

24.07.2023
Court No. 19
Item no.09
CP/GB

C.O. 3059 of 2022

Bholanath Debnath
Vs.
Anjali Bala Ghosh & anr.

Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal
....for the petitioner.

Mr. Gaurab Kr. Basu
.....for the opposite party no. 1.

Liberty is granted to the petitioner, to correct
the cause title here and now.

This revisional application has been filed by a
bona fide purchaser, who purchased the property
from one Dipankar Ghosh, son of Smt. Anjali Bala
Ghosh.

The schedule of the property are quoted below:

“A” Schedule Property

‘All that piece and parcel measuring
about 3.305 decimal of Bastu land along with
residential building situated in R.S. and L.R.
Dag No. 666, L.R. Khatian No. 4267, under
Mouza – Jirakpur, Re. Sa. 849, J.L. No. 94,
P.S. Basirhat, District North 24 Parganas,
within the local limits of Basirhat
Municipality.

“B” Schedule Property

All that four tail shaded structure and
one two storied building bounded by pucca
wall standing over all that piece and parcel of
Bastu land admeasuring more or less 7
decimal in L.R. Dag No. 4628 and more or
less 5 decimal in L.R. Dag No. 4629, L.R.
Khatian No. 7914, under Mouza Bithari, Re.
Sa. 43, J.L. No. 50, P.S. Swarupnagar,

District North 24 Parganas, within the local limits of Bithari-Hakimpur Gram Panchayat.’

The Presiding Officer, Maintenance Tribunal, constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as ‘the said Act’), by an order dated April 22, 2022 cancelled the two deeds of gift vide No. 151107727 dated November 10, 2017 and No.152505938 dated July 2, 2019 executed by Smt. Anjali Bala Ghosh, in favour of one Dipankar Ghosh (son). The learned Tribunal also cancelled the Deed No.15457 dated December 9, 2021 which was executed by the said Dipankar Ghosh, in favour of the petitioner.

The said order has been challenged on the following grounds:

- a) By a deed of conveyance dated December 9, 2021, the title to the property had passed on to the petitioner from the son of the senior citizen.
- b) The concerned property had been gifted to the vendor of the petitioner, by his mother. Third party rights had been created when the son transferred the property.
- c) The deeds of gift did not contain any stipulation or condition that the property was gifted to the son, subject to the

condition that the son would provide the basic amenities and the basic physical needs to the transferor.

- d) Section 23(1) of the said Act could not come into play, as it was not a case where the property was gifted with a liability on the son to provide the basic amenities and physical needs to the mother.
- e) Failure of the transferee to provide those amenities had also not been adjudicated by the Tribunal.
- f) The presumption that the transfer will be deemed to be obtained by fraud or coercion or under undue influence, would not arise as the gift was unconditional, complete and accepted as such, by the donee.
- g) The allegation of the doner was that the gift was obtained by fraud and coercion. The signature on the deed of gift was forged.
- h) On such issue, Title Suit No. 172 of 2020 had already been filed before the learned Civil Judge (Junior Division) 1st Court at Basirhat.
- i) The prayer for cancellation of the impugned deeds of gift had been made in the suit. The suit was filed prior to the filing of the application before the said Tribunal.

- j) The party who had purchased the property was not a party to the proceeding, but the deed of conveyance was cancelled in his absence.

Mr. Roy, learned advocate for the petitioner, refers to the recitals in the deed of gift, and to the provision of Section 23(1) of the 2007 Act. Reliance is also placed on the plaint of the Title Suit No. 172 of 2020.

Learned advocate for the opposite party no. 1 opposes the revisional application and submits that the deeds of gift was sent to the Questioned Documents Bureau, CID, West Bengal for opinion. The investigation revealed that the signature of the mother was forged. Charge-sheet has been filed and a criminal proceeding is going on. The vendor of the petitioner, is facing trial.

It is next submitted that Section 23(1) empowers the tribunal to cancel the deeds of gift and hence irrespective of pendency of the civil suit, the order impugned, must be upheld. Once the deed of gift are cancelled, all consequential transactions also become void.

It is also submitted that the order passed by the learned tribunal was challenged by the son before a learned writ court and interim order was refused.

From the said order, an appeal has also been preferred.

It appears from the pleadings in the civil revisional application that the petitioner had already prayed for being added as a party in the writ petition.

Having heard learned counsel for the respective parties, this court comes to the following factual findings:

- a) Two deeds of gift were executed by Smt. Anjali Bala Ghosh in favour of Dipankar Ghosh, her son, in respect of the property purchased by the petitioner.
- b) The gifts were unconditional.
- c) No condition was imposed upon Dipankar Ghosh, to provide the physical amenities and essentials to the mother.
- d) The mother had relinquished all her rights to the properties in favour of the son, without any condition whatsoever. The property passed unconditionally, by virtue of the said transfers.
- e) The son transferred the property to the petitioner, for valuable consideration.
- f) Title Suit No. 172 of 2020 was filed by the mother against the son, with the allegation that the son and the daughter-in-law had continuously used force, threats and pressure tactics, to compel the mother to transfer the

property in the name of the son. Allegation of physical and mental torture have been made. Allegations of forcing the mother to sign on blank papers and stamp papers have been made. Allegations have also been made that the signatures were procured forcefully and the mother's signatures were also forged.

- g) Further allegation that the mother was forced to go to the Additional District Sub-Registrar's office, Basirhat and sign on some blank papers have been levelled against the son.
- h) Sum and substance of the plaint case is that the deeds of gift were unintentional and the products of coercion, forgery and fraud.
- i) A complaint was lodged with the police authorities. An FIR was registered. The investigation was completed. Charge-sheet was filed against the son.

The prayers in the suit were as follows:-

- I. A decree of declaration that the plaintiff had right, title, interest over 'A' and 'B' schedule suit property.
- II. A decree declaring that the impugned deed of Gift being no 151107727 dated 10.11.2017 was the product of coercion and undue influence and as such,

ineffective, invalid, void ab initio and not binding upon the plaintiff.

- III. A decree declaring that the impugned Deed of Gift being no 152505938 dated 02.07.2019 was forged and as such, ineffective, invalid void ab initio and not binding upon the plaintiff.
- IV. For an order of permanent injunction, restraining the defendant and his men and agents from encumbering or disposing or transferring the 'A' and 'B' schedule property or any part to any third party and/or changing the nature and character of the 'A' and 'B' schedule property and/or wasting and damaging the 'A' and 'B' schedule suit property or any part thereof and / or from exercising any sort of ownership and possession over 'A' and 'B' schedule suit property or any part thereof.
- V. Temporary injunction in terms of the prayers.
- VI. Mandatory injunction directing the defendant to vacate and deliver the peaceful possession in respect of the 'A' and 'B' schedule suit property.
- VII. All Costs of the suit.

VIII. Any other relief/reliefs the plaintiff was entitled to get in law and equity.

In the decision of **Sudesh Chhikara vs. Ramti Devi & anr.** decided in **Civil Appeal No.174 of 2021**, the Hon'ble Apex Court held that if the deed of gift was unconditional and there was no liability on the son or the children to whom the property passed on the basis of such deed of gift, to provide for the physical amenities and physical needs of the doner/parent, Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 would not be applicable. 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 sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.'

In the decision of **Jayanta Ghosh and Ors. versus Ajit Ghosh** in **C.O.No.4243 of 2019** this Court 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."

In the decision of **Anirban Chakraborty v. State of West Bengal and Ors.** reported in **2019 SCC Online Cal 733** this court held as follows:-

"16. In my view, the orders impugned to this writ petition had been passed without jurisdiction inasmuch as, according to the respondent No. 5, the deed of gift was not voluntarily executed but, was obtained by fraud, coercion and undue influence and on such allegations the respondent No. 5 had already approached the civil court for a declaration of title and a further declaration that the deed was void and liable to be cancelled. The respondent No. 5 also obtained an order of temporary injunction from the civil court against the petitioner and the respondents No. 6. It is not a case where the deed of gift was voluntarily made by the donor that is, the grandfather on the condition that the petitioner that is, the grandson would look after and

provide the basic amenities to the grandfather and as such, Section 23 of the said Act would not be attracted. Moreover, parallel proceedings on the self-same causes of action was not maintainable.

.....

20. In view of the observation made hereinabove, I find that the Chairman, Maintenance Tribunal erred in passing the order dated February 8, 2018 in exercise of power under Section 23 of the said Act after the order of temporary injunction was passed by a competent civil court. It was not the case of the respondent No. 5 that the deed of gift should be deemed to be void due to the failure on the part of the petitioner to maintain the respondent No. 5 which was a pre-condition in the deed of gift. I find from the pleadings, both in the suit as also before the Tribunal that the specific case of the respondent No. 5 was that the deed of gift was null and void as the same was obtained by practicing fraud, coercion and undue influence on the respondent No. 5 by the petitioner and the respondent No. 6 at the time when the respondent No. 5 was physically and mentally unfit. Thus, Section 23 of the said Act would not be applicable in the facts of this case and the

validity and legality of the deed of gift will be decided in the civil suit. Further, the Tribunal could not have passed any order in the absence of the petitioner who was a necessary and proper party to the proceeding. The orders dated February 8, 2018 passed by the Chairman as also the order of affirmance dated May 28, 2018 passed by the Appellate Tribunal are hereby quashed and set aside.

21. *This writ petition is allowed.”*

Considering the averments in the plaint of Title Suit No.172 of 2022, it appears that the mother had already approached the learned civil court for cancellation of the alleged deeds of gift which according to the averments in the plaint, were products of forgery, coercion and undue representation by the son. In the opinion of this Court, such avenue was rightly availed of by the mother. This was not a case where the deeds of gift had been executed by the mother voluntarily but with a condition that the son would provide the physical needs and other basic amenities to the mother, and on such failure, prayers for invocation of Section 23(1) of the Act of 2007 had been made before the learned Tribunal.

This is a case where the mother alleged that the son had forged the signature of the mother and

also forced the mother to sign on blank stamp papers in order to fabricate and manufacture such document, by which the property as mentioned hereinabove stood transferred to the son. Thereafter, the son again transferred the said property to the petitioner. Title passed in favour of the petitioner before the same was cancelled by the learned tribunal. The petitioner was not even a party to the proceeding, although the tribunal was aware of the fact that the property had been sold to the petitioner.

The decision of the learned writ Court in the matter of ***Dipnakar Ghosh versus The State of West Bengal & Ors.*** in ***WPA 9618 of 2022*** in not application herein. An interim order was refused as Her Lordship was of the view that the tribunal's order could not be stayed as it would amount to allowing the main relief. First of all, the writ petition was filed by the son and secondly, it is an order refusing an ad interim order at the initial stage and the matter had been kept for final decision.

In this case, the subsequent purchaser has filed the revisional application challenging the final order passed by the Tribunal.

Thus, the revisional application is allowed. The portion of the order impugned dated April 22, 2022, insofar as, it relates to cancellation of the deeds of gift as also the deed of conveyance executed in favour

of the petitioner and further direction upon the ADSR to record such cancellation, are set aside. The other portions of the order are not interfered with.

The remedy of the parties would be before the learned civil court. The trial of the criminal proceedings and the civil suit, shall proceed in accordance with law. The observations made hereinabove, shall not prejudice any of those proceedings. The petitioner has the liberty to approach the learned civil court in accordance with law.

The Court makes it clear that the other portions of the order impugned are not interfered with.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)