

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9634 OF 2024

Subhadra Shivaji Deshmukh	...Petitioner
Versus	
Prasad Mahadev Deshmukh and Ors.	...Respondents

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Mr. Rupesh K. Bobade a/w Ms. Shradha Nakadi, for the Petitioner.

Mr. R. S. Pawar, A.G.P. for the Respondent Nos. 5 & 6 – State.

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CORAM	:	AVINASH G. GHAROTE, J.
DATE	:	23rd JULY, 2024

P.C.:

1. Heard Mr. Rupesh Bobade, learned counsel for the petitioner.

2. The application by the petitioner, who is the senior citizen also questions a Deed of Sale dated 29.04.2022 in respect of Agricultural land bearing Gat No.40 admeasuring 3.60 H.R. which is claimed to have been transferred in the name of her grandson, respondent No.1 for the reason that he wanted the same for the updation of his Aadhaar Card, and has been obtained by practicing fraud upon her as even the cheque of Rs.10,00,000/-, which is shown to be the part consideration in the aforesaid Sale

Deed (Page-35) has not been demonstrated to have been encashed. Learned counsel invites my attention to the copy of the cheque at (Page-40) which though in words makes a mention of 'Rupees Ten Lakhs', however, in figures mentions Rs.1,00,000/-. It is contended that inspite of this plea being raised, the same has not been considered on the ground that the remedy of the petitioner would lie before the Civil Court. The learned Collector, in appeal has also dismissed the appeal.

3. Mr. Rupesh Bobade, learned counsel for the petitioner submits that considering the factuality of the above position, it has to be presumed that the transfer was subject to a condition that a transferee would provide basic necessity and amenities to the petitioner for her life, which has not been so done, on account of which, the same having not been considered, the impugned orders cannot be sustained.

4. The learned A.G.P appears for the respondent No.5 & 6 and supports the impugned order.

5. The requirement by the Competent Authority for assuming jurisdiction, for the purpose of declaring a Sale Deed executed and registered by the senior citizen in favour of a third party or a

relative, is spelt out by the language of Section 23(1) of the Maintenance And Welfare Of Parents And Senior Citizens Act, 2007, which is 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.

6. It is therefore apparent, that the transfer, has to be subject to the conditions (i) that the transferee shall provide the basic amenities and basic physical needs to the transferor and (ii) it is demonstrated on record that such transferee has refused or failed to do so. It is only, in case these two conditions are satisfied, that the Competent Authority would have jurisdiction under Section 23(1) of the Maintenance And Welfare of Parents and Senior Citizens Act, 2007 to entertain and decide a plea for declaring a transfer void. It is therefore necessary for the senior citizen to demonstrate that the transfer, which is claimed to be void

contains a condition that the transferee has agreed to provide the basic amenities and basic physical needs to the transferor. In the instant case, a perusal of the Sale Deed dated 29.04.2022 (Page-34) indicates that it is executed for the purpose of availing the medical treatment and sustenance by the petitioner, as is reflected in Para-2 ((Page-35). Even the part consideration of Rs.10,00,000/- as claimed to have been paid under this document remains unpaid, as is reflected from the cheque at (Page-40). This has not been considered by the authorities below, in view of which, issue notice for final disposal, returnable on **12.08.2024**.

7. Learned A.G.P. waives service of notice upon respondent Nos.5 & 6.

(AVINASH G. GHAROTE, J.)