

05. 09.03.2022
Ct. No.21

C.O. 2059 of 2021

**Piyali Tewari Dey
-Versus-
Baidyanath Dey & Ors.**

(Through Video Conference)

Mr. Supriyo Bose,
Mr. Debojyoti Deb,
Mr. Sanjoy Kumar Das,
...for the Petitioner

Ms. Sutapa Sanyal,
Ms. Susnita Saha,
...for the state

Mr. Dipak Kr. Mukherjee,
Mr. Rajib Mukherjee,
Ms. Supriya Dey,
Ms. Shreyasi Bhaduri,
...for Uttarpura Municipality

Mr. Sanjoy Banerjee,
Mr. Senjuti Chakrabarti,
...for the Opposite Party No. 3

Mr. Kaushik Gupta,
Mr. Joydeep Bhattacharjee,
...for the Opposite Party No. 1 and 2

This case represents how dynamic human relationship can be in the present socio economic condition.

The present application under Article 227 of the Constitution of India is at the instance of the petitioner being aggrieved by the order of cancellation of gift deed dated 10.07.2017 executed in her favour by her father in respect of family flat by the declaring the said deed to be void and directing the Additional District Magistrate to take all steps to revert back the ownership of the flat as mentioned in the schedule of the registered deed to the donor father Baidyanath Dey/the opposite party no. 1 by Maintenance Tribunal, Serampore in Maintenance Case No. 4 of 2021 under the

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 on 30.07.2021.

The facts necessary for determination of the present revisional application in gist is that father/opposite party no. 1 before the marriage of the daughter and out of love and affection appears to have gifted flat being no. 2A having 1392 sq.ft. super build area in a multi storied building known as Ambika within holding no. 38/18 at new GT Road Uttarpara by executing a registered deed of gift on 10th July, 2017. It appears the said flat is a residential flat where the un-married daughter used to live with her parents. That situation appears to have changed after the marriage of the daughter, who even after marriage continued to reside in the disputed flat along with her husband. The relationship between daughter and parents appears to have deteriorated after the marriage of the daughter and for which the father had to file an application under Section 4 of the Act of 2007 seeking maintenance as well as for cancellation of the gift deed executed by him in 2017 as the daughter seems to have driven out the parents from the flat and who had to take shelter in the house of their married son. The learned Tribunal after causing inquiry was pleased to pass impugned order not only cancelling the gift deed but also gave the direction to the son to pay maintenance of the rupees 5000 per month to his parents and directed IC Uttarpara to give all kinds of protection to the aged parents/petitioner.

The Maintenance Act, which has come into existence in 2007 has been enacted to safeguard the interest of the parents senior citizens guaranteed and recognized under the constitution and to provide them maintenance so that in the fag end of their lives they do not have to lead a life of vagrancy perhaps day by day we are departing away from our traditional family value. In traditional Indian society the children even after attaining the majority and until they become fully independent they continue to reside under the shelter and protection of their parents like in the present case. Now, with globalization and with all modern technology we find drastic change in socio economic conditions and Indian values being eroded with adoption of the western culture and western tradition. Now, it has become a part of Indian society to see aged parents and aged senior citizens seeking shelter of the Courts for their social and economic safety as we see some of them driven away from their home by their own children and not being provided proper maintenance and basic necessities. And some is taking shelter in old age home run by government or by NGOs.

It is true that the parents having no source of income can seek maintenance from their children by invoking provision of Section 125 of C.r.P.C. but the procedure is time consuming. Now, under the new enactment the parents can seek speedy relief from the provision set up under the act under which the tribunal has been vested with all the power of Civil Court and can pass an award of maintenance and also

can pass an order of cancellation of deeds which parents had executed in favour of their child or children for providing social and economic security to the children.

However, the Hon'ble Division Bench of this Court in *Debashish Mukherjee @ Zen Acharya vs. Dr. Sanjib Mukherjee* reported in 2018 (1) CHN (CAL) 481 has been pleased to hold that "once the parents executed deed of transfer of their immovable property in favour of their child/children such deed cannot be cancelled or declared void by Maintenance Tribunal until and unless such deed executed by parents in favour of the child contains a clause that the donee has to maintain and provide basis amenities and physical needs to the donors in future.

The present case in hand prima facie shows the parents who have not only provided good life and good education to the present petitioner their only daughter but also gifted the flat where the daughter used to live with the parents in the year 2017 when the daughter was still a spinster.

It has also come on record the father has not only gifted the family flat to the daughter but has also purchased another flat in the name of his daughter in the year 2012. Such facts show how much the father used to love his daughter and who appears to be the apple of the eyes of her father. The father who had never imagined that after entry of a divorced stranger in the life of his daughter the relationship and equation between the daughter and father would deteriorate to such an extent the father who is a chronic kidney patient and who has

to undergo regular dialysis and in fragile physical condition has to run helter and skelter before different authorities to seek relief for his safety and social security.

Since the gift deed in question is not being a conditional gift deed the provision of Section 23 of Maintenance and Welfare of Parents and Senior Citizen's Act, 2007 is not attracted in view of the decision of Division Bench in *Debashish Mukherjee @ Zen Acharya* (supra). Therefore, this Court is of view the impugned order passed by Maintenance Tribunal in respect of cancellation of gift deed is not maintainable.

However, this Court cannot be unmindful to the facts at present the father who is aged about 72 years and his medical papers show that he is a chronic kidney patient who has to undergo regular dialysis and which is a very expensive treatment. It has also come on record the parents have no any other alternative accommodation to take shelter at their advance age and in fragile physical condition save and except the flat in question which they gifted to their unmarried daughter without any apprehension that one day they would be driven away from their own residential flat which they have purchased with their hard earned money and gifted to their only the then unemployed unmarried daughter to secure her life socially and financially.

Therefore, the petitioner is hereby directed to provide shelter to her parents in the flat where they are residing with her but in different mess during their lifetime and to see they

live peacefully their remaining days in the house which originally belonged to them. She is further restrained from alienating the disputed flat during the life time of her both parents. She is further directed to pay Rupees Ten Thousand per month towards their maintenance to meet their basic needs and medical expenses.

The son who has been directed to pay only Rupees Five Thousand per month towards the maintenance of his parents is also directed to pay Rupees Ten Thousand per month towards the maintenance of his parents.

Accordingly, the impugned order is modified.

Accordingly C.O No.2059 of 2021 is disposed of.

Interim order, if any, stands discharged.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Kesang Doma Bhutia, J.)

