

S/L 21
08.9.2022
Court No.652
SD

CO 1420 of 2021

Merina Easmin
Vs.
Imran Ali Sk.

Mr. Atis Kumar Biswas
Mr. Amit Singh
Ms. Jyoti Agarwal

...for the Petitioner.

Mr. Prabir Majumder
Mr. Snehansu Majumder

...for the Opposite Party.

Being aggrieved and dissatisfied with the order dated 07.01.2020 and also the order dated 07.7.2021 passed by the Tribunal headed by Sub-Divisional Magistrate, Tehatta, Nadia in Maintenance Case No.709 of 2018 in connection with a proceeding under Section 4 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter called as 'the Act of 2007'), the present revisional application has been preferred by the petitioner under Article 227 of the Constitution of India.

At the outset let me reproduce both the impugned orders:-

07/01/2020: "Put up today.

Petitioner has submitted documents to show the medical expenses of petitioner, which comes to around Rs.3,000/- per month.

Along with this petitioner has submitted grocery bills amounting to Rs. 4500/- per month and other miscellaneous bills.

The income statement of petitioner shows 4,500/- per month from petitioner's wife as ICDS worker.

In light of this situation, an interim monthly allowance of Rs. 10,000/- to the parents u/s 5(2) of the Maintenance of and welfare of Parents and Senior Citizens Act, 2007 is to be made by the O.P., i.e. Merina Yeasmin. O.P. is directed to make the payment before 7/2/2020 for the month of January, 2020.

Till next hearing, petitioner and O.P. are requested to maintain peace and harmony and status quo in terms of residence.

Petitioner and O.P. are directed to appear before this Court on 10/2/2020 for next hearing.

To next date-10/2/2020."

07/07/2021: "Heard both parties. OP denies to pay Rs.10,000/- per month to her parents. So as per the claim of 1st party, it is hereby ordered that the deed bearing No.5732/2005 dt. 26.10.2005 & 10435/2014 dt. 3.12.2014 will be cancelled. Competent authority will act as per the order.

Thus the case is disposed of."

Mr. Atis Kumar Biswas, learned advocate appearing on behalf of the petitioner, submits that the order impugned is a cryptic one and there is no reflection in the order as to whether the opposite party/father had any other property or not. Moreover, the opposite party/father was required to file application as per Form A, prescribed as annexure in the West Bengal Maintenance and Welfare of Parents and Senior

Citizen Rules, 2008, which he had not done and Tribunal ignoring the same and without considering various aspects of the matter passed the impugned orders.

He further submits that the voters' list published for Panchayat Election 2020, shows that the age of the father of the petitioner is 62 years. He further submits that the learned Tribunal failed to appreciate that the opposite party has no locus to initiate the proceeding under the Act of 2007 praying for cancellation of deeds, which was executed in the year 2005 and 2014 as the petitioner attained the age of 60 years only in the year 2018. Moreover, the Tribunal failed to appreciate that the petitioner being a deserted lady having meagre income as ICDS worker has to maintain herself. Hence, the order for maintenance to the tune of Rs.10,000/- per month is not justified.

He further submits that she has to prefer this application under Article 227 of the constitution of India as the statute does not give her any right to prefer an appeal. Section 16 of the Act provides that only senior citizen or a parent can prefer an appeal.

In reply, Mr. Prabir Majumder, learned advocate appearing on behalf of the opposite party, refers the judgment of *Rakhi Sharma vs. The State & Ors. in W.P.(C) 2895/2021* passed by Delhi High Court wherein it was held that non inclusion of 'children' in section 16 of the Act as aggrieved person is a case of an accidental omission and not of conscious exclusion. Accordingly petitioner's remedy, if

any, lies before appellate forum and present petition under Article 227 is not maintainable.

He also refers in this context another judgment of *Smt. Rita Roy vs. Maintenance Tribunal and Sub Divisional Officer & Ors. in W.P. (C) 753 of 2022* passed by the High Court of Chhattisgarh wherein in paragraph 16 it was held that in view of a Division Bench judgment of Allahabad High Court which has given the interpretation and made it a rule that any of the parties shall have the liberty to prefer appeal under Section 16 of the Act of 2007.

Even if it is accepted for the sake of argument that non inclusion of the word 'children in section 16 of the Act is an accidental omission, even then remedy under Article 227 cannot be shut in cases involving patent lack of inherent jurisdiction.

In view of the facts and circumstances of the case, the moot question that comes up before this Court is whether the Sub Divisional Magistrate was justified in directing the petitioner to pay monthly maintenance of Rs.10,000/- per month to her parents and was further justified to order for cancellation of two deeds stands in the name of petitioner herein.

At the outset, it is to be mentioned that nothing is more unfortunate than to deal with a dispute in between the daughter and her parents though nowadays such disputes in the society are not uncommon. It appears that the Tribunal headed by learned Sub Divisional Magistrate has declared

the deed bearing No.5732/2005 dt. 26.10.2005 executed by the father of the petitioner in favour of the petitioner and also the deed no.10435/2014 dt. 3.12.2014 as cancelled. The power of cancellation of deed has been given to the Tribunal under Section 23 of the Act of 2007.

Now the circumstances under which the deed can be declared as cancelled under Section 23 are as follows:-

Firstly, it envisages that such transfer of property was made by way of gift or otherwise by a senior citizen after commencement of the Act. Secondly, it envisages that such transfer must be subject to the condition that the transferee shall provide basic amenities and basic physical needs of the transferor. Thirdly, such transferee must have refused or failed to provide such amenities and physical needs.

It is only when all the three conditions are satisfied that an application lies to the senior citizen tribunal constituted under Section 7 to declare any transfer of property to be void under the provision of Section 23 on the ground that such transfer has been vitiated by fraud, coercion or undue influence and thus, rendered voidable at the option of the transferor.

Here in the present case, though other conditions are fulfilled but admittedly the petitioner was not a senior citizen when he had executed the deeds. The definition of senior citizen has been given in the Act itself which says senior citizen means any person being a citizen of India who has attained the age of 60 years or above.

In such view of the matter, when the deeds were executed in 2005 and 2014, admittedly the father of the petitioner was not a “senior citizen”. Moreover , first deed was executed prior to commencement of the Act. Accordingly I am constrained to held that the Tribunal was not justified in passing that cryptic order whereby he has cancelled the deeds being No.5732/2005 dt. 26.10.2005 & 10435/2014 dt. 3.12.2014.

Petitioner also aggrieved by the order dated 07.01.2020 relating to quantum of maintenance amount awarded by Tribunal. The term “maintenance” has been defined in the Act in section 2(b) which includes provision for food, clothing, residence and medical attendance and treatment. Petitioner/parent before trial court submitted grocery bills amounting to Rs. 4,500/- per month and other miscellaneous bills. Petitioner /parent also filed documents to show the medical expense of petitioner/parent comes to around Rs. 3000/- per month. Parent out of love and affection gifted the property to the petitioner who cannot become ungrateful to the parents. In such circumstance parent/petitioner have right to survive with dignity. Present Act in a beneficial legislation enacted for maintenance and welfare of parents. Petitioner has not denied that she is an able bodied lady capable of earning. The petitioner has also not shown any evidence that her parents are able to maintain themselves from their earnings.

The petitioner in his application admitted that she is an ICDS worker. Further she has earning from the two lands gifted by her father and as such, I find the maintenance amount of Rs.10,000/- as awarded by the Tribunal in favour of the parents of the petitioner is justified and does not call for any interference.

In view of the above, while the order of granting maintenance of Rs.10,000/- per month in favour of the parents of the petitioner vide order dated 07.01.2020 by the Tribunal headed by Sub Divisional Magistrate, Tehatta, Nadia is not interfered with but order of the Tribunal dated 07.07.2021, by which it declared that the “two deeds bearing No.5732/2005 dt. 26.10.2005 & 10435/2014 dt. 3.12.2014 will be cancelled” is hereby set aside.

Accordingly, C.O. 1420 of 2021 is disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)