

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3201 OF 2021

Vikas Prabhakar Patil (Shewale)

...Petitioner

V/s.

Shri Prabhakar Dawal Shewale & Anr.

...Respondents

Mr. G. S. Godbole i/b. Mr. Sumit Kothari and Mr. Shon Gadgil for Petitioner.
Mr. J. D. Khairnar for Respondents.

CORAM : G. S. KULKARNI, J.

DATE : NOVEMBER 24, 2021

PC :

1. Rule. Respondents waive service. By consent, heard finally.
2. This petition takes an exception to the judgment and order dated 26 April, 2021 passed by the learned Sub-Divisional Officer, Malegaon whereby the proceedings as filed by the respondents under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, "the Act") was allowed.
3. Before the Sub-Divisional Officer, the case of the respondents was in regard to a Sale Deed dated 17 March, 2013 as executed by the respondents in favour of their son which has been set aside stated to be on the grounds under Section 23 of the Act.

4. Perusal of the application as filed by the respondents as also perusal of the Sale Deed in question in no manner would show that this was a case where the respondents/senior citizens after the commencement of the Act, have transferred by such sale deed, their property, subject to the condition that the petitioner/transferee shall provide the basic amenities and basic physical needs to the respondents/transferees. Once such conditions were not contained in the Sale Deed, certainly the consequences brought about by the provisions of Section 23 were not attracted. Perusal of the impugned order would show that such basic tenets and requirements of the provisions of Section 23 of the Act are not fulfilled when the respondents invoked the said provision in praying that the sale deed be set aside.

5. There appears to be also no dispute that the only provision which was invoked by the petitioner was Section 23 of the Act as the only relief which was sought before the Maintenance Tribunal was to set aside the sale deed under the provisions of Section 23 of the Act.

6. For the above reasons, certainly a ground is made out by the petitioner to set aside the impugned order passed by the Maintenance Tribunal being patently in the teeth of Section 23 of the Act. The respondents if are otherwise aggrieved by the said sale deed on the ground

that as the same was not executed in accordance with law for any other reasons as may be available to them, then certainly it cannot be said that no remedy is available to them to adopt such appropriate proceedings as may be permissible in law.

7. Mr. Khairnar, learned counsel for the respondents on instructions, very fairly would not dispute such position and he would also agree that in that regard, a remedy for the respondents would be, to file a suit. In view of fair approach as adopted on the part of the respondents, in my opinion, no useful purpose would be achieved by keeping this petition pending. The petition is accordingly required to be allowed by the following order:-

ORDER

- i. The impugned order dated 26 April, 2021 passed by the Maintenance Tribunal is quashed and set aside.
- ii. The respondents are at liberty to avail such appropriate remedy including civil suit to assail the sale deed as executed by the petitioner.
- iii. If such suit is filed, all contentions of the parties in that regard are expressly kept open. The Civil Court shall decide such suit without being influenced by the impugned order dated 26 April, 2021 passed by the Maintenance Tribunal in the present proceedings.
- iv. Disposed of in the above terms. No costs.

(G. S. KULKARNI, J.)