

05.01.2024
Sl. No.12(DL)
srm

C.O. No. 436 of 2023

Sri Subodh Mitra

Versus

Mrs. Saabnam

Mr. Bidhayak Lahiri

...for the Petitioner.

1. The petitioner is a senior citizen, who is aggrieved by an order dated September 19, 2022 passed in Maintenance Appeal No.01/R.M. of 2022 under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the said Act).

2. By the order impugned, the learned appellate tribunal affirmed the order of refusal of the cancellation of the gift deed, which was passed by the Sub-Divisional Officer, Bolpur, i.e. the Presiding Officer of the Maintenance Tribunal. The learned appellate tribunal granted liberty to the petitioner to approach the Sub-Divisional Officer, Bolpur, in case he faced any obstruction while living in the house. The learned appellate tribunal, upon perusing the statement of needs of the appellant/petitioner, directed the daughter/opposite party to pay maintenance allowance of Rs.10,000/- per month to the father. The maintenance was directed to be deposited within 5th of every month, in the bank account of the petitioner.

3. The petitioner submits that the gift deed by which the property was transferred to the opposite party, ought to have been cancelled by the learned tribunal. The learned appellate tribunal also failed to apply his mind to the provisions of law, while affirming the order of refusal to cancel of the deed of gift, passed by the learned tribunal. The learned Advocate submits that the deed of gift was obtained by fraud, misrepresentation and coercion. That the daughter was not maintaining the father. That by taking advantage of the matrimonial dispute between the father and the mother, the daughter had been neglecting her duties towards her father. That the only property that the petitioner enjoyed, was transfer to the daughter and the petitioner was being deprived of his legitimate right to reside in the said property. The petitioner further alleges that the daughter had subsequently transferred portions of the property which were gifted to her.

4. The petitioner, aggrieved by the conduct of the daughter, approached the Maintenance Tribunal, Bolpur, Birbhum. The Sub-Divisional Officer, Bolpur/Presiding Officer disposed of the said application, *inter alia*, holding that the disputes between the father and the daughter, were family disputes. The same did not come within the purview of the said Act. The Officer-in-Charge, Santiketan, was directed to take steps in order to ensure that the petitioner could reside in the property without any harassment.

5. Aggrieved, the petitioner approached the learned appellate tribunal. The learned appellate tribunal, considering the provisions of Section 23 of the said Act, was of the view that the deed of gift was not liable to be cancelled in terms of the said Act. However, the learned appellate tribunal, upon taking into consideration the age of the petitioner and the contentions of the petitioner that the daughter was not maintaining the petitioner, directed that Rs.10,000/-, as monthly maintenance, be paid to the petitioner, by the daughter. Such amount was directed to be transferred to the bank account of the father.

6. The only issue to be decided in the revisional application is whether Section 23 of the said Act, would be applicable in the facts and circumstances of this case.

7. Having perused page 16 of the revisional application, which is the deed of gift and the recitals therein, this Court finds that the father had gifted the property in favour of the daughter being overwhelmed and satisfied with the love, affection, respect and care the daughter had bestowed upon the father. It has been categorically mentioned that the father had decided to gift the property to the daughter/opposite party since long, but due to many constraints, such deed of gift could not be executed earlier. Finally, upon being aware of the uncertainty of life, the father decided to gift the property and executed the deed. The entire deed of gift, which is Bengali, does not indicate that there

was any condition attached to such gift, to the effect that the daughter would be liable to maintain the father. Rather, the gift appears to be a conscious act on the part of the father to reward his daughter. The daughter had served the father relentlessly and selflessly all along. It is an unconditional gift.

8. Under such circumstances, this Court is of the view that Section 23 of the said Act would not be applicable. For convenience, Sections 23(1) 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 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”.

9. The ingredients of the said section are that when a property is gifted, subject to a condition that the transferee would 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 gift deed shall be deemed to have been obtained by fraud or coercion or undue influence. Under no other circumstances, can the tribunal decide on the validity of such gift, except when there is a condition to maintain the transferor, in the deed itself, and the transferor is

able to demonstrate before the tribunal that the transferee had refused to maintain the transferor.

10. Consideration of the allegations of fraud, misrepresentation and undue influence, would only come into play, had there been a specific condition in the deed of gift that the daughter was liable to maintain the father from the estate which was being gifted to her.

11. The learned appellate tribunal has taken into consideration the requirements of the father and has directed payment of maintenance of Rs.10,000/- per month to the father. The Presiding Officer of the learned Maintenance Tribunal had directed the police authorities to ensure that the father is able to reside in the property in question, without any harassment.

12. Under such circumstances, this Court does not find any reason to interfere with the order impugned.

13. Accordingly, the revisional application is dismissed.

14. There shall be no order as to costs.

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

(Shampa Sarkar, J.)