

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

**The Hon'ble The Chief Justice T. S. Sivagnanam
and**

The Hon'ble Justice Hiranmay Bhattacharyya

MAT/665/2023

IA NO: CAN/1/2023

AMAR NATH DUTTA

VS

THE STATE OF WEST BENGAL AND ORS.

For the Appellant : Mr. Dhananjay Banerjee
Mr. Tanmoy Khan
...advocates

For the State : Mr. Amal Kr. Sen, Ld. A.G.P.
Mr. Lal Mohan Basu
...advocates

For Respondent No.6 : Mr. Tapas Kr. Ghosh
Mr. Tanmay Chowdhury
...advocates

Reserved on : 14.12.2023

Judgment on : 20.12.2023

Hiranmay Bhattacharyya, J.:-

1. The judgment and order dated March 24, 2023 passed by a learned Single judge in WPA 1013 of 2023 is under challenge in this appeal at the instance of the writ petitioner.
2. The 6th respondent filed an application before the Sub-Divisional Magistrate and competent authority under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "2007 Act"), praying for revocation of the gift deed. The 6th respondent executed the deed of gift dated 03.07.2019 in favour of the appellant herein. The concerned

Sub-divisional Magistrate, by an order dated 30.11.2022 revoked the said deed of gift. The appellant challenged the order of Sub-divisional Magistrate dated 30.05.2022 by filing a writ petition being WPA 1013 of 2023. The learned Trial Judge, by the impugned judgment and order, dismissed the writ petition.

3. The facts giving rise to the writ petition as well as this appeal, in a nut shell are as follows.
4. The two storeyed building which is the subject matter of dispute between the private parties was originally owned by the wife of the 6th respondent. Wife of the 6th respondent died intestate on 04.09.2013 and upon her death the 6th respondent inherited the said two storeyed building. The appellant and the 7th respondent herein, claiming to be a married couple were inducted as tenants by the 6th respondent in the said building sometimes in the year 2014. The 6th respondent herein being alone and an aged widower claims to have become dependant on the appellant and the 7th respondent and he treated the appellant and the 7th respondent as his children. The 7th respondent & appellant refused to look after the 6th respondent and treated him with cruelty which compelled the 6th respondent to approach the concerned Sub-divisional Magistrate for revoking the deed of gift.
5. Challenging the judgment and order dated 24.03.2023 refusing to interfere with the order of the Sub-divisional Magistrate dated 30.11.2022, the appellant filed the writ petition which stood dismissed by the impugned judgment and order. Being aggrieved, by the order of dismissal of the writ petition, the writ petitioner approached this Court.
6. Mr. Dhananjay Banerjee, learned Advocate appearing for the appellant submitted that the deed of gift executed by the 6th respondent in favour of the appellant does not contain any stipulation that the transferee was to provide the basic amenities and basic physical needs to the transferor and, therefore, the said deed of gift dated 03.07.2019 could not have been revoked by the concerned Sub-divisional Magistrate by invoking the powers under Section 23 of the 2007 Act.

7. Per contra Mr. Tapas Kr. Ghosh learned Advocate appearing for the 6th respondent submitted that immediately after execution of the deed of gift a declaration was made within the week thereafter i.e., on 10.07.2019 incorporating a condition that the appellant would look after the daily needs including medical needs of the 6th respondent. He, therefore, submitted that since the appellant and the 7th respondent refused to look after the 6th respondent and treated him with cruelty, the Sub-divisional Magistrate was justified in revoking the deed of gift. He further submitted that since the learned Single Judge dismissed the writ petition by assigning cogent reasons, this Court should not interfere with such finding in this intra court mandamus appeal.
8. The Sub-divisional Magistrate acting as the Maintenance Tribunal declared the deed of gift dated 03.07.2019 as void by accepting the deed for revocation filed by the 6th respondent herein in exercise of powers under Section 23 of the 2007 Act.
9. Before entering into the factual aspect it will be profitable to recapitulate the provisions laid down in Section 23 of the 2007 Act for which the same is extracted hereinafter.

“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 such transferee refuses or fails to provide such amenities and physical needs, the said transfer of 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 part 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 organisation referred to in Explanation to sub-section (1) of section 5.”

10. The Hon'ble Supreme Court in the Case of ***Sudesh Chhikara vs. Ramti Devi and anr.*** reported at **(2022) SCC Online SC 1684** held that Section 23 covers all kinds of transfers as is clear from the use of the expression "by way of gift or otherwise". It was further held therein that for attracting sub-section (1) of Section 23 the following twin conditions must be satisfied-
- (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 refused or fails to provide such amenities and physical needs to the transferor.
11. It was further held in the said reported decision that if the aforesaid twin conditions are satisfied, by a legal fiction the transfer shall be deemed to have been made by fraud or coercion or undue influence and such a transfer then becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void. The Hon'ble Supreme Court summed up its conclusions by observing that effecting transfer subject to a condition for providing the basic amenities and basic physical needs to the transferor cum senior citizen is *sine-qua-non* for applicability of Sub-Section (1) of Section 23.
12. In view of the aforesaid well settled legal proposition, the Maintenance Tribunal while invoking the provisions laid down in Section 23 of the 2007 Act has to be first satisfied whether the impugned transfer was subject to a condition of providing the basic amenities and basic physical needs to the transferor cum senior citizen. Only upon being satisfied that the transfer was subject to such condition the Tribunal is then required to inquire into whether the transferee refused or failed to provide such amenities and physical needs and only after the Tribunal arrives at a finding that the transferee refused or failed to provide such amenities and physical needs, the Tribunal, upon being approached by the transferor, can declare the deed of transfer to be void.

13. After going through the order of the Sub-Divisional Magistrate dated 30.11.2022 this Court finds that the gift deed was revoked by assigning the following reason-

“Since the facts and case record point out harassment and non-maintenance as well as fraud and coercion in getting the gift deed signed, the tribunal is satisfied that it is a fit case for revocation of gift deed.”

14. After going through the reasons assigned in the aforesaid order, this Court finds that the Sub-Divisional Magistrate took into consideration the grounds which do not fall within the ambit of Section 23(1) of the 2007 Act. Therefore, the said order dated 30.11.2022 is liable to be set aside and quashed only on such ground. Ordinarily in such a case the matter should be remitted to the Maintenance Tribunal for deciding the said application on merits after setting aside the impugned order. However, no useful purpose would be served by remitting the matter back to the Tribunal in the case on hand due to the following reasons.
15. After reading the impugned deed as a whole, this Court finds that the learned Single judge rightly noted that the deed of gift dated 03.07.2019 did not contain any specific condition that the appellant (transferee) would look after the needs of the 6th respondent (transferor). As has been held by the Hon’ble Supreme Court in **Sudesh Chhikara** (supra) that effecting transfers subject to a condition of providing the basic amenities and basic physical needs to the transferor is *sine-qua-non* for applicability of sub-section 1 of Section 23, this Court is of the considered view that the Maintenance Tribunal exceeded its jurisdiction by invoking the provisions of Section 23(1) of the 2007 Act for declaring the transfer of property to be void in the case on hand.
16. The learned Advocate for the 6th respondent seeks to justify the invocation of Section 23(1) of 2007 Act by placing reliance upon the declaration dated 10.07.2019 by contending that the transfer of property was subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor.

17. Section 23(1) contemplates that the transfer of property by way of gift or otherwise must be subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor. In the instant case, the property was transferred by a gift deed. Section 123 of the Transfer of Property Act, 1882 states that for the purpose of making a gift of immovable property the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. Therefore, it goes without saying that for applicability of Section 23(1) of the 2007 Act the instrument of transfer i.e., the registered gift deed must incorporate the aforesaid condition.
18. After going through the document dated 10.07.2019 this Court finds that the same is a declaration made by the 6th respondent (transferor) stating that the appellant (transferee) shall be obliged to provide the transferor with the basic amenities and basic physical needs during the lifetime of the transferor. The concluding paragraph of the said declaration states that it was written as per the direction of the 6th respondent (transferor) and also that after reading the statements contained therein and having understood the contents of the same, the 6th respondent has executed the said document in the presence of the witnesses. However, it does not appear from the said document that the witnesses have attested the execution of the said document. The said document is also a notarised one and not a registered document. Such declaration made by a transferor after extinguishment of all his right, title and interest in the immovable property upon execution and registration of a gift deed and that too by a notarized document, in the considered view of this Court, cannot be said to be in compliance with the provisions laid down under Section 23(1) which states that the transfer by way of gift or otherwise of a property by a senior citizen shall be subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor.
19. Upon reading the gift deed as a whole this Court finds that the same was complete at the time when the actual transfer took place and the same was also an unconditional one.

20. This Court, therefore, holds that Section 23(1) of the 2007 Act cannot be invoked if after the property is transferred by way of a registered deed of gift, the transferor imposed certain obligations upon the transferee.
21. Merely because of the fact that the signature of the appellant (transferee) appears in the said declaration, that by itself, cannot justify invocation of Section 23(1) of the 2007 Act.
22. This Court is, therefore, not inclined to accept the finding of the learned Single Judge that the declaration/undertaking should be taken as a part and parcel of the deed of gift.
23. In view of the discussions made hereinbefore the impugned judgment and order dated 24.03.2023 passed by a learned Single Judge as well as the order of the Sub-divisional Magistrate dated 30.11.2022 calls for interference.
24. The conduct of the 6th respondent is also to be taken note of for deciding this appeal. Prior to the filing of this application under Section 23(1) of the 2007 Act before the Sub-divisional Magistrate, the 6th respondent filed a Title Suit being no. 9 of 2022 before the learned Civil Judge (Junior Division), First Court, Chandannagore at Hooghly, praying for a decree declaring that the gift deed dated 03.07.2019 is void due to misrepresentation and fraud allegedly committed by the appellant herein in the matter of preparation and execution of the deed of gift. It is the specific case of the 6th respondent in the said title suit that the appellant herein instead of preparing a deed of settlement fraudulently got a deed of gift executed and registered by the 6th respondent in favour of the appellant herein.
25. However, in the application under Section 23(1) of the 2007 Act the 6th respondent specifically stated that he instructed the appellant and the 7th respondent to make all arrangements so that he can transfer the property by way of registered deed of gift in favour of the appellant and his wife i.e., the 7th respondent herein but subsequently it transpired that the appellant

had managed to get the gift deed executed only in his name thereby depriving his wife i.e., the 7th respondent.

26. It is, therefore, evident that the pleadings in the Civil Suit and the application filed before the Maintenance Tribunal are contradictory and mutually destructive. That apart the 6th respondent is still pursuing the Title Suit before the Civil Court. The conduct of the 6th respondent is not appreciated by this Court.
27. For all the reasons as aforesaid the appeal stands allowed and the judgment and order dated 24.03.2023 passed by the learned Single Judge in WPA 1013 of 2023 stands set aside. The writ petition being WPA 1013 of 2023 accordingly stands allowed and the order of the Sub-Divisional Magistrate, Chandannagore dated 30.11.2022 in Case no. 14 of 2022 under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 stands set aside and quashed. The application also stands disposed of.
28. It is, however, made clear that the observations made hereinbefore are only to support the ultimate conclusion in this appeal and the same shall not prejudice the private parties in the pending title suit. There shall be, however, no order as to costs.
29. Urgent Photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, CJ.)

(Hiranmay Bhattacharyya, J.)