14.07.2023
Sl. No.7(DL)
srm

C.O. No. 3361 of 2022

Syed Imran Ali

Versus

Rahana Begum & Anr.

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Abhirup Halder
…for the Petitioner.

Mr. Amal Krishna Saha,
Mr. Souvik Sarkar
…for the Opposite Party No.1.

The petitioner is the younger son of the opposite party No.1 (mother). The petitioner is aggrieved by an order dated August 17, 2022 passed by the Chairman, Tribunal for Maintenance and Welfare of Parents and Senior Citizens, constituted under the Act of 2007.

The deeds of gift executed by the opposite party No.1, being Deed No.I 3154 dated 03.06.2020 and I 3153 dated 03.06.2020, by which 24 decimals of land in Plot Nos.2730, 2729, 2767 and 2768 and 2769 of mouza Uttarhat, had been transferred in favour of the petitioner, was declared as void and was cancelled.

The petitioner submits that the deeds of gift do not come with any condition with regard to assurance of future maintenance and supply of essential needs to the mother.

Mr. Bhattacharya, learned Advocate for the petitioner relies on a decision of this Court in the matter of Himangshu Mondal vs. Smt. Sachirani Mondal (In Re: C.O. 1891 of 2021).

Mr. Saha, learned Advocate appearing on behalf of the opposite party No.1 submits that the learned tribunal rightly directed the deeds of gift to be set aside in terms of Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the Act of 2007). According to Mr. Saha, if a senior citizen, after the commencement of this Act, transfers 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, it shall be deemed that the transfer of the property was made by fraud or coercion or undue influence. The tribunal had the power under the said provision of law to declare the transfer to be void.

Laying emphasis on the expression 'subject to', Mr. Saha submits that the tribunal had the power to go beyond the recital and assess the intention of the transferor who executed the two deeds of gift. According to Mr. Saha, such power of the tribunal is clearly spelt out in the non-obstante clause under Section 3 of the said Act of 2007. Mr. Saha submits that the general rules of interpretation of a deed and the provisions of Section 92 of the Indian Evidence Act would be overridden by the provisions of the Act of 2007.

Interpreting the expression ‘subject to’ Mr. Saha relies on the decision of the Hon’ble Apex Court in the matter of K.R.C.S. Balakrishna Chetty Sons & Co. vs. State of Madras, reported in AIR 1961 SC 1152. In the said decision, while dealing with the issue of grant of licence and the interpretation of Sections 5 and 13 of the Madras General Sales Tax Act, the Hon’ble Apex Court interpreted the expression ‘subject to’. The Hon’ble Apex Court held that the licence given under the said Act would be subject to the rules and other requirements of submission of returns, etc. The expression ‘subject to’ did not mean upon fulfilment of condition but meant ‘liable to the rules and the provision’.

Relying on such interpretation of the Hon’ble Apex Court, Mr. Saha contends that the transfer, in this case, was liable to the condition that the transferee/donee should maintain the mother and provide the essential amenities and physical needs.

Dealing with the first submission of Mr. Saha that the tribunal had the power to interpret the intention of the donee, this Court finds from page 3 of paragraph 2 of the deeds of gift that the intention was clearly spelt out. The deeds are in Bengali, which if translated, would indicate that the mother and the son had a strong bonding and love and affection for each other. The mother was pleased with the son's dedication, devotion, respect and the physical care and the medical facilities provided by the son. Hence, as an acknowledgement and return for the son's behaviour and the love which the mother felt for the son, she had decided to gift the property in favour of the son, not only as a mark of her love and blessings, but also to prevent any future dispute with regard to the enjoyment of the property after the mother's death. Thus, such intention is available from the deed itself. No further background check of the interpretation would be necessary. The care and affection which the son had given, was appreciated, and in lieu thereof the mother wanted to settle the property in favour of the son. Further, as a precautionary measure and to avoid any future dispute with regard to the property, such decision was taken. Thus, the deed does not reflect that the mother had gifted the property 'subject' to the condition that the son would provide the physical needs and essential amenities. The gift deeds did not make the petitioner liable to maintain his mother. The gift was unconditional as would be reflected from the recitals.

The contention of the petitioner that adequate opportunity was not given to him to file his objection to the application for maintenance, is not accepted as summons was served upon the petitioner and the petitioner was asked to appear before the tribunal on August 17, 2021 with his written objection.

From the order impugned, it does not appear to the Court that the tribunal had embarked upon any exercise to draw the correct inference with regard to the intention of the transferee. No such satisfaction is recorded. No condition in the deeds have been discussed. The tribunal simply applied the provision of Section 23(1) of the Act of 2007 assuming that any gift made by a senior citizen should be declared as void on the presumption that the same was obtained by coercion or misrepresentation, if there is any complaint of failure of the children to provide for the mother. That cannot be the true import and meaning of Section 23(1)

The intention as available from a bare reading of the deeds, does not indicate that the son was liable to supply the basic amenities and look after the physical needs of the mother. The expression 'subject to', as discussed by the Hon'ble Apex Court, meant liable to abide by certain conditions and provisions. Such liability is absent in these deeds. However, the law is that children have to maintain the mother.

Reliance is placed on the decision of this Court in the matter of Mastak Hossain Alias Mostak Hossain vs. Jarina Bewa & Ors. (In Re: C.O. 1141 of 2023). The relevant portion is quoted below:-

"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."

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 was executed, subject to a condition that the donee would provide the basic amenities and basic physical needs to the parent and the donee fails to provide such amenities, the power under Section 23 can be invoked by the Tribunal. It shall then 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 sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal."

Thus, in my view, the petitioner is liable to maintain the mother irrespective of the deeds. Hence, the petitioner shall pay a sum of Rs.8,000/- to the mother every month on account of her maintenance. Failure to comply with this direction, will entitle the mother to approach the tribunal in future, under the relevant provisions of the Act of 2007.

The order impugned is set aside.

The order impugned does not reflect how such expectation of the mother was established before the Tribunal as the deeds do not impose any condition at all.

The revisional application is, thus, disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)