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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2903 OF 2023

1. Mr. Duryodhan Nivrutti Londhe
Aged : 82 years, Occupation : Retired
Having address at : S.No. 35/1+2
Road No. 7C, Plinth No. 19 of Plot no.
22, Savind CHS Ltd.
Vidya Nagar, Dhanori, Pune-411 032
..... Petitioner

Versus

1. The State of Maharashtra
Through Sub Divisional Officer, Haveli
& Presiding Officer Parents and Senior
Citizens Subsistence Tribunal, Pune
Add : 7, Nilgiri Bungalow, Queens
Garden, Alpa Bachat Bhavan, Pune-
411 001 Through Government Pleader
Officer, Original Side, PWD Building
High Court, Mumbai-400 023
2. Mr. Vinaykumar Duryodhan Londhe
Aged : 48 years, Occupation : Farmer
Present Address : S/No. 35/1+2
Plot No. 22/19, Vidya Nagar
Pune-411 032
Permanent Address :
C/o. Suresh Amrutrao Kamble Ward
No. 1 Borawake Nagar, College Area
Near Sagan Bagh Shrirampur-413 709

3. Mr. Rajkumar Duryodhan Londhe
(since deceased through Legal Heirs)

3(A). Smt. Shobha Rajkumar Londhe
Age : 42, Occupation : Govt. Service

3(B). Master Chaitanya Rajkumar Londhe
Age : 7 years, Occupation : Student
(Being Minor through natural guardian
Mother Smt Shobha Rajkumar Lucille
Both having present address : C/o.
Aniruddha Krishna Kasabe
S. No. 2765/2/5, Sai Nagar, Lohagaon,
Pune-411 047
Address No. 2:
Off : Central Goods and Service Tax,
Audit-I, Office of Commissioner of
Pune, 41-A, GST Bhavan, 4th floor,
Opp. Wadia College
Sasoon Road, Pune-411 001

.... Respondents

Mr. Hemant Ghadigaonkar for the Petitioner.

Mr. Hitendra D. Gandhi for Respondent No.2.

Mr. Abhijit Patil for Respondent Nos. 3(A) and 3(B).

Mr. P. V. Nelson Rajan, AGP for the State.

CORAM : GAURI GODSE, J.

DATE : 5th APRIL 2024

ORAL JUDGMENT

1. Rule. Mr. Gandhi waives service for respondent no. 2, Mr. Patil waives service for Respondent No. 3(A) and 3(B) and learned AGP waives service for the State. Rule made returnable forthwith. By consent of the parties, this petition is taken up for final disposal.

2. This petition takes an exception to order dated 4th November 2022 passed by the Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (“Senior Citizens Act”). The petitioner is a senior citizen who had filed application under Section 5 read with Section 23 of the Senior Citizens Act praying for cancellation of the Gift Deed executed by the petitioner in favour of his sons – respondent nos. 2 and 3. Respondent no. 3(A) is widow and respondent no. 3(B) is son of deceased respondent no.3.

3. The petitioner had also prayed for directing respondent no. 3(A) to vacate the suit property situated at Survey No. 27, Hissa No. 313. The petitioner had further prayed for directing respondent nos. 2 to 3(B) to take care of the petitioner and not to create any hindrance in the life of the petitioner. The said application was contested by

respondent nos. 2 to 3(B). After hearing parties the Tribunal partly allowed the application directing respondent nos. 2 to 3(B) to take care of the petitioner and not cause any mental or physical harassment to the petitioner. By the said order the Tribunal rejected the prayer for cancellation of the Gift Deed by holding that the Tribunal had no jurisdiction to decide the said prayer. Being aggrieved by the rejection of the said prayer, this petition is filed.

4. Learned counsel for the petitioner submitted that the issue regarding jurisdiction of the Tribunal under the Senior Citizens Act for deciding the prayer for cancellation of Gift Deed is no more res integra. He submits that the provision of Section 23 of the Senior Citizens Act has been interpreted to mean that prayers made by the petitioner for cancellation of the Gift Deed is included within the powers and jurisdiction of the Tribunal.

5. In support of his submissions learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of ***Sudesh Chhikara vs. Ramti Devi and Another.***¹ He thus submits that the Tribunal has erroneously rejected the prayer for cancellation of Gift

¹ 2022 SCC Online SC 1684

Deed. He submits that in view of the aforesaid settled position of law application be remanded to the Tribunal for deciding the application for cancellation of Gift Deed.

6. Respective counsels for the respondents do not dispute the aforesaid legal position regarding the jurisdiction of the Tribunal to decide the prayer for cancellation of gift deed.

7. In view of the aforesaid facts and the settled position of law, the Tribunal has jurisdiction to decide the prayers for cancellation of Gift Deed and the consequential prayers. The Tribunal has rejected the said prayers only for want of jurisdiction. Hence, the petition needs to be partly allowed by remitting the matter back to the Tribunal for deciding the prayer clause(a), 2 and 3 of paragraph 29 of the Application No. 59 of 2021.

8. Hence the petition is partly allowed by passing the following order :

(i) Judgment and Order dated 4th November 2022 passed by the Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 in Application No. 59 of 2021 is

quashed and set aside to the extent of rejection of the prayers contained in clauses (a), (2) and (3) of paragraph 29 of the application.

(ii) Application No. 59 of 2021 is restored to the file of the Tribunal for deciding prayer clauses (a), (2) and (3) of paragraph 29 of the application afresh on its own merits.

(iii) Needless to clarify that directions issued in clause (2) and (3) of the operative order of Judgment and order dated 4th November 2022 passed by the Tribunal in Application No. 59 of 2021 stands confirmed.

(iv) It is clarified that I have not examined the rival contentions of the parties on merits of the prayer clauses (a), (2) and (3). Hence, all contentions of all parties with regard to the said prayers are kept open.

(v) Writ Petition is partly allowed in the aforesaid terms.

(vi) Since the age of the petitioner is 82 years, the Tribunal to consider deciding the application expeditiously. Parties shall

appear before the Tribunal on **16th April 2024 at 11.00 am** and thereafter Tribunal to fix the schedule of hearing.

[GAURI GODSE, J.]