

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1736 OF 2019**

Priya Sameer Holkar

.. Petitioner

Versus

The Deputy Collector (Gad),
Mumbai City, Mumbai And 3 Ors.

.. Respondents

**WITH
CONTEMPT PETITION (L) NO. 25 OF 2022
IN
WRIT PETITION NO. 1736 OF 2019**

Vasant Raghunath Holkar & Anr.

.. Petitioners

Versus

Priya Sameer Holkar & Ors.

.. Respondents

**WITH
INTERIM APPLICATION (L) NO. 25747 OF 2023
IN
WRIT PETITION NO. 1736 OF 2019**

Ms. Priya Sameer Holkar

.. Applicant

IN THE MATTER BETWEEN

Ms. Priya Sameer Holkar

.. Petitioner

Versus

The Deputy Collector (Gad) Office & Ors.

.. Respondents

...

Mr. Sanjiv Sawant a/w Mr. Heramb Kadam i/b Mr. Aditya Andhorikar, for the Petitioner & Applicant in IAL/25747/2023.

Mrs. Jyoti Chavan, Addl. GP a/w Ms. Nazia Sheikh, AGP for State, Respondent Nos. 1 & 4.

Ms. Trupti A. Bharadi, for Respondent Nos. 2 & 3 in WP/1736/2019 & for the Petitioner in CONPWL/25/2022.

Mr. D. S. Hatle a/w Mr. Mandar Surve, for Respondent No. 5.

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CORAM	: SANDEEP V. MARNE J.
RESERVED ON	: 22 FEBRUARY 2024.
PRONOUNCED ON	: 1 MARCH 2024.

JUDGMENT :-

1) Petition raises an issue as to whether a gift of property made in the name of son by senior citizens can be revoked by the Maintenance Tribunal after son's death in proceedings filed against the daughter-in-law. Also raised is an issue about responsibility of daughter-in-law to maintain the senior citizens and whether the daughter-in-law can be directed by the Tribunal to pay maintenance to her parents-in-law.

2) Issues arise on account of challenge set up by Petitioner, who is daughter-in-law of Respondent Nos. 3 and 4, to the Order dated 9 March 2018 passed by the Maintenance Tribunal constituted under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 (**Senior Citizens Act**). By its Order, the Maintenance Tribunal has directed Petitioner to pay maintenance at the rate of Rs.10,000/- per month in respect of two senior citizens from 27 December 2016 and has also set aside the Gift Deeds

dated 18 November 2013 and 7 February 2014 under provisions of Section 23 of the Senior Citizens Act, directing her to hand over possession of properties covered by the said two Gift Deeds to the senior citizens within 30 days.

3) Petitioner is the daughter-in-law of senior citizens-Mr. Vasant Raghunath Holkar and Smt. Vaishali Vasant Holkar. Petitioner was married their son- Late Sameer Vasant Holkar. It is the case of the senior citizens that the partnership firm under the name "Print Home" was established in 1986, in which both senior citizens each had 50% shares. That the elder son of the senior citizens-Late Sameer Vasant Holkar was included as a partner in the firm in the year 1996 and the shares were redistributed as Vasant-40%, Vaishali-30% and Sameer-30%. It is the case of senior citizens that after father suffered heart attack, son Sameer started looking after the business. He married Petitioner-Priya in the year 2002. That Sameer and Priya established two more companies i.e. Print World (Proprietor-Sameer Holkar) and Promo World (Proprietress-Priya Holkar). That Sameer purchased various properties out of the income generated from partnership firm in which the senior citizens held 40% and 30% shares. That there are as many as 18 immovable properties purchased out of the income from partnership firm. That Sameer raised various credit facilities from various banks and created mortgages against various properties of senior citizens. That the senior citizens executed Gift Deed dated 18 November 2013 in respect of Flat No. 905 Harikunj Co-operative Society Ltd., Sindhi Colony, Chembur (East), Mumbai. Another Gift deed executed on 4 February 2014 in respect of Gala No. 313-A, Printing Press, Byculla Service Industries, near Rani Baug Byculla East, Mumbai. That Sameer Holkar expired on 13 July 2015. After Sameer's death, Petitioner-Priya started harassing the senior citizens and denied them

shares in the properties purchased out of income of partnership firm. The senior citizens accordingly filed compliant before the Maintenance Tribunal.

4) The complaint filed by the senior citizens is adjudicated by the Maintenance Tribunal by Order dated 9 March 2018 which has issued the following directions:

"1. आई-वडिलांचा व ज्येष्ठ नागरिकांचा निर्वाह व कल्याण अधिनियम 2007 मधील कलम 4, (2),(4) च्या तरतुदीच्या उद्दिष्टांच्या पूर्ततेसाठी तसेच कलम 5(7), कलम 9 नुसार गैरअर्जदार श्रीमती. पिरया समीर होळकर यांनी ज्येष्ठ नागरिक तथा अर्जदार श्री. वसंत रघुनाथ होळकर व श्रीमती वैशाली वसंत होळकर यांची स्थावर व जंगम मालमत्ता जसे की गाळा नं. 205 ऐ, भायखळा, सर्विस इंडस्ट्रियल इस्टेट, डी. के. रोड, भायखळा, मुंबई 400027 तसेच पिरंटींग मशीनरी व दाग दागीने शेअर्स, बॉन्ड्स, एल.आय.सी पॉलीसी, नगद रक्कम, पोस्टल सर्टिफिकेट, कच्चा माल व इतर चल व अचल मालमत्ता गैरअर्जदार बेकायदेशीरपणे स्वतःच्या ताब्यात ठेवून आहेत. सबब अर्जदाराच्या ताब्यात सदर मालमत्ता मिळेपर्यंत त्यांनी अर्ज केल्याच्या तारखेपासून म्हणजेच दिनांक 27.12.2016 पासून प्रतिमाह 10,000/- रुपये प्रमाणे निर्वाह भत्ता गैरअर्जदाराने अदा करावा. तसेच गैरअर्जदाराने उपरोक्त नमूद मालमत्ता हे आदेश प्राप्त झाल्यापासून 30 दिवसांच्या आत अर्जदारांच्या ताब्यात द्यावी.

2. आई-वडिलांचा व ज्येष्ठ नागरिकांचा निर्वाह व कल्याण अधिनियम 2007 मधील कलम 13 व महाराष्ट्र नियम 2010 अन्वये निर्वाह भत्त्याची रक्कम रोख स्वरूपात अथवा अर्जदाराचे बँक खाते प्राप्त करून घेवून त्यामध्ये या आदेशाच्या तारखेपासून 30 दिवसांच्या आत अर्जदारास संपूर्ण रक्कम प्रदान करावी.

3. ज्येष्ठ नागरिक तथा अर्जदार श्री. वसंत रघुनाथ होळकर व श्रीमती. वैशाली वसंत होळकर यांनी गैरअर्जदार श्रीमती. पिरया समीर होळकर यांचे पती श्री. समीर वसंत होळकर (मयत) यांच्या मध्ये झालेले पत्ता- 905, हरिकुंज को. ऑ. हौ. सोसायटी., सिंधी सोसायटी, चेंबूर पूर्व मुंबई 400071 या मालमत्तेचे दिनांक 18.11.2013 रोजी झालेले बक्षीस पत्र, सह दुय्यम निबंधक कुर्ला तालुका -1 येथील दस्त क्रमांक 9671/2013 नोंदणी 63 म हे आई- वडिलांचा व ज्येष्ठ नागरिकांचा निर्वाह व कल्याण अधिनियम 2007 मधील कलम 23 व महाराष्ट्र नियम 2010 नुसार अवैध ठरवण्यात येत आहे. सबब सह दुय्यम निबंधक कुर्ला, कुर्ला तालुका -1 यांनी या आदेशा ची नोंद घेवून सदर झालेली बक्षीस पत्राची नोंद रद्द करून न्यायाधिकरणास 30 दिवसात अहवाल सादर करावा.

4. अर्जदार तथा ज्येष्ठ नागरिक श्री. वसंत रघुनाथ होळकर व श्रीमती वैशाली वसंत होळकर आणि गैरअर्जदार श्रीमती. पिरया यांचे पती श्री. समीर होळकर (मयत) यांच्या मधील झालेले पत्ता- गाळा क्र. 313 ए, पिरंटींग प्रेस, भायखळा सर्विस इंडस्ट्रीज, राणी बागेच्या जवळ भायखळा, पूर्व, मुंबई 400027 हया दिनांक 07.02.2014 रोजी झालेले बक्षीस पत्र सह दुय्यम निबंधक मुंबई शहर-3 दस्त क्र. 919/2014 नोंदणी क्र. 63 म हे आई- वडिलांचा व ज्येष्ठ नागरिकांचा निर्वाह व कल्याण अधिनियम 2007 मधील कलम 23 व महाराष्ट्र नियम 2010 नुसार अवैध ठरवण्यात येत आहे. सह दुय्यम निबंधक मुंबई शहर-3 यांनी या आदेशा ची नोंद घेवून सदर झालेली बक्षीस पत्राची नोंद रद्द करून न्यायाधिकरणास 30 दिवसात अहवाल सादर करावा.

5. उपरोक्त नमूद दोन्ही मालमत्तेचा ताबा गैरअर्जदार श्रीमती. पिरया समीर होळकर यांनी हे आदेश प्राप्त झाल्यापासून 30 दिवसांच्या आत अर्जदार तथा ज्येष्ठ नागरिक श्री. वसंत रघुनाथ होळकर व श्रीमती. वैशाली वसंत होळकर यांना द्यावा.

6. गैरअर्जदार व त्यांचे पती श्री. समीर वसंत होळकर (मयत) यांनी आदेशामधील नमूद मुद्दा क्रमांक 3 व 4 नुसार बँकेकडे गहाणखत करून ठेवलेली मालमत्ता अर्जदारांचे निर्वाह व निवासाचे एकमेव साधन आहे. सबब आई-वडिलांचा व ज्येष्ठ नागरिकांचा निर्वाह व कल्याण अधिनियम 2007 मधील कलम 3 व महाराष्ट्र नियम 2010 च्या तरतुदी नुसार सदर कायद्याचा अंमल देण्यासाठी संबंधीत बँकांनी त्यांची वसुली गैरअर्जदार जी ग्रेन्टर सुध्दा आहे हीच्या ताब्यातील इतर मालमत्तेतून करावी (आदेशातील नमूद मालमत्ता वगळून), उर्वरीत इतर मालमत्तेचे स्रोत देखील अर्जदारची मूळ मालमत्ता पिरंट होमच्या अपत्र स्रोतातूनच असल्याचे दिसून येत असल्याने सदर अधिनियमाच्या कलम 3 च्या तरतुदी नुसार अंमल बजावणीसाठी बँकांनी या आदेशाप्रमाणे पूढील कारवाई करावी."

5) The English translation of the above directions as provided by the Petitioner reads thus:

"1. According to the provisions of Maintenance of Parents and Senior Citizens Act, 2007 under section 4,(2), (4) and under section 5(7), 9 the respondent Mrs Priya Holkar is directed to return back all the properties i.e Gala no 205 A, byculla Service Industrial Estate, B.K Road, Byculla, Mumbai 400 027 also printing machinery and all the / jewelleries, share bonds, LIC policy, cash, postal certificates and ail other things which is in the unlawful custody of the respondent. Further till the Applicant receives all the above property as stated above the respondent is directed to pay Rs. 10,000/per month as monthly allowance from the date of complaint filed by the applicant i.e 27/12/2016. That the respondent on receipt of this order within 30 days shall return back all the properties as mentioned above.

2. According to the provisions of Maintenance of Parents and Senior citizens Act, 2007 under section 13 and Maharashtra rule 2010 shall give cash or deposit the entire amount of maintenances alioavance in the bank account of the applicant within 30 days from the date of the order.

3. The gift deed executed by Applicants I.e Mr Vasant Raghunath Holkar and Vaishali Holkar in favour of their deceased Son Mr Sameer Holkar of the flat being flat no. 905, Hari Kunj CHS. Ltd, Sindhi Society, Chembur, Mumbai which was executed on 18/11/2013 which ig registered at SRO Kurla at sr no 9671/2013 shall be treated as cancelled according to the provisions of Maintenance of Parents and Senior Citizens Act, 2007 under section 23 and Maharashtra rule 2010. The sub registrar office kurla should take note of this order and shall terminate/ cancel the said gift deed and shall forward the report of the same within 30 days on receipt of this order.

4. The gift deed executed by Applicants I.e Mr Vasant Raghunath Holkar and Vaishali Hoikar in favour of their deceased Son Mr Sameer Holkar of Gala No. 313 A, 3" floor, Byculla Service Industries, near Rani Baug, Byculla, Mumbai 400 027 , which was executed on 07/02/2014 and is registered with SRO Mumbai -III at Sr no 919/2104 shall be treated as cancelled according to the provisions of Maintenance of parents and Senior Citizens Act, 2007 under section 23 and Maharashtra rule 2010. The sub registrar office Mumbai-III should take note of this order and shall terminate/ cancel the said gift deed and shall forward the report of the same within 30 days on receipt of this order.

5. The Respondent shall return back above mentioned both the Properties in her possession to the Senior Citizens / Applicants i.e Mr Vasant Raghunath Holkar and Vaishali Holkar within 30 days from receipt of this order.

6. As mentioned in point no 3 and 4 in order the property which has been mortgaged with the bank by the Respondent and her deceased Husband Mr Sameer Holkar, which is the sole source of livelihood and only place for them to reside. Hence according to the provisions of Maintenance of Parents and Senior Citizens Act, 2007 under Section 3 and Maharashtra rule 2010 and to give effect to the said act the concerned banks should recover the loans from the other properties (excluding the property as mentioned in the order) in the possession of the Respondent who is also the guarantor. As it appears that the source of other property of the Applicants is also from the income of the original property print home, therefore as per the provisions of the said Act under Section 3, the bank authorities are directed to take appropriate step as per this Order."

6) Petitioner is aggrieved by the Order of the Maintenance Tribunal and has filed a present Petition.

7) During pendency of the Petition, father-in-law-Vasant Raghunath Holkar unfortunately expired in March 2023. The case was referred for mediation by this Court. However, the mediation has failed. In the meantime another twist came to be added in the disputes between the Petitioner and senior citizens when the Kurla Nagarik Sahakari Bank Ltd. intervened and came to be added as Respondent No. 5 in the Petition. It is contention of the bank that various credit facilities were extended by the bank to Petitioner's husband, who is no more. That Sameer Holkar had mortgaged property bearing Gala No. 313-A, Byculla Service Industries Ltd., Byculla with the bank as security to the credit facilities. Apprehending that the Order passed by Maintenance Tribunal cancelling the Gift deed dated 7 February 2014 in respect of Gala No. 313-A would affect bank's interests, it has intervened in the present Petition.

8) I have heard Mr. Sawant the learned counsel appearing for Petitioner, who submits that the order passed by the Maintenance Tribunal suffers from a patent illegality where the Tribunal has instituted an enquiry into the entitlement of partners to the assets in a partnership firm, which jurisdiction it does not possess. He would criticize the Tribunal of rendering a lengthy judgment beyond the scope of its jurisdiction. That the Petitioner herself is facing immense difficulties in managing the affairs of the firm which is under heavy debts. That no maintenance can be sought under the Senior Citizens Act from a daughter-in-law. That she does not possess the properties of the senior citizens. That Gifts executed in favour of Son cannot be declared void by the Tribunal after his death.

9) Ms. Bharadi the learned counsel appearing for Respondent No.3 (mother) would oppose the petition and support the order passed by the Maintenance Tribunal. She would submit that the Petitioner is unauthorisedly holding on to the properties of the senior citizen and is exclusively enjoying the same. That she has no right to enjoy the properties gifted by senior citizens to their son. That senior citizens cannot be held responsible for debts created by the son and Petitioner and their properties cannot be utilized for repayment of debts which senior citizens never availed. That the various properties are purchased out of income of partnership firm in which the senior citizens held $40+30=70\%$ stake. That they must get back their properties, which are being exclusively enjoyed by Petitioner, who is not even a partner in the firm 'Print Home'. That the son and Petitioner deliberately created two more firms to siphon off the assets of the firm 'Print Home'.

10) Mr. Bharadi would submit that the Mother had no place to reside and is at the mercy of other child. That she must get back the flat which was owned by the senior citizens and gifted to son. That there is no one to take care of mother. That in any case, the mother has $1/4^{\text{th}}$ share in the properties of son, after his death, including the gifted properties. She would pray for dismissal of the Petition.

11) Ms. Chavan the learned Additional Government Pleader appearing for Respondent Nos. 1 and 4 would also oppose the Petition. She would justify the jurisdiction of the Maintenance Tribunal exercised in the present case considering the broad objective of the Act. According to Ms. Chavan, the Tribunal had ensured that the senior citizens are not divested of their properties by the daughter-in-law. That the Act has been enacted with

the objective of providing a quicker remedy to the senior citizens, who cannot be expected to undergo the rigmarole of lengthy litigation in civil courts to get back their properties. She would pray for dismissal of the Petition.

12) Mr. Hatle the learned counsel appearing for Respondent No.5-Bank would support the Petition to some extent. He submits that the Bank has limited interest in the litigation between Petitioner and Respondent No. 3. That the Bank is concerned with its rights qua the mortgaged property, gift of which is set aside by the Tribunal. That the Tribunal could not have decided the validity of the gift after the gifted property was mortgaged with the Bank and credit facilities are availed through the security of mortgaged property. That the Tribunal had no jurisdiction to decide validity of Gift since the Bank is entitled to sell the gifted property to recover its dues.

13) Having considered the submissions canvassed by the learned counsel appearing for the parties and on perusal of the Order passed by the Maintenance Tribunal. It is seen that the Order is in following three parts:

- i) Payment of maintenance of Rs.10,000/- per month from 27 December 2016 to the senior citizens till return of properties at sr. no. (ii).
- ii) Return of all movable and immovable properties of the senior citizens by Petitioner such as Gala No. 205-A, printing machinery, ornaments, share bonds, LIC policy, cash, postal certificates, raw materials and other movable and immovable properties.
- iii) Cancellation of gift deeds dated 18 November 2013 and 7 February 2014 under Section 23 of the Senior Citizens Act.

14) In the present case, the complaint under provisions of Section 4 and 5 of the Senior Citizens Act was filed by senior citizens against their daughter-in-law. Sections 4 and 5 of the Senior Citizens Act reads thus:

"4. Maintenance of parents and senior citizens -

(1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of:-

- (i) parent or grand-parent, against one or more of his children not being a minor;*
- (ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2.*

(2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such citizen or he would inherit the property of such senior citizen:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

5. Application for maintenance. —

(1) An application for maintenance under section 4, may be made—

- (a) by a senior citizen or a parent, as the case may be; or*
- (b) if he is incapable, by any other person or organisation authorised by him; or*
- (c) the Tribunal may take cognizance suo motu.*

Explanation.- For the purposes of this section "organisation" means any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860), or any other law for the time being in force.

(2) The Tribunal may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this section, order such children or relative to make a monthly allowance for the interim maintenance of such senior citizen including parent and to pay the same to such senior citizen including parent as the Tribunal may from time to time direct.

(3) On receipt of an application for maintenance under sub-section (1), after giving notice of the application to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance.

(4) An application filed under sub-section (2) for the monthly allowance for the maintenance and expenses for proceeding shall be disposed of within ninety days from the date of the service of notice of the application to such person:

Provided that the Tribunal may extend the said period, once for a maximum period of thirty days in exceptional circumstances for reasons to be recorded in writing.

(5) An application for maintenance under sub-section (1) may be filed against one or more persons: Provided that such children or relative may implead the other person liable to maintain parent in the application for maintenance.

(6) Where a maintenance order was made against more than one person, the death of one of them does not affect the liability of others to continue paying maintenance.

(7) Any such allowance for the maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or expenses of proceeding, as the case may be.

(8) If, children or relative so ordered fail, without sufficient cause to comply with the order, any such Tribunal may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person for the whole, or any part of each month's allowance for the maintenance and expenses of proceeding, as the case be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made whichever is earlier:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Tribunal to levy such amount within a period of three months from the date on which it became due."

15) Thus, the senior citizens can file application under Section 5 of the Act against one or more of his children who are not minor. A childless senior citizen can also file a complaint against his relative. Definition of the term children under Section 2(a) of the Act is as under:

"2 (a). "children" includes son, daughter, grandson and grand-daughter but does not include a minor;"

16) Thus a daughter-in-law is not included in definition of the term 'children'. Under sub-section 4 of Section 4, a relative of senior citizens having sufficient means is under obligation to maintain the senior citizen only if such relative is in possession of property of senior citizen or he would inherit the property of senior citizen. Therefore, though a daughter-in-law is not included in definition of the term 'children', but she would still be obliged to maintain a senior citizen under Section 4 (4), if it is proved that the daughter-in-law is in possession of property of senior citizens. Jurisdiction against Petitioner, who is otherwise not covered by definition of term 'children', is sought to be exercised by the Tribunal by treating her as

relative. The term relative is defined under section 2 (g) of the Senior Citizens Act as under:

“2 (g). “relative” means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death;

17) Thus, to rope in a daughter-in-law, who is not covered under definition of the term ‘children’, it must be proved that the daughter-in-law is in possession of or would inherit property of senior citizen after his/her death. It is therefore necessary that a finding is recorded that the senior citizen owns a property. The term ‘*his property*’ in section 2(g) would obviously mean the property owned by the senior citizen and not a property in which senior citizen merely claims share, which is yet to be established. The Maintenance Tribunal has recorded a finding that Petitioner held/holds property of the senior citizens. Though list of several properties is incorporated in the order of Maintenance Tribunal, no inquiry is instituted as to whether senior citizens actually own those properties in their individual capacities. The finding of Petitioner holding senior citizen’s properties is then utilised for issuance 2 directives viz. (i) to pay Maintenance of Rs. 10,000/- to senior citizens and (ii) to return the properties to senior citizens. I proceed to examine correctness of both these directions.

18) The Maintenance Tribunal has directed payment of maintenance of Rs.10,000/- per month to the senior citizens on account of illegal holding of properties of senior citizens. Mr. Sawant, after taking instructions from his client, made a statement that Petitioner is willing to pay maintenance of Rs.10,000/- to the mother-in-law during her lifetime. In view of the said statement being made, it is not necessary to delve deeper into the aspect of

liability of Petitioner to maintain the senior citizens under Section 4 (4) of the Act. Therefore, the statement recorded by Mr. Sawant for payment of maintenance of Rs.10,000/- per month to Respondent No.3 is accepted and recorded. It must be noted here that even after death of father-in-law, Petitioner is still willing to pay monthly maintenance of Rs.10,000/- to mother-in-law-Vaishali during her lifetime. It appears that such maintenance amount has been paid every month by the Petitioner to the senior citizens from 27 December 2016 till date. She shall continue to pay the same during lifetime of Respondent No.3.

19) The next direction is for return of movable and immovable properties of senior citizens. In my view to justify this direction, a positive finding of ownership of those properties by senior citizens was required to be recorded. Ownership of properties by senior citizens is an altogether different concept than ownership of stake in partnership firm through whose income, property is purchased. From the application made by the senior citizens so also from findings recorded by the Tribunal, it appears that most of the properties are purchased through the income of partnership firm, in which the senior citizens claim share. In my view, the Maintenance Tribunal cannot decide the issue of entitlement of senior citizens to a share in properties purchased through income of the partnership firm. To issue a drastic order for return of properties, a positive finding must be recorded that the senior citizens own the property absolutely and that the same is in possession of a relative. In the present case, no such finding is recorded and therefore the direction of Tribunal for return of movable and immovable properties is clearly unsustainable. If the senior citizens have/had 40% + 30% share in the business and assets of the partnership firm and if they are indeed entitled to secure any benefits out of their share in the partnership firm, the proper

remedy for them is to file a suit for dissolution of the partnership. The assets of the firm cannot be directed to be handed over by passing a vague Order under provisions of the Senior Citizens Act. In fact, the jurisdiction conferred upon the Maintenance Tribunal does not include jurisdiction to decide disputes arising out of partnership firm.

20) Coming to the third aspect of annulment the Gift Deeds dated 18 November 2013 and 7 February 2014, it appears that by the said Gift deeds, two properties being Flat No. 905 in Harikunj CHS and Gala No. 313-A were gifted by the senior citizens to their son-Sameer. The Maintenance Tribunal has proceeded to annul both the Gift deeds under provisions of Section 23 of the Senior Citizens Act. Section 23 of the Senior Citizens Act reads thus:

"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."

21) Thus under Section 23 of the Act, a deeming fiction is created where a senior citizens transfers his property by way of Gift or otherwise on a condition that the transferee shall provide the basic amenities and basic physical needs to be transferor and where the transferee refuses or fails to provide such basic amenities and basic physical needs, the transfer is deemed

to be treated as having been made by fraud or coercion or under undue influence and be declared void by the Tribunal. For an application being made to the Tribunal for passing an Order declaring a transfer as void under provisions of Section 23 of the Act, certain conditions need to be satisfied which are as under:

- i) The transfer must take place after coming into force of the Act.
- ii) A transfer must be effected on a condition of transferee agreeing to provide the basic amenities and basic physical needs to the transferor and
- iii) The transferee fails or refuses to provide such amenities and physical needs to the transferor.

22) The Apex Court in its judgment in ***Sudesh Chhikara Vs. Ramti Devi & Anr.*** Civil Appeal No. 174 of 2021 decided on 6 December 2022 has discussed the scope of exercise of jurisdiction by the Maintenance Tribunal under Section 23 of the Act and has held in Para 12, 13, 14 and 15 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.

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.

13. 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.

14. 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 22" 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 lo 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 staled earlier, it is not even pleaded by respondent no.1 that the release deed was executed subject to such a condition.

15. We have perused the counter affidavit filed by respondent no. 1. Even in the counter, it is not pleaded that the release was subject to such a condition. It is merely pleaded that the appellant had no intention to take care of her mother. Thus, the order of the Maintenance Tribunal cannot be sustained as the twin conditions incorporated in sub-Section (1) of Section 23 were not satisfied. Unfortunately, the High Court has not adverted to the merits of the case at all."

23) In the present case, in my view, the conditions specified under Section 23 for passing an order of declaration of transfer as void by the Tribunal are not met with. The most essential condition for declaring a transaction as void by the Tribunal is "*failure or refusal by the transferee to provide basic amenities and basic physical needs to the transferor*". In the present case the transferee in respect of the Gift deeds dated 18 November 2013 and 7 February 2014 is Sameer Holkar. The said transferee was already dead on the date of filing of application by the senior citizens before the Maintenance Tribunal. The death of Sameer occurred on 13 July 2015 whereas the application was filed by the senior citizens before the Maintenance Tribunal in the year 2017. Thus, as on the date of filing of the application, the transferee was already dead and therefore there was no question of failure or refusal by the transferee to provide basic amenities and basic physical needs to the senior citizens. Thus, the very basic condition for exercise of jurisdiction by the Tribunal under Section 23 of the Act was absent. Therefore, the Tribunal could not have passed an Order under Section 23 of the Act declaring the Gift deeds as void. In the lengthy Order running into 73 pages, the Tribunal has not rendered any finding as to satisfaction of the basic condition of failure or refusal by the transferee to

provide basic amenities and physical needs to the senior citizens. Petitioner is not the transferee and is not under legal obligation to provide basic amenities and basic physical needs to the senior citizens. The gift executed in favour of son Sameer was not out of expectation that Petitioner would provide basic amenities and basic physical needs to the senior citizens. In my view, therefore, the Maintenance Tribunal did not have jurisdiction to pass an Order declaring the Gift deeds as void under Section 23 of the Act.

24) It must be borne in mind that in ordinary circumstances, after execution of a gift, the alienation/transfer in the property becomes absolute to the transferee and the transferor cannot later change his/her mind and seek cancellation of that gift. Section 23 of the Senior Citizens Act is an exceptional provision under which, a validly executed gift by a senior citizen can be declared void, if it is found that the transferee fails to provide basic amenities and basic physical needs to the transferor. To invoke such exceptional provision, which has the drastic effect of annulment of a document of transfer, all conditions specified in Section 23 must be scrupulously met with. Even if one of the conditions is not satisfied, declaration of annulment of gift cannot be made under Section 23 of the Act. Since the conditions specified under Section 23 are not met in the present case, the declaration made by the Tribunal about annulment of gift deeds dated 18 November 2013 and 7 February 2014 is erroneous and deserves to be set aside.

25) The issue of jurisdiction of the Tribunal to declare a gift to be void needs to be looked from another angle in the present case. After execution of the Gift, the gifted property is mortgaged by the transferee in favour of Respondent No. 5 Bank for availing the credit facilities. Today it is

the mortgaged property with the Bank, which is entitled to sell the same to recover its dues. By annulling the gift, the Tribunal has indirectly negated the mortgage rights of the Bank.

26) While interfering with the Order passed by the Maintenance Tribunal, I am conscious of the fact that the mother-in-law (Respondent No.3) could face difficulties during sunset days of her life. In fact, Ms. Bharadi has made repeated emotional appeals before me that Respondent No.3 does not have a place to reside. However, at the same time, it appears that the entire family is in heavy debts. From the lengthy order passed by the Maintenance Tribunal, one may get an impression as if the daughter-in-law is sitting on numerous of properties belonging to the family. However if the dues payable by the partnership firm are taken into consideration, it is doubtful whether all those properties would satisfy those dues. The Affidavit filed by Respondent No.5 indicates that in respect of credit facilities availed by the son Sameer from the bank, a sum of Rs.3,33,82,795/- was due as on 25 May 2017 when recovery certificates were issued under provisions of Section 101 of the Maharashtra Co-operative Societies Act, 1960. Since the due amount is not paid to the Bank, total amounts due as on the date of filing of the Affidavit dated 22 January 2024 was Rs. 9.50 Crores. Out of the two gifted properties, Gala No. 313-A has been mortgaged by Son Sameer with the bank. The effect of annulment of the Gift Deed dated 7 February 2014 would be such that deceased Sameer and consequently Petitioner, would lose ownership in respect of that Gala, which he had already mortgaged with bank. It is in the interest of the entire family that bank's dues are repaid at the earliest. Any change in the status of owners of the property would put the entire family in further difficulties. The real dispute which the senior citizens raised was not about their maintenance and care but claim to

the assets of the partnership firm. Dispute with regard to entitlements under partnership deed were sought to be raised before the Maintenance Tribunal, which unfortunately has dealt with the same. The Maintenance Tribunal, in my view has transgressed its jurisdiction, remit of which is to conduct a summary inquiry and not to render a lengthy judgment after instituting an inquiry into the entitlements of partners to the assets of the partnership firm. Merely because senior citizens happen to be partners of a firm, the same does not bestow jurisdiction on the Maintenance Tribunal to decide their entitlement to the assets acquired through income of partnership firm.

27) Coming back to the topic of difficulties likely to be faced by the mother-in-law (Respondent No. 3), this Court is sensitive about the same and which is why this Court requested Mr. Sawant to take instructions from Petitioner as to whether she would continue to pay the maintenance amount of Rs.10,000/- to Respondent No.3 which request, after some efforts by Mr. Sawant, she has gracefully agreed. It must also be noticed that the maintenance amount of Rs. 10,000/- was in respect of both Respondent Nos. 2 and 3. Unfortunately Respondent No.2 has passed away during pendency of the present Petition in March 2023. Nonetheless this Court has ensured that the amount of maintenance is not reduced and that the Petitioner pays the same to Respondent No. 3 during her entire lifetime. It is not known whether Respondent No.3 desires to engage into litigation with regard to her entitlements to the assets of / acquired through income of the partnership firm. But if she desires to do so, she would be free to initiate appropriate proceedings, which would be decided without being influenced by any of the observations made by the Maintenance Tribunal in the impugned Order or by this Court in the present Judgment.

28) What remains now is to deal with Ms. Bharadi's reliance on the judgment of this Court delivered by this Court in ***Ashwin Bharat Khater Vs. Urvashi Bharat Khater*** Writ Petition No. 6022 of 2022 decided on 7 September 2023. In that case the mother had executed a gift in favour of her son and wanted her gifted properties back, by seeking annulment of that gift under Section 23 of the Senior Citizens Act. In the present case Respondent No.3 is expecting annulment of gift made in favour of her son by filing proceedings against daughter-in-law. The Judgment in ***Ashwin Khater*** has therefore no Application to the facts of the present case.

29) Both Ms. Bharadi and Ms. Chavan sought to urge before me that even if the validity of the Gift deeds are upheld, after death of son Sameer, the Mother-Respondent No. 3 will have 1/4 share in the properties of Sameer. If this is the case, the Mother (Respondent No.3) will have initiate proceedings to claim her share in the properties of her son. Neither the Maintenance Tribunal in exercise of its jurisdiction under Section 5 or Section 23 of the Senior Citizens Act nor this Court in exercise of jurisdiction under Article 227 of the Constitution of India is not expected to decide the entitlement of the Mother (Respondent No.3) about her alleged share in her son's properties. Similar is the position with regard to alleged entitlement of Respondent No.3 to the assets of the partnership firm.

30) Considering the overall conspectus of the case I am of the view that the Order passed by the Maintenance Tribunal is unsustainable and is liable to be set aside, except to the extent of direction to pay monthly maintenance of Rs.10,000/- by Petitioner to Respondent No.3.

31) I accordingly proceed to pass the following Order:

ORDER

- i) Order dated 9 March 2018 passed by the Maintenance Tribunal is set aside.
- ii) Petitioner shall continue to pay monthly maintenance of Rs.10,000/- to Respondent No.3 during her entire lifetime.
- iii) Respondent No. 3 would be at liberty to adopt appropriate remedies to claim share in assets of partnership firm or in the assets of her son late Sameer Vasant Holkar.

32) With the above directions, the Writ Petition is disposed of. There shall be no orders as to costs.

33) In view of disposal of Writ Petition, Contempt Petition (L) No. 25 of 2022 and Interim Application (L) No. 25747 of 2023 do not survive and the same are also disposed of.

[SANDEEP V. MARNE J.]