deed bearing registered No. 20710 in book No.1 vol No. 6806 on page 191 to 195 dated 5/10/2012, regarding H. No. 48, situated at old Brij Puri, Khureji Khas, Delhi 51 is hereby declared as void, to the extent of Petitioner's ownership right of 1/4th share measuring about 53 sq. yards in the said property.*
- 2) *That the Respondent No.1 shall handover back to the Petitioner 1/4th portion about 53 sq. yards (from Ground Floor to Top Floor including open terrace) of the property, and get, the same properly demarcated by brick wall within 30 days, of the receipt of order.*
- 3) *That all the three Respondents 1 to 3 shall make a payment of Rs.2000/- each per month as maintenance allowance to the Petitioner by 10th of every month every month by depositing the same in the bank account of the Petitioner or cash payment against proper acknowledgement receipt.*
- 4) *That all the Respondents shall look after and take proper care of the Petitioner.*
- 5) *That the SHO P.S. Brij Puri, Delhi shall ensure timely compliance of the above orders, and status/action taken report in this regard be sent to the tribunal. The SHO shall also ensure safety and protection of life of the Petitioner.*

4. The case of the Petitioner is that the mother of the Petitioner was the owner of property bearing No. 48, Old Brij Puri, Khureji Khas, Delhi. Apart from the above-referred property, the mother also left behind a property bearing no. A-10/1, Chauhan Bangar, Jafrabad Road, Delhi. The mother of the Petitioner and Respondent nos. 2 and

3 died on 01.04.1993 leaving behind Respondent no. 1, her husband, three sons and seven daughters.

5. It is contended that earlier, Respondent No. 1 had made a claim that the property situated at Jafrabad Road, Delhi had been orally gifted to him by his wife, i.e., late mother of the Petitioner. The claim was rejected by Award dated 14.01.1996.

6. It is contended that Respondent no. 1 after the demise of his wife contracted a second marriage at the age of 66 years with a lady of 25 years of age. It is contended that when objections were raised by the neighbours, Respondent No. 1 shifted to Varansi.

7. The Petitioner as well as his brothers and sisters executed a Relinquishment Deed in favour of Respondent no. 1 in respect of Jafrabad Road property. It is contended that subsequently thereto the said property has been sold by Respondent no. 1 and the sale proceeds appropriated by him.

8. A Relinquishment Deed was executed by the Respondent no. 1 as well as all the brothers and sisters of the Petitioner, in favour of the Petitioner on 03.10.2012 in respect of the property situated at Old Brij Puri, Khureji Khas, Delhi.

9. Respondent no. 1 filed a petition under Section 9 & 23 of the Act against the Petitioner as well as the Respondent nos. 2 and 3, i.e., the three sons of Respondent no. 1.

10. It is contended, by Respondent No. 1, in the said petition before the Maintenance Tribunal, that the property bearing No. 48, Old Brij Puri, Khureji Khas, Delhi was purchased by Respondent no. 1 but registered in the name of his deceased wife.

11. It is contended, in the said petition, that the Petitioner being the youngest son of Respondent no. 1 persuaded and prevailed upon the Respondent no. 1 to relinquish his ownership right in the said property in favour of the Petitioner.

12. It is contended, in the said petition, that the Petitioner had assured that Respondent no. 1 shall have full right to live in the said property during his life time and he shall be suitably looked after for all his daily needs and provisions shall be made for all basic necessities and amenities for life. On the assurances and promises made by the Petitioner, Respondent no. 1 executed the relinquishment deed.

13. It is contended, in the said petition, that the Petitioner stopped providing the basic amenities and monetary help. It is contended in the petition that the relinquishment deed was obtained by the Petitioner by misrepresentation, coercion, fraud and undue influence.

14. In these circumstances, Respondent No. 1 sought that the transfer of share of Respondent no. 1 by way of relinquishment deed be declared as null and void and Respondent no. 1 be put back in

possession. Further direction was sought to pay maintenance allowance to Respondent No. 1.

15. The said petition was defended by the Petitioner. It is contended in the written statement filed to the said petition that the relinquishment deed was not a conditional relinquishment deed as envisaged by Section 23 of the Act.

16. It is contended that after the demise of the mother, Respondent no. 1 the father then aged 66 years, immediately married a young girl of 25 years of age and brought the girl to live in the same house. When the neighbours and other relatives questioned Respondent no. 1 about his conduct, he shifted to Varansi and started living there and neglected the whole family.

17. It is contended that it was the Petitioner who thereafter took care of all the family members including the daughters. It is contended that the relinquishment deed was not executed on account of any condition or assurance given by the Petitioner for providing basic amenities and physical needs to Respondent no. 1.

18. By the impugned judgment dated 31.08.2015, the Tribunal, after recording the deposition of the three sisters and the Petitioner opined that the relinquishment deed was in lieu of consideration in cash or kind. This finding has been returned on the basis of statement of the three sisters of the Petitioner, who deposed that the Petitioner

had promised to pay them a sum of Rs. 7 lakhs each, in lieu of relinquishing their respective shares.

19. The Tribunal held that the relinquishment deed was obtained by the Petitioner in lieu of monetary consideration paid/promised to be paid to his brothers and sisters. Respondent no. 1 was also to be provided boarding/lodging facilities apart from making provisions of basic necessities and amenities for life.

20. The Tribunal held that non compliance and adherence to the promises and assurances made to the Respondent no. 1 by the Petitioner at the time of execution of the relinquishment deed came within the ambit of Section 23 (1) of the Act and as such it declared the relinquishment deed executed by Respondent no. 1 to be void to the extent of Respondent no.1's ownership right of 1/4th share.

21. The Tribunal directed the Petitioner to hand over 1/4th portion of the said property from ground floor to terrace and also to get the property demarcated by a brick wall.

22. The Petitioner has assailed the judgment contending that the relinquishment was not for any understanding that the Petitioner would provide boarding/lodging facilities apart from making provisions of basic necessities and amenities for life.

23. It is contended that Respondent No. 1 had received Rs. 7,00,000/- for relinquishing his share. It is contended that Petitioner on 19.05.2015 had filed additional documents comprising of receipts

of payment of Rs. 7 Lakhs each to the three sisters and also to Respondent No. 1, affidavits of sisters. The sisters also deposed before the tribunal on 02.06.2015. It is contended that the sisters had admitted before the tribunal that they had executed affidavits and their statements were recorded. It is contended that the tribunal had not referred to either the additional documents or the statement of the sisters. It is submitted that the additional documents and statement of the sisters is not available on record.

24. Further, it is contended that the Tribunal has issued directions for dividing the property by metes and bounds, which is beyond the scope of powers of the tribunal.

25. The records of the Tribunal were summoned to ascertain as to whether the original documents, as alleged, were filed on record or not.

26. The records revealed that the tribunal had merely recorded the statements of the sisters on 02.06.2015. No original receipts were found on record. Order dated 02.06.2015 also does not record that any originals were produced. An application was filed by the Petitioner before the Tribunal, after the disposal of the petition alongwith photocopies of the receipts.

27. It may also be noticed that the Petitioner in his reply to the Petition filed by Respondent No. 1 did not take any plea that the Relinquishment deed executed by the brothers and sisters and the

Respondent No. 1 was in lieu of any money paid. Neither was any reference made to any payment made for the execution of the relinquishment deed nor were any receipts or documents to support the same filed with the reply.

28. The relinquishment deed dated 03.10.2012 records as under: -

“Now the Releasors with their free will and consent without any pressure or compulsion from others and in their sound disposing mind have relinquished their own share of the said property due to love and affection which became to them after the death of MRS. ZAIDA BIBI according to the Indian Succession Act in favour of Releasee MOHD. ZAKAIRA without receiving anything, he/she is also co-owner/co-share of the remaining own share of the said property as the legal heir of the ' - said deceased.”

29. The relinquishment deed records that the that the Releasors have out of their own free will and consent due to love and affection and without receiving anything have relinquished their share in the said property in favour of the Petitioner. The Relinquishment Deed does not record any stipulation that Respondent no. 1 has relinquished his share for any consideration paid or promised to be paid.

30. Section 23 of the Act reads as under:

"Where any senior citizen who, after the commencement of this Act, has 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"

31. Section 23 stipulates that where any senior citizen 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 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.

32. The contention of Respondent no. 1 before the Tribunal was that he has relinquished his share in the said property in lieu of the Petitioner assuring Respondent no. 1 that he shall have full right to live in the said property during his life time and he shall be suitably looked after for all daily needs and provisions shall be made for all basic necessities and amenities of life.

33. It is contended that the Petitioner served Respondent no. 1 only for few amenities thereafter threw away Respondent no.1 from the house and did not allow Respondent no. 1 to use and occupy the house and stopped providing basic amenities and monetary help.

34. The Petitioner in his written statement in paragraph 1 *inter alia* stated as under:

a) *That the Relinquishment Deed as executed is not the conditional relinquishment deed as envisaged*

in Section 23 of the Maintenance & Welfare of Parents & Senior Citizen Act, 2007 and it was rather on account of the fact after the death of the mother of the replying Respondent in 1993, it is he who looked after the entire family and married even three unmarried sisters. The Petitioner is a father of the replying Respondent as such he does not want to speak against his conduct as immediately after the death of the mother of the Respondent he re-married to a young girl when he himself was 66 years old and girl was hardly 25 years old to whom he married and he brought the girl, to live in the House No. 48, Old Brij Puri, Khurejl Khas, Delhi but he could not face the question raised by the neighbours and other relatives and as such he shifted back to Varanasi from where he and she hails, and started living there and neglected the whole family and did not perform his duties even to marry his daughters.

- b) ***** ***** *****
- c) ***** ***** *****
- d) *That the Petitioner has also sold the property at Varanasi which was ancestral property and; thus he is wasting all money.*
- e) *That the present Relinquishment Deed has been executed by the Petitioner voluntarily along with other children in favour of the Respondent No. 1 as it is the Respondent No. 1 who was meeting all the needs of the entire family and married her three sisters as well and has the only house to live and his own earning, life savings have been spent by him on his brother and sisters and the Petitioner. The Relinquishment Deed was executed on*

03.10.2012 and the petition is totally silent about the fact that Relinquishment Deed was executed with any condition of providing basic amenities and physical needs to the Petitioner. The Petitioner is having sufficient money and in fact there was no question of a conditional transfer. In these circumstances the petition is not maintainable.

35. In response thereto the Respondent no. 1 in his replication has stated as under:-

a) Para- 1(a) of preliminary objection is totally wrong and denied. The Relinquishment Deed dt. 3.10.2013 executed in favour of the Respondent No. 1 was for consideration in cash and kind, which the Respondent No.1 had promised to all the Releasors including the Petitioner. That it is being reiterated herein that Respondent No. 1 had promised/assured to provide boarding/lodging and monthly monetary allowance to the Petitioner in lieu of foregoing right in the property. Whereas other releasers of the deed who are brothers and sisters of the Respondent No. 1 were promised substantial monetary consideration. It is totally wrong that Respondent No. 1 had looked after the family or got three sisters married. At the time of death of Petitioner's wife (Zahida Bibi), Respondent No. 1 was about 18 years old and studying in the school. In fact whole family was supported by the Petitioner and deceased wife, and after the death of wife Petitioner got his three daughters married. Rest of the Para is wrong and not admitted as laid.

b) *****

- c) *****
- d) *Para No. (1) (d) of the preliminary objection is totally wrong and denied.*
- e) *Para No. (1) (e) is false, baseless and hence denied. As mentioned earlier. Respondent No.1 was about 18 years of age and youngest child of the Petitioner. Respondent No.1 was studying in school when his mother died, and his two elder brothers were earning, so it is totally wrong to aver that he supported his brothers. The said relinquishment deed is in fact a transfer/conveyance of property under the garb of relinquishment deed. The Respondent No. 1 had promised handsome amount of Rupees Seven Lacs to each of the releasors, and Petitioner was specifically assured of boarding/lodging and monthly cash allowance in lieu of relinquishment of right in the property. The Petitioner is a frail and old senior citizen without any means of livelihood and is dependent on monetary help from his children.*

(underlining supplied)

36. Respondent no. 1 in his replication has categorically taken a stand that the said relinquishment deed is a transfer/conveyance of property under the garb of relinquishment deed. The Petitioner had promised a handsome amount of Rupees Seven Lacs to each of the releasors (other brothers and sisters), and Respondent No. 1 was specifically assured of boarding/lodging and monthly cash allowance in lieu of relinquishment of right in the property.

37. Though, the Petitioner has denied, the contention of Respondent No. 1 that the Relinquishment Deed was not merely out of love and affection but was for consideration, the statements of the sisters as well as the alleged receipts that have been alleged to have been produced by the Petitioner contradicts the stand of the Petitioner.

38. The receipts that have been alleged to have been produced before the Tribunal, (which as per the Petitioner are not available on the record) allege that a sum of Rupees Seven lakhs has been paid to the sisters, including the Respondent No. 1.

39. The Petitioner was directed by the Tribunal by order dated 19.05.2015 to produce the sisters. The sisters appeared and deposed before the tribunal. Their statement is recorded as part of the order. The Tribunal in order dated 02.06.2015 had noted *“Three witnesses daughters of Petitioner deposed orally. Zebon Nisha, Farida and Rukhsana deposed that till the death of mother, the household expenditure was met through ‘dyeing’ business at home, and Petitioner/father used to do all outside work and dealt with customers. The relinquishment deed in question in fact is not a relinquishment deed, rather it is a sale deed as Respondent Zakaria had promised to give money to all releasers in lieu of others share to the property. Petitioner was not promised any money but rather Respondent Zakaria had promised to look after the Petitioner for all his needs and requirements. But the Respondent has turned away the Petitioner from the property after execution of relinquishment deed.”*

40. The relinquishment deed when read in conjunction with the alleged receipts filed by the Petitioner show that even the case of the Petitioner is that the relinquishment deed is not completely out of love and affection. Though the Petitioner has himself filed those receipts and relied upon the same, the Petitioner has not come out clean about the same. The receipts show that the releasers are alleged to have received money in lieu of relinquishing their share. The Petitioner, while relying upon the receipts, continues to deny that the relinquishment was for consideration. The Petitioner has taken contradictory stand.

41. As noticed above the Petitioner in his written statement before the Tribunal did not even aver that the relinquishment deed was for consideration or any amount was paid against any receipt. The receipts were neither relied upon nor produced.

42. The Petitioner has also sought to contend that the sisters had not deposed before the tribunal as noticed above and the statement has been altered.

43. Record reveals that the statement forms part of the order sheet of the Tribunal and the margin of the order sheet bears the signatures not only of the sisters but also of the Petitioner.

44. The stand of the Petitioner is thus not believable. The Petitioner cannot be permitted to deny the statement of the sisters as recorded by the Tribunal. The said statement is recorded as part of the order sheet,

which bears the counter signatures of the Petitioner. The Petitioner has thus not approached this court with clean hands.

45. In view of the above, the finding returned by the Tribunal that the relinquishment deed was in lieu of consideration in cash or kind cannot be faulted. The direction of the Tribunal that the relinquishment deed in so far as the Respondent No. 1 is concerned is declared void also does not warrant any interference.

46. Even though the finding of the Tribunal that the relinquishment deed is void, in so far as the Respondent No. 1 is concerned, the Tribunal has erred in declaring the share of Respondent No. 1 as $\frac{1}{4}^{\text{th}}$. The relinquishment deed records the share of Respondent No. 1 as $\frac{1}{8}^{\text{th}}$. The Tribunal has applied the share as $\frac{1}{4}^{\text{th}}$, by applying the principles of Muslim Law.

47. The Tribunal has clearly exceeded its jurisdiction. The Tribunal was called upon only to ascertain as to whether the relinquishment deed was void in view of section 23 of the Act or not. Having returned the finding that the same is void in terms of section 23, the Tribunal has exceeded its jurisdiction in holding the share of the Respondent No. 1 as $\frac{1}{4}^{\text{th}}$.

48. The Tribunal in these proceedings was not called upon to determine the same. On declaration of the Relinquishment deed qua the Respondent No. 1 as void, the consequences of such finding is to follow.

49. Furthermore, the Tribunal by the impugned judgment has also exceeded its jurisdiction in directing a partition of the property and delivery of possession to Respondent No. 1. Directing a partition of the property is clearly beyond the mandate of Section 23 of the Act.

50. It may be noticed that the Respondent No. 1 has made a bald averment that the Petitioner served Respondent No. 1 only for few months and thereafter he virtually threw away Respondent No. 1 from the house and did not allow Respondent No. 1 to use and occupy the said house as promised.

51. No details have been given by Respondent No. 1 as to whether he ever resided in the said house and as to when he was thrown out. Petitioner in his written statement has categorically stated that after the demise of his mother, Respondent No. 1 married a young lady and on questioning of neighbours and family members left Delhi and started residing at Varanasi. Respondent No. 1 in his replication has not specifically denied this allegation and has made a mere bald denial that the para as laid is denied.

52. Since Respondent No. 1 has not been able to substantiate that he was ever residing in the house and was turned out, the tribunal has erred in directing that he be put in possession of a separated portion.

53. In so far as the direction issued by the Tribunal, as against the Petitioner as well as other two brothers, of providing a sum of Rs. 2000/- per month to Respondent no. 1 are concerned, perusal of

record shows that Petitioner has not denied that Respondent no. 1 is aged over 87 years and is not doing any business and does not have any other livelihood. Since the Respondent no. 1 is aged over 87 years and does not have any independent source of income, the Petitioner being one of the sons of Respondent no. 1 would certainly have the liability to maintain his father. In view of the above, the finding of the Tribunal, inter-alia, directing the Petitioner to pay a sum of Rs. 2000/- per month as maintenance allowance does not warrant any interference.

54. In view of the above, the writ petition is disposed of as under:

- (i) the finding of the Tribunal that the relinquishment deed dated 05.10.2012, qua the Respondent No. 1 is declared void in terms of section 23 of the Act, does not warrant any interference;
- (ii) the declaration that the share of Respondent No. 1 is 1/4th in the subject property is set aside;
- (iii) the direction that the Petitioner shall handover back to the Respondent No. 1 1/4th portion about 53 sq. yards (from Ground Floor to Top Floor including open terrace) of the property, and get, the same properly demarcated by brick wall within 30 days, of the receipt of order is also set aside;

- (iv) the directions that the three sons of the Respondent no. 1 shall make a payment of Rs. 2000/- each per month as maintenance allowance to Respondent No.1 by 10th of every month by depositing the same in the bank account of Respondent No. 1 or in cash against proper acknowledgement receipt and that they shall look after and take proper care of Respondent No. 1 does not warrant any interference.

55. It is clarified that declaration that the Relinquishment deed is void in so far as Respondent No. 1 is concerned, is in terms of Section 23 of the Act and shall have no bearing on the relinquishment deed, in so far as it relates to the brothers and sisters of the Petitioner.

56. It is further clarified that this order would be without prejudice to the right of the Respondent No. 1 to have his share determined, demarcated and partitioned in accordance with law.

57. The petition is disposed of in the above terms with costs quantified at Rs 20,000/- to be paid by the Petitioner to Respondent No. 1.

SANJEEV SACHDEVA, J

October 10, 2017
rs/HJ