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13.03.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 26464 of 2023

Tarak Ghosh
Vs.
The State of West Bengal & Ors.

Mr. Amitabha Ghosh,
Ms. Nabanita Chatterjee,
Ms. Arpita Dhar
...for the petitioner

Ms. Ipsita Banerjee,
Mr. Suddhadev Adak
...for the respondent nos. 1 and 3

1. Learned counsel for the petitioner/son submits that on the application of the private respondent/father of the petitioner, the concerned Presiding Officer of the Maintenance Tribunal, Kolkata, by the impugned order dated November 02, 2023, not only cancelled the three gift deeds executed by the private respondent in favour of the petitioner but also went on to pass orders virtually tantamounting to a decree of partition.
2. It is argued that the petitioner bore the medical expenses and other expenses for his father and, as such, cannot be held guilty of dereliction of his duty of maintaining his father.
3. Moreover, there is no consideration in the impugned order regarding the ingredients

contained in Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

4. Despite service, none appears for the private respondent.

5. Affidavits of service filed today be kept on record.

6. Upon hearing learned counsel, it transpires that the petitioner is justified in arguing that the Presiding Officer of the Maintenance Tribunal exceeded his jurisdiction in virtually passing directions which tantamount to granting a partition decree, even apart from cancelling the gift deeds.

7. Moreover, there is complete absence of consideration as to whether the ingredients of Section 23 of the 2007 Act are satisfied. The Tribunal proceeded merely on the allegation of the private respondent that the petitioner had failed to maintain his father. However, no cogent or objective basis for coming to such finding is disclosed in the impugned order.

8. In the deeds executed in favour of the petitioner, copies of which are annexed to the writ petition, it does not appear that any specific clause is included, which comes within the purview of Section 23 of the 2007 Act. However, it cannot be gainsaid that the said ingredients need not necessarily be contained in the deed itself and may also be established by surrounding circumstances

or circumstantial evidence. Section 23 (1) of the 2007 Act merely stipulates that if any senior citizen has transferred by way of gift or otherwise his property, subject to the condition that the transferee shall provide basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such basic amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud and coercion or under undue influence and shall, at the option of the transferor, be declared void by the Tribunal.

9. Both the components, that is, whether there was any circumstantial evidence to associate the condition of providing basic amenities and basic physical needs with the gifts and as to whether the petitioner failed to provide such amenities are absent from the impugned order. Accordingly, the impugned order ought to be set aside.

10. In view of the above observations, W.P.A. No. 26464 of 2023 is allowed, thereby setting aside the order dated November 02, 2023 passed in Case No. 02 of 2023 by the Presiding Officer of the Maintenance Tribunal, Kolkata, whereby, inter alia, the gift deeds executed by the private respondent in favour of the petitioner were cancelled.

11. The matter is hereby remanded to the Tribunal, who shall, upon advertent to the evidence on record

and to the arguments of the parties afresh, if necessary by giving further opportunity to adduce evidence to the parties, come to a de novo conclusion as to whether the ingredients of the 2007 Act are met and, thereafter, go on to pass appropriate orders.

12. It is expected that such exercise shall be concluded within three months from the date of communication of this order to the said Tribunal.

13. It is made clear that the merits of the claims and counter-claims of the petitioner and the private respondent have not been gone into by this Court and it will be open to the Tribunal to decide on the issues independently and in accordance with law.

14. There will be no order as to costs.

15. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)