

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 24.04.2019

+ **W.P.(C) 12318/2015 and CM Nos. 32689/2015 & 34902/2017**

RENU ANAND

..... Petitioner

versus

THE MAINTENANCE TRIBUNAL & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner :Mr K.K. Chuchar, Advocate alongwith
:petitioner in person.

For the Respondents :Mr N.K. Kantawala and Mr Parashar
: Sharma, Advocates for R-3 and R-5.
: Mr T.K. Goon, Advocate for R-2.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 12.12.2015 (hereafter 'the impugned order') passed by the Maintenance Tribunal (Central District) Delhi (hereafter 'the Tribunal'), whereby the application filed by the petitioner's late mother, Smt Satya Rani Chopra, for cancellation of the gift deed in favour of the petitioner was allowed. The Tribunal accepted Smt Satya Rani Chopra's claim that she had executed the gift deed under undue influence and induced by fraud and mis-representation.

2. The petitioner has assailed the impugned order on merits as well as on the ground that the Tribunal lacked the jurisdiction to pass the impugned order. According to the petitioner, the Tribunal does not have any jurisdiction to set aside gift deed on the grounds as alleged by late Smt Satya Rani Chopra.

Factual Background

3. Sh Krishan Kumar Chopra, the late husband of Smt Satya Rani Chopra was the owner of the property bearing no. 51/15 Old Rajinder Nagar, New Delhi. The said property comprised of basement, ground floor, first floor, second floor and a third floor. The first and the second floor of the property were sold by Sh Krishan Kumar Chopra during his life time.

4. He had executed a will dated 20.11.1993 bequeathing the basement and the ground floor of the aforementioned property to his son Sh Abhilash Chopra (original respondent no.4 in this petition). The third floor with the roof rights was bequeathed to his wife (Ms Satya Rani Chopra – original respondent no.2) and is, hereafter, referred to as ‘the property in question’.

5. Late Sh Krishan Kumar Chopra and Satya Rani Chopra had six children; five daughters, including the petitioner, and one son. Three of their daughters, namely, Smt Seema Hassan Chopra, Ms Kirti and Smt Savita Narula are arrayed as respondents to the present petition. One of her daughters, Ms Anita Chhabra had predeceased Smt Satya Rani Chopra as she had expired in the year 2009.

6. Smt Satya Rani Chopra claims that she used to reside in the said property (third floor of the property bearing 51/15 Old Rajinder Nagar, New Delhi) after the demise of her late husband. She had also executed a will dated 01.08.2006, bequeathing the property in question to all her five daughters. It is claimed that she thereafter, executed another will on 20.10.2007 bequeathing the property in question in favour of her three daughters, namely, the petitioner, Smt Seema Hassan Chopra and Smt Savita Narula. On 10.02.2009, she executed a gift deed – which is central to the controversy in this petition – in favour of the petitioner and Seema Hassan Chopra.

7. The Gift Deed in question was witnessed by the petitioner's husband Sh Naveen Anand and one Sh Subhash Chand, who is stated to be working as an accounts assistant in the office of the Chief Accounts Officer, Northern Railway Headquarters, Baroda House, New Delhi, which is a subordinate position to the petitioner.

8. On 04.12.2014, Smt Satya Rani Chopra filed a petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereafter 'the Act'), *inter alia*, praying for the cancellation of the Gift Deed dated 10.02.2009. She alleged that the petitioner and her husband Sh Naveen Anand had coerced her and made her sign certain documents, representing that the same were to ensure equal distribution of the property in question amongst her five daughters. She also alleged that they (petitioner and her husband) had assured her that they would look after her and fulfill all her basic necessities. She claimed that the petitioner's husband had assured her

that by the said Gift Deed, the property in question would fully and finally vest with all her five daughters.

9. The Tribunal accepted the claims made by Smt Satya Rani Chopra and held that the gift deed had been obtained by fraud and coercion. Accordingly, by the impugned order, the Tribunal cancelled the Gift Deed in question and issued further directions. The operative part of the impugned order is set out below:-

“1. That the gift deed bearing Regn. No. 970 in Addl. Book NO.I Volume No. 13098 on Pages 55 to 63 dt. 10.02.2009 in favour of respondent No.1 & 2 is cancelled and declared null and void for all purposes.

2. That Sub-Registrar SR III Asaf Ali Road, New Delhi is directed to enter the same in the record, so that respondents No.1 & 2 or any other person under them do not act on the said gift deed.

3. That the respondent No.1 & respondent No.2 shall handover vacant possession of the property to the petitioner within 15 days of the receipt of the order.

4. That respondent No.1 shall surrender and hand over all the documents in her possession pertaining to the said property to the petitioner. Further any other valuables, jewellery, share certificate of the petitioner in possession of the respondent No.1 are to be handed over to the petitioner forthwith.

5. That all the respondents shall lookafter and take care of the petitioner, and shall not create

any hinderance in the peaceful life of the petitioner.

6. That S.H.O. Rajender Nagar is directed to ensure that in compliance of the order possession is handed over to the Senior Citizen petitioner within the stipulated time, and also depute Beat Constable for weekly visit to the petitioner, to ensure that her life and property is protected.”

Submissions

10. Mr Bhuchar, learned counsel appearing for the petitioner has assailed the impugned order, essentially, on three fronts. First, he submitted that the impugned order was without jurisdiction, as there were no averments in the application filed by Smt. Satya Rani Chopra (respondent no.2) that she executed the Gift Deed in question in consideration for the assurance that she would be looked after in her old age and that the petitioner would provide basic amenities and cater to her basic physical needs. Further, there were no averments that the petitioner had failed to look after her mother (Smt. Satya Rani Chopra). He submitted that the principal allegation made by Smt. Satya Rani Chopra was that the Gift Deed dated 10.02.2009 had been executed by coercion, fraud and by falsely representing that the property in question would vest with all her daughters. He submitted that there was no fraud as contemplated under Section 23 of the Act.

11. Second, he submitted that the Tribunal had passed the impugned order without recording the evidence and without affording the petitioner an opportunity to cross-examine Smt. Satya Rani

Chopra. He also referred to Section 6 of the Act and submitted that in terms of sub-section (4) of Section 6 of the Act, evidence was required to be recorded in the presence of the children or the relatives against whom proceedings had been initiated. He also referred to the decision of the Kerala High Court in *Abhilash V. S. & Ors. v. Sarasan & Ors.: W.P.(C) 19704/2014, decided on 23.01.2015* in support of his contention.

12. Lastly, he contended that the petitioner was not permitted to take the assistance of an advocate before the Tribunal and, therefore, the impugned order was vitiated. He referred to the decision of the Punjab and Haryana High Court in *Paramjit Kumar Saroya v. Union of India and Ors: AIR 2014 P&H 121* and on the strength of the said decision, contended that the petitioner had the right to be represented by an advocate.

Reasons and Conclusion

13. At the outset, it is necessary to bear in mind that the Act was enacted as a beneficial legislation in order to address the issues faced by senior citizens and recognising that the ageing had become a major social challenge. It would be relevant to refer to the statement of objects and reasons for enacting the Act, which are set out below:-

“STATEMENT OF OBJECTS AND REASONS

Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family

system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly, widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting-up oldage homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

The Bill, therefore, proposes to provide for:-

- (a) appropriate mechanism to be set-up to provide need-based maintenance to the parents and senior citizens;
- (b) providing better medical facilities to senior citizens;
- (c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;
- (d) setting-up of oldage homes in every district.

The Bill seeks to achieve the above objectives.”

14. This Court, in several decisions, has observed that the provisions of the Act must be interpreted liberally in aid of the senior citizens. In *Shabad Khairi & Anr. v. The State & Ors.: LPA No.783/2017, decided on 22.02.2018*, the Division Bench of this Court had observed that *“beneficial legislation in a welfare State demands a liberal interpretation wide enough to achieve the legislative purpose and be responsive to some urgent social demand in a welfare state.”*

15. The provisions of the Act, including Section 23, must be read liberally and in a purposive manner. At this stage, it would be relevant to refer to Section 23(1) of the Act, which is set out below:-

“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.”

16. The principal object of the aforesaid Section is to enable the senior citizens and parents to secure their basic physical needs and amenities and to void any transfers made with the understanding that their needs would be looked after by the transferee, if the transferee fails to live-up to the said commitment.

17. This Court in *Smt. Sunita Bhasin v. State of NCT of Delhi And Ors.: W.P.(C) 13139/2018, decided on 05.12.2018* held that it is implicit in any gift of property, that is executed out of natural love and affection, that the transferee would reciprocate the love and affection and, at the very least, provide the basic amenities and meet the physical needs of the donor and express stipulation that the gift deed has been made on an understanding that the transferee would look after the basic needs of the donor is not necessary.

18. This case must be considered bearing the aforesaid in mind.

19. The contention, that the Tribunal is bound to record the evidence before proceeding to adjudicate any claim under Section 23 of the Act and the petitioner had a right to cross-examine Smt. Satya Rani Chopra in respect of her complaint, is unpersuasive. The Tribunal is required to follow a summary procedure and it is not mandatory for the Tribunal to record evidence or to permit any cross-examination. The reference to Section 6(4) of the Act is misplaced. It is apparent from the plain language of Section 6 of the Act that the same is applicable only in cases of application for maintenance under Section 5 of the Act. Sub-section (4) of Section 6 of the Act mandates that all evidence shall be recorded in the presence of children or relatives against whom an order for payment of maintenance is proposed to be made. In the present case, no direction has been issued for payment of maintenance.

20. The contention that the impugned order is invalid on the ground that the petitioner was not permitted representation by an advocate, is unpersuasive. Section 17 of the Act expressly provides that notwithstanding anything contained in any law, any party to a proceeding before a Tribunal shall be represented by a legal practitioner. The validity of Section 17 of the Act has not been challenged by the petitioner. It is also relevant to note that the hearing was concluded on 30.06.2015 and the petitioner's request to be represented by an advocate was denied by an order passed on the said date. However, the petitioner took no steps to challenge the said order at the material time and has not assailed the order in the present petition as well.

21. It would be relevant to refer to the averments made by Smt Satya Rani Chopra in her application for setting aside the Gift Deed bearing the aforesaid in mind.

22. Smt Satya Rani Chopra had made the said application in Hindi language. The English translation of paragraphs 5 to 9 of the said application are relevant and set out below:-

“5. My daughter Renu anand and her husband with the object of assuring my basic necessities and needs and for equally distributing my property amongst all my five daughters persuaded, influenced and forced me to sign on some blank papers. On my making enquiry about those papers they told me that through these papers the would distribute my property equally amongst my five daughters; when I informed them that I had already executed a Will/ Vasiatnama in favour of my daughters,

they then assured me that my property fully and in foolproof manner would devolve in favour of your daughters which can not be changed later on.

6. My daughter Renu Anand and her husband Naveen Anand, who is an advocate persuaded/forced(Coerced) me to execute a document said to be a Gift Deed in respect of the 3rd Floor with terrace of the property No. 51/15, Old Rajinder Nagar, New Delhi-110060. Photocopy of the said Gift Deed dated 10/02/2009 is attached herewith.

7. After the execution of the said Gift Deed, Renu Anand started visiting me on the excuse of inquiring about my welfare and slowly slowly on excuses started taking my Jewlery, money, share certificates, property Title Deeds, my husbands original Will and Pan Card etc. and kept under her control and also kept on assuring me that 3rd Floor & Terrace of property No. 51/15, Old Rajinder Nagar, New Delhi-110060, all are mine. But a lot of changes took place in her attitude. In the year 2013, Renu Anand fraudulently took away keys bunch of the property from me when I was living in the house of my older daughter but when I demanded return of keys she refused and said now she had no right over the property and I could not now enter in the property. This way Renu Anand has taken over the control of the entire property.

8. Even now I am living with my older daughter and on the bases of the said Gift Deed Renu anand and Seema Hasan Chopra with the objective of payment of House tax, the got the property mutated in their names. Electricity Meter and Water Meter are also in their names and electricity and water bills are also being issued in their names.

9. All this is not acceptable to me because this inhibits my freedom, along with this it is my wish that

after my death my property be delivered equally amongst my daughters. Apart from this, despite my being absolute owner of my house I am being forced to be dependent on my ready to happily keep me with them.

23. It is apparent from the above that the principal case set up by Smt. Satya Rani Chopra was that she had been induced to sign blank papers on a representation that the same was necessary for distributing the property amongst her five daughters. Although, it is stated that an assurance for meeting her basic necessities and needs was also made, that was not the main thrust of her allegation. It is also apparent that there is an apparent inconsistency in the averments made in her complaint. On one hand, Smt. Satya Rani Chopra had asserted that she was persuaded to sign blank documents and in the same breath, also asserts that she was forced (coerced) to sign blank papers.

24. Whilst it was Smt Satya Rani Chopra's case that she had signed on blank papers believing the same to be necessary for distributing the property in question amongst her five daughters and on assurance of her basic necessities, there is no allegation that she had executed the Gift Deed in question based on an assurance that her basic necessities would be taken care of. It is seen that apart from alleging that the petitioner and her husband had "persuaded/forced (coerced)" her to execute the Gift Deed in question, there are no other particulars necessary to establish a case of fraud.

25. It is also relevant to note that the petitioner had presented the document for registration before the Registering Authority and it is

difficult to accept that she was forced to do so. It is also not disputed that Smt. Satya Rani Chopra was well conversant in Hindi language. A careful reading of her complaint also indicates that there is no assertion that she was unaware of the contents of the documents executed by her. A plain reading of paragraph 6 of her complaint indicates that she had admitted that she had executed the document *“said to be a Gift Deed in respect of the 3rd Floor with terrace of the property No. 51/15, Old Rajinder Nagar, New Delhi 110060”*. Her averment, that she had signed documents under the belief that it was necessary to distribute her property equally amongst her five daughters, was made in respect of “some blank papers” and not with regard to the Gift Deed in question.

26. Admittedly, the property in question was mutated in the name of the petitioner and Ms Seema Hassan Chopra. The electricity and water bills were also issued in their names. Admittedly, the same were paid by the petitioner/ Smt. Seema Hassan Chopra. Plainly, if Smt Satya Rani Chopra believed that she continued to own the property in question, she would have taken steps to ensure that the utilities are paid for or made arrangements for the same.

27. It is stated that the property in question had been leased to a tenant in the past. There is no explanation as to why steps were not taken by Smt. Satya Rani Chopra to lease the property in question considering that she was not using the said premises.

28. A plain reading of the petition also indicates that Smt. Satya Rani Chopra was being looked after. Her complaint was that she was deprived of the property in question and the same had inhibited her freedom. She had expressed her dissatisfaction at being dependent on her son and daughters, even though they were happy to keep her with them. There is no material to conclude that the basic needs of Smt Satya Rani Chopra were not being met.

29. Although, it was asserted by Smt. Satya Rani Chopra that she had executed a Will dated 01.08.2006 in favour of all her daughters, she had failed to mention the subsequent Will dated 29.10.2007, which was registered before the Sub-Registrar III on 30.10.2007. By the said Will, she had bequeathed the property in question to four of her five daughters, namely, Smt. Savita Narula, Smt. Anita Chhabra, the petitioner and Smt. Seema Hassan Chopra. She had excluded her daughter Smt. Kirti and her son Mr Abhilash Chopra, *inter alia*, alleging that they had harassed and misbehaved with her. In the counter affidavit filed by Smt. Satya Rani Chopra, she did not dispute that she had executed the Will on 29.10.2007; she claimed that the said Will was also executed under undue influence of the petitioner and not out of her own free Will. It is also relevant to state that by the Gift Deed in question, the property was transferred to the petitioner and respondent no.3 (Smt. Seema Hassan Chopra). Concededly, Smt. Seema Hassan Chopra is a resident of USA and there is no allegation that she had in any manner coerced or forced Smt. Satya Rani Chopra to execute the Gift Deed in question.

30. Although, proceedings under the Act are summary proceedings, the Tribunal is required to evaluate the material available on record. If the facts of the case are considered in totality, there is little material to conclude that Smt Satya Rani Chopra was defrauded to execute the Gift Deed in question. Although, she was aware that she had executed the said Gift Deed in 2009, there is no communication prior to her filing the complaint in the year 2014 alleging any fraud. An inference of fraud cannot be readily drawn without material particulars. Section 23 of the Act does provide recourse to senior citizens to avoid transfer of their property to relatives, if their needs are not met. In the present case, the basic needs of the Smt Satya Rani Chopra were, concededly, being met, albeit not by the petitioner.

31. In view of the above, the present petition is allowed and the impugned order is set aside. All pending applications stand disposed of.

April 24, 2019
Pkv/MK

VIBHU BAKHRU, J