

S/L 37
25.02.2021
Court. No. 19
GB

C.O. 202 of 2020

Sri Dipesh Mondal
Vs.
Rekha Mondal & Ors.

(Through Video Conference)

Mr. Sarbananda Sanyal.

... for the Petitioner.

Mr. Mrinal Kanti Ghosh.

... for the Opposite Parties.

This revisional application has been filed by the opposite parties in Case No.06 of 2014 which was an application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the 'said Act'). The Sub-Divisional Officer, Domkal, Murshidabad in. Case No.6 of 2014 passed an order on September 17, 2014 cancelling the deed No.10156 of 2011 dated October 21, 2011 executed by the father of the petitioner, late Harendra Nath Mondal in favour of the petitioner and declared the same void under the provisions of Section 23 of the said Act.

Aggrieved by the said order, the petitioner preferred an appeal before the District Magistrate. By communication dated June 10, 2019, the office of the District Magistrate intimated the petitioner that the

appeal before the District Magistrate was not maintainable under Section 16 of the said Act. Thereafter, this revisional application has been filed.

The contention of the petitioner is that the Sub-Divisional Officer did not have the jurisdiction to entertain the application under Section 23 of the said Act and to pass the order impugned declaring the deed of gift as null and void on the basis of the petition filed by the father of the petitioner. In the petition it was clearly and unequivocally stated that the petitioner by practising fraud upon the father made him sign on blank white sheets of paper under the plea of the same being required for the treatment of the father and got the property transferred in his name. It was further stated that when the son started neglecting the parents, the late father of the petitioner herein, intimated the son that he would sell the property. At this juncture, the father was told by the son that he had created a deed of gift in his favour by practising fraud on the father.

Emphasis has been placed on the deed of gift to show that the gift was unconditional. It has been mentioned in the deed that the father being happy with the treatment of the son and being unable to look after the property due to his old age, had voluntarily gifted the said property to the son. It has been

specifically stated that the father thought it fit to gift the property to the son within such time he was still keeping well and before his health started fading.

Reliance has been placed in the decisions of ***Mita Panda & Ors. versus Minati Chakraborty & Ors.*** reported in **(2019) 1 WBLR (Cal) 668** and ***Anirban Chakraborty versus State of West Bengal & Ors.*** reported in **(2019) 4 CivCC 340**. In both these decisions, this Court was of the opinion that when no condition of looking after the parents was attached to the deed of gift, the Sub-Divisional Officer would not be empowered to declare the deed as void. It was only a Civil Court, which could decide whether the deed was obtained by fraud or misrepresentation.

Mr. Ghosh, learned advocate appearing on behalf of the opposite parties submitted that the father having died after the order impugned was passed, the petitioner did not have any right to carry the proceeding before this Court against the heirs of the father. He relied on the decision of this Court in the matter of ***Payel Sinha versus Ratna Biswas Sinha*** passed in **C.O. 420 of 2019** in support of his contention that the section contemplated an action by the transferor against the transferee and substitution of the widow of the deceased transferor in the proceeding under Section 23 of the said Act before the

Sub-Divisional Officer was not maintainable as held in the said decision. But, if a condition was attached to the deed of gift then the mother had the right to receive maintenance under Section 23 (2) of the said Act.

Mr. Ghosh further submitted that in the instant case once the father had died, by applying the ratio of the aforementioned decision, the revisional application against the heirs of the deceased father (transferor) was not maintainable. He further submitted that in an enquiry report prepared by project officer ICDS project during the pendency of the appeal, there was an admission on the part of the petitioner that the parties were living happily and accordingly the record of rights have already been prepared in the names of all the heirs of the deceased.

Mr. Ghosh further submitted that although the petition before the Sub-Divisional Officer was filed with the allegation of fraud, misrepresentation and fraudulent creation of the deed of gift behind the back of the transferor, yet, the correct interpretation would be that the transferor gifted the property to the son with the expectation that the son would look after the parents.

Mr. Ghosh's contention was that the Child Development Officer had made an enquiry and had

recorded the submission of the petitioner that everybody was happy with the decision of the court.

I have heard the rival contentions of the respective parties.

The deed of gift does not impose any condition on the donee to look after the father. Rather, the deed of gift categorically stated that the father wanted to gift the property to the son due to his failing health and before he was rendered totally inactive due to old age and infirmity. No condition for looking after the parents in lieu of such gift has been mentioned. It is settled law that a deed should be construed as it reads and the terms and conditions of a deed should be considered and interpreted on what has been written, without adding or subtracting anything therefrom. Implications, mind set and thought process of the transferor are not to be read into any instrument, in which the terms and conditions are unambiguous and unequivocal.

In this deed of gift, there is no such covenant or condition imposed upon the son to look after the father and the said argument of Mr. Ghosh that an implied condition should be read into the deed and the court should look into the purpose behind such gift, is not accepted. The clauses in the deed of gift cannot be read down. In the petition filed before the Sub-

Divisional Officer it has been categorically stated that the son had practised fraud on the father and obtained signatures of the father on blank sheets of paper and fraudulently got the property transferred in his name behind the back of the father and without the father's consent and knowledge. The transferor/father approached the Sub-Divisional Officer under Section 23 of the said Act for an order to set aside such a deed of gift and declare the same as null and void on the ground of the same being a fraudulent and a manufactured deed.

Section 23(1) of the said Act reads as follows:

“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.”

Section 23 of the said Act is clear and it provides that when the property is transferred 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, the transfer of the said property shall be deemed to be made by fraud, coercion or undue influence and the transferor could approach the tribunal for declaration that the same was void. Thus, the very section itself does not support the contention of Mr. Ghosh.

The next contention of Mr. Ghosh that once the transferor dies, the proceeding lapses is also not accepted. The decision of His Lordship in **Payel Sinha (supra)** was on the point as to whether the widow of the transferor could be substituted when the proceeding under Section 23 of the said Act was pending before the Sub-Divisional Officer.

From the very language of Section 23 of the said Act, it is clear that only the transferor could pray for declaration that the deed of gift was void. Thus, His Lordship in **Payel Sinha (supra)** held that the cause of action was only available to the transferor and the widow of the transferor would not get substituted in the proceeding.

In the instant case, the situation is completely different. The transferor's application for declaration of the deed of gift to be void was allowed. The result of

such a declaration was that the property reverted back to the heirs of the transferor, namely his widow and children. The opposite parties herein are three sisters and the mother of the petitioner, who by dint of the order of the Sub-Divisional Officer got equal 1/5 share in respect of the property along with the petitioner. Thus, the petitioner who has suffered an order, has every right to proceed against the heirs of the father who stand to benefit from the order impugned before this Court. The effect of the order has conferred proprietary rights on the opposite parties by curtailing the share of the petitioner. Thus the petitioner has every right to have the order set aside by a superior forum in a proceeding against the other heirs of his deceased father.

Reference is made to the decision of **Smt. Yallawwa vs. Smt. Shantavva** reported in **(1997) 11 SCC 159**, where the Hon'ble Apex Court has held that even after a decree of divorce was obtained by the husband against the wife, the wife had the right to file an appeal and such appeal would not abate on account of death of the respondent\husband. Whether such death takes place prior to the filing of appeal or during the pendency of the appeal, in all such cases, other legal heirs of the deceased husband could be brought on record as opponent or respondents, in

such proceedings by the aggrieved spouse who wants such decree to be set aside and when the other heirs of the deceased would naturally be interested in getting such a decree confirmed. Even if the proceedings were purely based on a personal cause of action till they reached finality at the trial, once a decree of divorce was passed certain legal effects regarding the status of the parties and even proprietary rights flowing from such decree would arise as a direct consequence of such a decree. This application is maintainable against the heirs of the transferor.

For the reasons aforesaid, the order dated September 17, 2014 does not have any legs to stand on and the same is accordingly set aside.

There may be an enquiry made by the District Magistrate but once the District Magistrate himself has said that the appeal was not maintainable such direction and enquiry have lost its value. However, the opposite parties may take recourse to the said report at the appropriate stage if permitted by law.

The revisional application is allowed.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)