

27.06.2023
Court No. 19
Item no.24
CP

C.O. 1141 of 2023

Mastak Hossain Alias Mostak Hossain
Vs.
Jarina Bewa & ors.

Mr. Pinaki Dhole
Md. Ziaul Rahaman

....for the petitioner.

Mr. Shounak Mukhopadhyay
Ms. Rimpa Das

....for the opposite party no. 1.

The revisional application has been filed challenging an order dated March 3, 2023, passed by the learned Maintenance Tribunal in Maintenance Tribunal Case No. 35 of 2022.

By the order impugned, the deed of gift vide No.I 4709 dated September 20, 2016 was declared null and void. The petitioner/opposite party no. 1 was granted liberty to approach the ADSR, Buniadpur with a copy of the registered deed and other relevant documents for cancellation of the deed. After cancellation of the deed, the petitioner was granted further liberty to approach the Block Land & Land Reforms Officer, Buniadpur for correction of the record of rights. The ADSR, Buniadpur was directed to take note of the cancelled deed and nullify the deed within March 3, 2023 and send the compliance report to the learned tribunal.

The Block Land & Land Reforms Officer, Banshihari was directed to take necessary measures to restore the title of the land in favour of the petitioner.

Mr. Dhole, learned advocate appearing on behalf of the petitioner, namely one of the sons of the opposite party no. 1, Mastak Hossain alias Mostak Hossain, submits that the order suffers from the following perversities:

- a) The learned tribunal failed to consider the contents of the deed of gift.
- b) The order was passed beyond the parameters of law.
- c) The willingness of the respondents in the proceeding, to maintain the mother, was not taken into consideration.
- d) The order suffered from material irregularity and was contrary to law.

Mr. Dhole relies on the deed of gift and submits that there was not a single mention that the deed of gift had been executed by the mother in favour of her children as a condition to be maintained and provided with all amenities and essentials.

Mr. Mukhopadhyay, learned advocate appearing on behalf of the mother, submits that there was an implied condition to maintain the

mother in the deed of gift. According to him, when an aged mother transfers her property in favour of her children by way of a gift, the children have a duty to maintain the mother. The correct interpretation of the deed of gift would be that as the same had been executed by the mother at a very advanced age, the natural corollary was promise of maintenance by the children. Reliance has been placed on a decision of the Hon'ble Bombay High Court in the matter of Pritish Natvar Sanghvi vs. Natvar Keshavlal Sanghvi & anr., reported in (2018) 5 AIR Bom R(NOC 108)40 and on a decision of the Hon'ble Karnataka High Court in the matter of S. Prashanth Kumar & anr. vs. The Deputy Commissioner, Bangalore Urban District, Bangalore & ors. The Karnataka High Court observed that if there was evidence to the satisfaction of the authorities that the ingredients of Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the 'said Act'), had been satisfied in a given case, the authority reserved the power to invoke Section 23 of the said Act, to invalidate the gift.

Having gone through the deed of gift meticulously, this court finds that the opposite party as the mother thought it to be her bounden duty to bestow landed properties in favour of her children so that the children do not face any problems in future

and they were sufficiently provided for. With such emotion which is reflected in each and every sentence of the recitals, the mother thought it proper to transfer the landed property to her children who were mentioned as donees in the deed of gift.

Although, Mr. Mukhopadhyay contends that any deed of gift executed by an elderly person in favour of her children would attract the ingredients of Section 23 of the said Act, this court cannot accept such interpretation.

The law is well settled that any conveyance or deed or agreement must be read as a whole and as it appears to be. Reading between the lines to take out any implied condition or reason which has not been specifically mentioned in such deed or conveyance, would not be proper. Recitals in a deed of gift should be interpreted and read as it had been recorded. No further interpretation is permissible under the law. Nothing can either be added or subtracted. Moreover, it appears from the order impugned that the children who are respondents before the learned Maintenance Tribunal had submitted that they were willing to maintain the mother, but the mother refused.

The Hon'ble Apex Court in the matter of *Sudesh Chhikara vs. Ramti Devi & anr.* decided in Civil Appeal No.174 of 2021, had held that when a transfer was made out of love and affection and

without any expectation in return from near and dear ones and the children, the provisions of Sub-Section (1) of Section 23 of the said Act would not be attracted.

Only when the gift is executed, subject to a condition that the donees would provide the basic amenities and basic physical needs to the parent and the donees fail to provide such amenities, the power under Section 23 can be invoked by the Tribunal. It shall be deemed that the deed was executed by fraud, coercion or undue influence and under suspicious circumstances. The deed shall be declared as void under the law. The relevant portion of the Hon'ble Apex Court's judgment is quoted below:

'12. Sub-section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression "by way of gift or otherwise". For attracting sub-section (1) of Section 23, the following two conditions must be fulfilled:

a. The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and

b. the transferee refuses or fails to provide such amenities and physical needs to the transferor.

If both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void.

13. When a senior citizen parts 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 subsection (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.'

This court, in the matter of Jayanta Ghosh & ors. Vs. Ajit Ghosh, in C.O. 4243 of 2019, had considered the provisions of law and it was held as follows:

'11. Having heard the learned Counsels for the parties, it is necessary to deal with the deed of gift which was registered on July 18, 2018. The deed of gift is in Bengali. From the recitals in the deed of gift, it appears that the opposite party being pleased and satisfied with the love and respect shown by the petitioners, considered it his fatherly duty to secure his son in the future and thus had gifted the said property to the petitioner No.1. It has been categorically recorded that the petitioners had shown immense love and respect to the opposite party and the opposite party in turn always had love and affection for them. With the same expectation, of such love and respect, the opposite party chose to gift away the said property in favour of the petitioner No.1. In my view, the deed of gift was unconditional. No condition was attached with regard to the duty upon the petitioner No.1 to provide basic maintenance and basic physical needs to the opposite parties. In my opinion, Section 23 of the said Act does not have any manner of application in this case. Section 23 of the said Act is quoted below:-

"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 the transferee refuses or fails to provide such amenities and physical needs, the said transfer or 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.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or party thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organization referred to in Explanation to sub-section (1) of Section 5."

The decisions referred to by Mr. Mukhopadhyay do not apply as they do not fit into the facts of this case. In this case the gift was unequivocal and unconditional. The same was executed out of pure love and affection without any expectation.

The order impugned is set aside. All consequential steps that may have been taken on the basis thereof, are also quashed.

It appears from the application for maintenance filed by the mother, that a prayer had been made for payment of specific amounts by her children, for her maintenance. Clause VII of the application gives in detail the amount which the mother expects to be paid to her by her children. The learned tribunal will rehear the matter on the point of maintenance and fix the quantum to be paid by each of the children who are respondents before the learned tribunal.

The issue to be decided now would be what would be the exact maintenance that the mother shall require and the reasonable amount that should be paid by the children.

As the mother deserves to be maintained by the children, irrespective of whether there is a deed of gift or not, the learned tribunal is directed to conclude the proceedings within four months from the next date fixed by deciding the issue of maintenance, in accordance with law and on evidence.

All parties, including the petitioner and the proforma opposite parties, shall be entitled to file their written statements and adduce oral and documentary evidence.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)