

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present :

THE HON'BLE JUSTICE PARTHA SARATHI SEN

C.O. No.2024 of 2021

Jadab Chandra Haldar
Vs
Indranil Haldar

For the Petitioner	: Mr. Rwitendra Banerjee, Adv.
	: Mr. Shibasis Chatterjee, Adv.
For the O.P.	: Mr. Mani Sankar Chattopadhyay, Adv.
Last Heard on:	: 09.01.2023
Judgment on:	: 11.01.2023

Partha Sarathi Sen, J. : –

1. The instant revisional application under Article 227 of the Constitution of India arises out of Order No.05 dated 25.08.2021 as passed by the Learned Sub-Divisional Officer, Domkal, Murshidabad (hereinafter referred to as the 'SDO') in L.A Case no.1 of 2021 whereby and whereunder the said SDO in a proceeding under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the said 'Act') dismissed the petition of the petitioner as filed under Section 23 of the said Act.
2. The petitioner felt aggrieved and thus preferred the instant revisional application.

3. In support of the instant revisional application learned advocate for the revisionist/father at the outset draws attention of this Court to the copy of the petition as filed under Section 23 of the said Act before the learned SDO. Attention of this Court is also drawn to the impugned order. It is contended that while passing the impugned order, learned SDO has failed to visualize the true spirit of the said Act which is practically a beneficial legislation for the Maintenance and Welfare of the Parents and Senior Citizens guaranteed and recognized under the Constitution of India. Drawing attention to the provision of Section 8 vis-à-vis Section 23 of the said Act it is argued that while disposing the said petition under Section 23 of the said Act, the SDO has failed to appreciate the true spirit of the said application as well as the said Act and therefore the said SDO is not justified in passing the impugned order. It is argued that since in the deed of transfer as executed by the present revisionist/father in favour of the present opposite party/son, there exists a clause that after execution of the said deed of transfer the present opposite party/son shall have to maintain his parents and shall have to take the responsibility of their treatment and since the present opposite party/son has failed and neglected to comply with such stipulation of the deed of transfer, the SDO ought to have allowed the application as filed under Section 23 of the said Act instead of dismissing it. It is thus submitted that it is a fit case where interference is required by this Court in exercise of its superintendent jurisdiction as envisaged under Article 227 of the Constitution of India.

4. While opposing the contention of the learned advocate for the revisionist, learned advocate for the opposite party/son, submits before this Court that the Learned SDO is very much justified in passing the impugned order since before the learned SDO nothing could be established that the present opposite party/son is not maintaining and/or is negligent for the treatment of the present revisionist/father in terms of the condition as incorporated in the deed of transfer. It is thus argued that this is a fit case for dismissal of the instant revisional application. This Court has meticulously gone through the entire materials as placed before this Court especially, the photocopy of deed of transfer as executed by the revisionist in favour of the opposite party/son dated 24.01.2018, the said petition as filed under Section 23 of the said Act as well as the impugned order as passed by the Learned SDO. This Court has given its anxious consideration over the submissions of the learned advocates of both sides. For effective adjudication of the instant revisional application a look to the provisions of Section 8 as well as Section 23 of the said Act is necessary. Section 8 of the said Act is as under:-

“8. Summary procedure in case of inquiry.

(1) In holding any inquiry under section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.

(2) The Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rule that may be made in this behalf, the Tribunal may, for the purpose of adjudicating and deciding upon any claim for maintenance, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.”

5. Section 23 of the said Act is appended below in verbatim:-

“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.”

6. Keeping in mind the aforementioned two provisions of the aforesaid Act this Court will make an endeavour to come to logical conclusion as to whether learned SDO is at all justified in passing impugned order or not thereby dismissing the petitioner’s application under Section 23 of the said Act. On perusal of the entire materials as placed before this Court it appears that it is nobody’s case that in the deed of transfer dated 24.01.2018 there lies no condition that the opposite party shall provide basic amenities, physical needs, maintenance and shall look after, also provide medical treatment to the petitioner in future i.e. after execution of the said deed of transfer. On perusal of the averments as made out in the said petition under Section 23 of the said

Act it appears to this Court that it is the case of the present revisionist before the Learned SDO that one of his sons namely; the present opposite party refuses and fails to provide amenities and physical needs as well as maintenance to the opposite party in utter disregard to the said conditions as mentioned in the said deed of transfer. On perusal of the impugned order vis-à-vis the certified copy of the previous orders as have been annexed with the instant revisional application it appears to this Court that before passing the impugned order the said SDO conducted a summary enquiry in coming to a conclusion that even after execution of the said deed of transfer the present opposite party used to stay in a separate house of his own near to the house which has been gifted to him by the present revisionist where the present revisionist/petitioner and his spouse are leading peaceful life. It is the further observation of the learned SDO that both the petitioner and his wife are retired government servants and they are enjoying the pensionary benefits and they are also getting good cooperation from the present opposite party. It appears to this Court that the abovementioned findings of the SDO are all factual findings based on enquiry as conducted by him under Section 8 of the said Act and nothing could be placed before this Court that such finding of the SDO is perverse, illogical and/or illegal.

7. In view of such, this Court considers that being a revisional court this Court in exercise of its jurisdiction under Article 227 of the Constitution ought not to interfere with the abovementioned finding of the learned SDO which is

purely factual in nature unless gross illegality and/or irregularity is shown in arriving such finding.

8. In view of such this Court finds no merit in the instant revisional application and the instant revisional application is thus dismissed.

9. In view of such Order No.05 dated 25.08.2021 as passed by the Learned Sub-Divisional Officer, Domkal, Murshidabad in L.A Case no.1 of 2021 is hereby affirmed.

10. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

(Partha Sarathi Sen, J.)