

C.O. 2606 of 2019

Biplab Ganguly
Vs.
Biswanath Ganguly and Anr.

Mr. Indranath Mukherjee,
Ms. Gargi Acharya For the petitioner.

Ms. Juin Dutta Chakraborty
...for the opposite party nos. 1 & 2.

Being aggrieved by the order dated 28.11.2018 passed in Case No. 81/2018 by Sub-divisional Officer, Barasat (Sadar), North 24-Parganas this revisional application has been preferred.

The petitioner contended that the opposite party no.1, being father of the petitioner was owner of a plot of land measuring 13 decimal of land together with two storied building at Ashoknagar, North 24 Parganas. The opposite party no. 1 was a State Government employee and retired from service and used to reside with his elder son, i.e. the petitioner in the said property. The opposite party no.1 by way of amicable settlement, decided to settle all the amounts he got at the time of retirement, as retiral benefits and his other properties to his sons after retirement. Amicably , he decided to give his retiral benefits to his younger son opposite party no.2 and the aforesaid house property to the petitioner, i.e. elder son.

The petitioner used to take care of his parents since long and maintained a cordial relationship with them. As

a result of such amicable settlement, opposite party no.1 executed a deed of gift in favour of his elder son, the petitioner herein and gifted such property measuring 13 decimal of land along with two storied building as above.

The petitioner further claims that in the said deed of gift it has been clearly stated by the opposite party no.1 that he was very pleased with the conduct of elder son/petitioner and he was very much compassionate to his son and he also mentioned in the deed that he has gifted his retiral benefits to his youngest son/opposite party no.2.

It is further submitted that the petitioner has duly accepted the said deed of gift and his name also recorded in the concerned land records.

Petitioner alleged that in the above backdrop, all on a sudden the opposite party no.1 made an application before the Tribunal for annulment of the aforesaid deed of gift without serving any copy of the same upon the petitioner herein under the provision of maintenance and welfare of parents and senior citizens Act, 2007(hereinafter called as Act of 2007).

The petitioner contended that he has, however, received a notice from the Tribunal without any copy of the application and contested the same. The petitioner alleged that the he was not allowed to represent through

any advocate or law knowing person.

However, the learned Tribunal after contested hearing was pleased to declare the said deed of gift as void by its impugned order dated 28.11.2018.

Learned counsel appearing on behalf of the petitioner submits that no grievance was found to have recorded that the petitioner has ever neglected his parents or acted against any terms of the deed either in fact or in law. The Tribunal has acted illegally with material irregularity by declaring the said deed of gift as void under Section 23(1) of the Act of 2007. As there is no such refusal or failure on the part of the petitioner herein in providing any basic amenities and physical needs which is a condition precedent in applying section 23(1) of the Act, Learned Tribunal acted illegally without appreciating that in the order it is clearly stated that it is the only wish of opposite party no.1 to divide his property equally between his two sons. It is to be mentioned that the said order of annulment of deed of gift is being passed to respect the desire of the opposite party no. 1 to divide the properties equally amongst two sons and, accordingly, Tribunal has no jurisdiction to apply said provision of such Act. The Act of opposite party no. 1 itself ultra vires being contrary in nature since there cannot be conditional gift nor there is any cogent ground to pass for such order of annulment of deed. Accordingly, his prayer is for

setting aside the order passed by the Tribunal.

Learned counsel appearing on behalf of the opposite party no.1 refers to the preamble of the Act and contended that this is an Act to provide more effective provisions for the Maintenance and Welfare of Parents and Senior Citizens guaranteed and recognized under the Constitutional provisions and for matters connected therewith. She also referred Section 300A of the Constitution of India and contended that a senior citizen must not be deprived of his property, which is his legal right. She also referred in this connection Section 3 of the Act of 2007 contending that the provisions of such Act has overriding effect notwithstanding anything inconsistent therewith contained in any enactment.

She further submits that as to whether the gift deed is liable to be revoked or not at the option of the father/ opposite party no.1, conduct of transferee after transfer is to be taken into account. It can be presumed that the gift was obtained by the transferee with intention to deceive by pretending love and affection. She further submits any donor before execution of the deed as a natural course of human conduct expect that done will continue to behave in the same manner as behaved before execution of deed. Love and affection that influenced for the execution of deed certainly must be enduring and without any barrier and on account of the human conduct in relation to a

particular relation is presumed to exist in all set of circumstances for governing relationship of those individual and therefore, transferee cannot disown his own action of love and affection after the transfer comes into effect.

She further submits that when there is some amicable transfer by deed of gift the intention of the parties must be deduced from the surrounding circumstances. Since the preamble declares to provide more protection for the maintenance and welfare of the senior citizens guaranteed under the Constitution, interpretation shall always be in favour of the parents and senior citizens.

Before going to further details, let me reproduce the order impugned to reflect the reason assigned by the Tribunal in supporting of cancelling the impugned deed

“Mr. Biplob Gganguly, the respondent as well as the elder son of the petitioner used to live separately at another place but shifted to this residence post retirement and illness of the petitioner and always pretended to maintain a cordial relation with parents. On the pretext of taking loan from Bank for his business Mr. Biplob Ganguly has deceitfully taken the signature of his father Mr Biswanath Ganguly on the 100% share of property registration documents (gift Deed No-150108587 dated 09.11.2015) showing it as a gift to Biplob Ganguly from his father

Biswanath Ganguly instead of registering first floor of the building which Mr. Biswanath Ganguly has consented to give to his elder son Biplob Ganguly. The deceitfulness was detected sometimes in March 2018 by the petitioner when some people came to the house to inspect the said building for the purpose of purchasing it.

His only wish now is to divide his property (the building in question) equally between his two sons.

Statement of Sri Bipob Ganguly, the respondent

Mr Biplob Ganguly refused to accept the fraud he has committed instead he replied that his father Mr Biswanath Ganguly has willfully gifted the residential building to him on being satisfied with the behavior and taking care of his father during his illness and bearing the major portion of the cost of treatment.

After hearing both side the tribunal find that the petitioner Sri Biswanth Ganguly is very much hurt and aggrieved with the respondent for misleading him to sign on a deed which he is not ready for.

The Tribunal has finally decided to declare void the gift deed in the name of respondent Sri Biplob Ganguly for the building which stands on a land measuring 13 decimal in L.R. Dag No-419, R.S. Khatiyon No-266 corresponding to L.R. Khatiyon No-719 under Mouza-pukurkona, J.L. No-105, police

Station-Habra, Dist-North 24 Parganas in accordance with Chapter-V, Section 23(1) of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.”

In the present case, the entire pleadings impugning the deed of gift in question revolve around allegations of mis-representation and fraud which can only be the subject matter of a civil suit. Section 23 of the Act of 2007, cannot confer jurisdiction on a Magistrate or Sub-divisional Officer to exercise the power of a regular civil court as envisaged in the Code of Civil Procedure particularly when the pre-condition of Section 23 are not met. Even the language of the deed of gift is completely silent as to the transfer contemplated in the deed of gift being conditional upon the transferee providing the basic amenities and/or basic physical needs of the transferor. Previous good conduct of the transferee could be a reason for the gift but could not be construed as a condition of basic amenities or physical needs being provided by the donees to the donor.

In this context, it would not be out of place to mention that in order to attract section 23 of the Act three conditions needs to be fulfilled. I) transfer by way of deed of gift or otherwise and secondly II) there must be condition that the transferee shall provide basic amenities and basic physical needs to the transferor and III) such

transferee refused or failed to provide such amenities and physical needs.

Here in the present case the deed of gift is absolutely unconditional, reserving no right at all to the donor. No conditions were attached that the petitioner herein would have to provide basic amenities and basic physical needs to the transferor.

The power of the tribunal to declare a transfer deed void, such power can be exercised only when the transfer is subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refused or fails to provide such amenities and physical needs. Normally recital in the deed is the best guide to answer the question as to whether such a condition was attached to the transfer. In the event the recital of deed is clear and unambiguous no extrinsic aid of construction need to be resorted to in order to gather intention of the parties but where there is some ambiguity in the transfer deed, the intention of the parties will have to be gathered from surrounding circumstances.

In *Debashish Mukherjee @ Zen Acharya -Vs.- Dr. Sanjib Mukherjee* reported in 2018 (1) CHN (Cal) 481, the Division Bench of this Court was pleased to observe

“12. we have carefully gone through a copy of te deed

of gift dated 29th April, 2015. It is clear that the flat in question was gifted absolutely and unconditionally to the appellant reserving no right at all to the donor being the mother of the appellant. No conditions were attached that the appellant would have to provide basic amenities and basic physical needs to the transferor. Accordingly in our opinion, section 23 of the Act can have no manner of application to the facts of the present case”.

In another judgment the Apex Court *Sudesh Chhikara –Vs._ Ramti Devi & Anr.*, reported in 2022 Live Law (SC) 1011 observed as follows :

“13. when a senior citizen part withs with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.”

“14. Careful perusal of the petition under section 23 filed by respondent no. 1 shows that it is not even pleaded that the release deed was executed subject to a condition that the transferees (the daughters of respondent no.1) would provide the basic amenities and basic physical needs to respondent no. 1. Even in the impugned order dated 22nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems that oral evidence was not adduced by the parties. As

can be seen from the impugned judgment of the Tribunal, immediately after a reply was filed by the appellant that the petition was fixed for arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor senior citizen is sine qua non for applicability of sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent no. 1 that the release deed was executed subject to such a condition.”

“15. We have perused the counter affidavit filed by respondent no.1 Even in the counter, it is not pleaded that the release was subject to such a condition. It is merely pleaded that the appellant had no intention to take care of her mother. Thus, the order of the maintenance Tribunal cannot be sustained as the twin conditions incorporated in sub-section (1) of Section 23 were not satisfied. Unfortunately, the High Court has not adverted to the merits of the case at all.”

In view of the aforesaid facts and circumstances of this case and for the reasons, as stated above, this revisional application is allowed and the impugned order of the Tribunal dated 28.11.2018 is hereby set aside.

C.O. 2606 of 2019 is thus allowed.

However, the opposite party no.1 being old aged father , I trust and hope that the petitioner shall make every endeavour for opposite party No. 1's accommodation either in the flat in question or in any similarly situated alternative accommodation.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

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

(Ajoy Kumar Mukherjee, J.)