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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 31st JULY, 2023

IN THE MATTER OF:

+ **W.P.(C) 2461/2022, CM APPL. 7084/2022**

URMIL PATHAK

..... Petitioner

Through: Mr. Dhruv Kapur, Mr. Vijayender kumar, Mr. Maharshi Kaler and Ms. Chahat Arya, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Anupam Srivastava, ASC-GNCTD with Mr. Vasuh Misra, Advocate for R-1.
Mr. B.K. Singh, Advocate for R-2.
Mr. Mukesh Anand, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT(ORAL)

1. The present Writ Petition has been filed by the Petitioner, who is the mother of Respondent No.2, challenging the Order dated 14.12.2021, passed by the District Magistrate (DM), Shastri Nagar, in Appeal No.18-19/2020, setting aside the Order dated 10.06.2021, passed by the Additional District Magistrate (ADM) revoking the gift deed dated 04.10.2018 executed by the Petitioner herein in favour of Respondent No.2 herein.
2. The facts of the case reveals that the Petitioner herein purchased a property bearing No. WA-11, Ground Floor, Shakarpur, Delhi (*hereinafter*



referred to as 'the property in question' in 2000 out of her savings, gratuity and Provident Fund. It is stated that Petitioner has two sons, her elder son – Rajat Pathak is a resident of B-413, Nirman Vihar, Delhi and her younger son, i.e. Respondent No.2 herein is a resident of the property in question. Respondent No.3 is the wife of Respondent No.2.

3. It is stated that a gift deed dated 04.10.2018 was executed by the Petitioner in favour of Respondents No.2 & 3. An application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter referred to as 'the Senior Citizens Act'*) was filed by the Petitioner for revocation of the Gift Deed dated 04.10.2018 on the ground that after execution of the gift deed, Respondents No.2 & 3 have thrown her out of the property in question and are not taking care of her at all. It is stated in the said application that Respondents No.2 & 3 approached the Petitioner herein pleading with her that since they do not have any property, the property in question be given to them. It is stated that Respondents No.2 & 3 promised to take care of the needs of the Petitioner. It is stated that once the gift deed was executed in favour of Respondents No.2 & 3, they started ill-treating the Petitioner and have thrown her out of the house.

4. *Vide* Order dated 10.06.2021, the ADM, after placing reliance on Section 23 of the Senior Citizens Act, cancelled the gift deed dated 04.10.2018 and declared the same as null and void.

5. The said order was challenged by Respondents No.2 & 3 by filing an appeal before the District Magistrate. The District Magistrate *vide* the Order impugned herein has held that the present case is one of sibling-rivalry between the children of the Petitioner and not a case of harassment/ill-treatment of a senior citizen. The District Magistrate relied on the



photographs of the 80th birthday celebrations of the Petitioner herein and came to a conclusion that the relationship between all the family members appears to be cordial and does not show that the Respondents No.2 & 3 were harassing/mistreating the Petitioner herein. The District Magistrate also relied on the medical bills submitted by both the sides to come to a conclusion that the Petitioner was being taken care of by both her sons depending upon where she has been residing. The District Magistrate also placed reliance on the Memorandum of Settlement dated 31.10.2018 which was executed only a few days prior to the execution of the Gift Deed dated 04.10.2018 wherein it is recorded that the property in question is being gifted by the Petitioner herein to her younger son, i.e. Respondent No.2 herein, and on the other hand the Petitioner has given a sum of Rs. 6 lakhs along with jewellery worth 5 lakhs to her elder son - Rajat Pathak. The District Magistrate, therefore, came to the conclusion that in October, 2018 a family agreement was entered into wherein the Petitioner herein gave both her sons some part of her assets and that the present case is one of property dispute between two sons of the Petitioner which has been given a colour of Senior Citizens case in order to get a gift deed which is not only unconditional, but was executed consciously, without undue influence and out of free will by the Petitioner herein and is also duly registered with payment of stamp duty, which was paid by the Respondents No.2 & 3. The learned District Magistrate, therefore, set aside the Order dated 10.06.2021, passed by the learned ADM. It is this Order which has been challenged in the present Writ Petition.

6. Learned Counsel for the Petitioner places reliance on the following judgments:



- a) Raksha Devi v. Deputy Commissioner-cum-District Magistrate, Hoshiarpur & Ors.; CWP No.5086/2016;
- b) Radhamani & Ors. V. State of Kerala & Ors.; W.P.(C) No. 13110/2015;
- c) Raghav Krishan Jetty v. State of Karnataka & Ors., Writ Petition No.49984/2019;
- d) Gurdeep Singh v. Sub Divisional Magistrate-cum-Presiding Officer, Maintenance Tribunal, Samana; CWP No.13121/2016;

to contend that it is not necessary to state in the Gift Deed that the Gift Deed is being given on a condition that the children will take care of the Senior Citizen and that it is implied. He, therefore, states that the reasoning of the learned District Magistrate is not correct.

7. *Per contra*, learned Counsel for Respondents No.2 & 3 places reliance on the judgment passed by the Apex Court in Sudesh Chhikara v. Ramti Devi and Another, **2022 SCC OnLine SC 1684**, to contend that in order to maintain a Petition under Section 23 of the Senior Citizens Act, the Court has to be satisfied that the ingredients of Section 23 of the Senior Citizens Act are fulfilled inasmuch as the gift deed must stipulate that it is being executed on a condition that the Donee will take care of the Donor. He, therefore, states that in absence of any such stipulation in the Gift Deed, the decision of the learned District Magistrate in setting aside the order dated 10.06.2021, passed by the learned ADM, does not require any interference from this Court.

8. Heard the Counsels and perused the material on record.

9. Section 23 of the Senior Citizens Act, which is necessary for adjudication of the present matter, reads as under:



“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. A perusal of Section 23 of the Senior Citizens Act stipulates that if any senior citizen has transferred his property by way of gift or otherwise subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and it is only when the 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.

11. Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was brought into force to provide a more effective provision for maintenance and welfare of parents and senior citizens, a right which is guaranteed and recognized under the Constitution of India. The Statement of Objects and Reasons of the Act indicates that there is a provision under the Code of Criminal Procedure under which parents can claim maintenance from the children but the procedure is time consuming and expensive and, therefore, it is stated that simple, speedy and inexpensive mechanism be provided whereunder maintenance can be claimed by the suffering parents from the children.

12. A Division bench of this Court in a Judgment dated 30.05.2019 passed in **W.P.(C) 347/2018** in the case of “Aarshya Gulati and Ors vs. Government of NCT of Delhi and Ors” has stated that the objective of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is to provide inexpensive and speedy procedure for the protection of life and property of the senior citizens from the children/legal heirs, who are expected to maintain parents/senior citizens by providing the basic amenities and physical needs but refuse or fail to maintain/provide basic amenities which conduct shall amount to ill-treatment and non-maintenance and shall be a ground for parents / senior citizens to seek eviction of children/legal heir from the property, which is the only way for them to seek protection of their property so that, they continue to have shelter over their head, and sustain themselves independently without interference from their children/legal heirs. It was further observed that a senior citizen cannot be expected



to knock the door of Civil Courts to file a legal battle to obtain possession of the property.

13. In Sudesh Chhikara (supra) the Apex Court has observed as under:

“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.

13. 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.

14. 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.

15. Careful perusal of the petition under Section 23 filed by respondent no. 1 shows that it is not even pleaded that



the release deed was executed subject to a condition that the transferees (the daughters of respondent no. 1) would provide the basic amenities and basic physical needs to respondent no. 1. Even in the impugned order dated 22nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems that oral evidence was not adduced by the parties. As can be seen from the impugned judgment of the Tribunal, immediately after a reply was filed by the appellant that the petition was fixed for arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor - senior citizen is sine qua non for applicability of sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent no. 1 that the release deed was executed subject to such a condition.”

14. Both the authorities have failed to record evidence to come to the conclusion that the gift deed had been given on a condition that the Petitioner will be taken care of by the Respondents No.2 & 3. The ADM ought to have recorded evidence and then would have satisfied himself that the ingredients of Section 23 of the Senior Citizens Act are satisfied before holding that the gift deed is bad. The District Magistrate ought to have remanded the matter back to the ADM to ensure that the evidence is led by both the parties and it is proved that the ingredients of Section 23 of the Senior Citizens Act are fulfilled.

15. In view of the above, the matter is remanded back to the District Magistrate to follow the due procedure of law as prescribed under Section 16 of the Senior Citizens Act to enable the parties to lead evidence and show as to whether ingredients of Section 23 of the Senior Citizens Act are satisfied or not before the gift deed dated 10.06.2021 can be said to have



been made by fraud or coercion or under undue influence.

16. With these observations the Writ Petition is disposed of. Pending applications, if any, also stand disposed of.

SUBRAMONIUM PRASAD, J

JULY 31, 2023

Rahul