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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-04-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

WP No.1987 of 2023

And

WMP No.2063 of 3

Palanimuthu

.. Petitioner

-VS-

1.The Principal Officer,
Maintenance Tribunal /
Revenue Divisional Officer,
Namakkal District,
Namakkal.

2.Irusappan

3.Karuppannan

4.The Sub Registrar,
Vazhapadi,
Salem District.

.. Respondents



Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent in his proceedings in Pa.Mu.10348/2022/A1 dated 29.11.2022 and quash the same.

For Petitioner : Mr.D.Vasanth

For Respondents-1 and 4 : Mr.V.Jeevagiridharan,
Additional Government Pleader.

For Respondent-2 : Mr.R.Kalyan Kishansingh

For Respondent-3 : Mr.R.M.Muthukumar

ORDER

The order passed by the Revenue Divisional Officer in proceedings dated 29.11.2022 under the Senior Citizens Act, is under challenge in the present writ proceedings.

FACTS OF THE CASE:

2. Though the order stipulates that the petitioner can prefer an appeal, the Senior Citizens Act [hereinafter referred to as the 'Act', in short], contemplates an appeal only to the aggrieved senior citizen.



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3. In the present case, the impugned order has been passed against the son of the senior citizen/writ petitioner and therefore, no appeal is maintainable under the provisions of the Act. Thus, the present writ petition is entertainable.

4. The second respondent is the father of the writ petitioner and the third respondent is his brother. A Partition Deed was executed on 01.11.2021 between the family members, which is registered as Document No.4734 of 2021.

5. The petitioner states that the Partition Deed was executed voluntarily by the family members. 'A' Schedule property in the document was allotted to the second respondent/father and in lieu of immovable properties, he had taken cash of Rs.50,000/- from and out of the joint family income. The sister of the petitioner was allotted 'D' Schedule property and she had taken Rs.2 lakhs from and out of the joint family income. The petitioner was allotted 'B' Schedule property and accordingly, the partition was effected.



6. The petitioner states that he is working in Saudi Arabia. To put up constructions in Door No.3/354, out of his own earnings and the said house situate in Survey No.303/6A. In the joint family house, the petitioner's family and the second respondent, were residing together and the said property is allotted to the third respondent. The house situate in Survey No.303/6B was occupied by the father and mother of the writ petitioner.

7. It is not in dispute that the house property is maintained by the second respondent. The petitioner states that his wife has been disturbed by the second respondent in order to evict her. Under those circumstances, the second respondent filed a petition under the Act. The Revenue Divisional Officer, without considering any of the facts and circumstances, passed the impugned order, which is under challenge in the present writ petition.

8. The learned counsel for the petitioner would submit that the petitioner is ready to maintain the second respondent, who is none other



than his father. He has no objection to provide residence in the same house where his parents were living. The second respondent is unnecessarily creating disturbance and he made an attempt to send out his wife and children and that prompted for initiation of action under the Act.

9. The learned counsel appearing on behalf of the second respondent would oppose by stating that the second respondent-senior citizen was thrown out from his residence by the wife of the writ petitioner. The senior citizen was not allowed to reside in his own house and therefore, he filed an application to cancel the Partition Deed for the purpose of protecting his residence, where he is living for years together along with his wife and family members.

10. Since the petitioner has not cooperated and instigated his wife to send out the second respondent from the house, the second respondent initiated action under the Act. The Revenue Divisional Officer conducted an enquiry and based on the statements and considering the circumstances, passed the order, cancelling the Partition Deed, since the right of residence of the petitioner is to be protected under the Act.



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11. The petitioner would further submit that the Partition Deed was executed with the consent of the family members and therefore, it cannot be cancelled. More-so, he is ready to accommodate the second respondent in the house. That being so, the impugned order is to be set aside.

12. The order impugned reveals that an elaborate enquiry has been conducted. The mother of the writ petitioner has given a statement before the Competent Authority under the Act. The mother of the writ petitioner has stated that they are in possession of the joint family property for about 50 years and the income derived from the properties are spent for the welfare of the family as a whole. In respect of the residential house in Survey No.303/6, the second respondent, their sons, daughter-in-law, grand children were residing together.

13. The mother of the writ petitioner further states that she was also earning and gave money to her son Mr.Palanimuthu. Further, she says



that she has spent money for the education of three grandchildren. The second respondent, her husband, due to age and out of love and affection agreed to execute the Partition Deed. After executing the Partition Deed, the sons of the second respondent attacked the second respondent. The daughter-in-law Smt.Vennila beaten her father-in-law and harassing him in order to evict him from the house. Under those circumstances, the second respondent-senior citizen and his wife, were not in a position to reside in the said house. Therefore, they have approached the Competent Authority under the Act.

14. Pertinently, another son of the second respondent Mr.Karuppannan also has given a statement before the Competent Authority. The said Mr.Karuppannan is the brother of the writ petitioner herein. He also has deposed before the Competent Authority that the petitioner and his wife after execution of Partition Deed, started harassing their father and mother. The said Mr.Karuppannan further deposed that the Partition Deed is to be cancelled and the properties must be handed over to his age-old parents.



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15. When the wife of the senior citizen and the brother of the petitioner, have clearly deposed that the petitioner and his wife made an attempt to send out the senior citizen from the residence, the petition under the Act, was filed. The brother of the writ petitioner himself deposed before the Competent Authority that the Partition Deed is to be cancelled in order to protect the livelihood of the senior citizen and the properties are to be handed over to the senior citizen in order to protect their livelihood and the residence.

16. Based on the deposition of the mother and brother of the writ petitioner, the Competent Authority has passed an order, cancelling the Partition Deed.

17. In the case of **Mohamed Dayan vs. District Collector** [2023 (4) LW 613], this Court has elaborately considered the principles as under:-

“JUDGMENTS ON THE SENIOR

**CITIZENS ACT:**

24. *A notable judgment on the Senior Citizens Act, was delivered by the Three Judges Bench of the Hon'ble Supreme Court of India in the case of **S.Vanitha vs. Deputy Commissioner, Bengaluru Urban and District and Others [(2021) 15 SCC 730]**, wherein in paragraphs 15 to 25, it has been held as follows:-*

“C. Legislative scheme : Senior Citizens Act, 2007

15. *The rival submissions will now be analysed.*

16. *Our analysis of the rival submissions must begin with explaining and interpreting the salient feature of the Senior Citizens Act, 2007 which have a bearing on the present controversy. “Maintenance” is defined in an inclusive manner to incorporate, among other things, provisions for food, clothing, residence, medical assistance and treatment [“2. (b) “**maintenance**” includes provision for food, clothing, residence and medical attendance and treatment;”] . In defining the expression “property”, the legislation uses broad terminology encompassing “property of any kind” and to include “rights or interests in such*



property” [“2. (f) “**property**” means property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property;”] . Overriding effect is given to the provisions of the enactment by Section 3 [“3. **Act to have overriding effect.**—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.”] . Besides the definitions which are comprised in Chapter I, Chapter II is titled “Maintenance of Parents and Senior Citizens” while Chapter V is titled “Protection of Life and Property of Senior Citizen”.

17. The Statement of Objects and Reasons indicates the rationale for the enactment of the law:

“Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women



are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.”

18. Briefly reviewed, Section 4 recognises an entitlement of maintenance to inhere in parents and senior citizens. Section 5 lays down the procedure by which an application for maintenance can be made. Section 6 elucidates provisions governing jurisdiction and procedure. Section 7 contains stipulations for the constitution of a Maintenance tribunal. Section 8 envisages a summary procedure for making an inquiry. Section 11 provides for the enforcement of an order of maintenance.

19. A senior citizen, including a parent, who is unable to maintain themselves from their



own earning or out of property owned by them, is entitled to make an application under Section 4(i). A parent or grandparent may make an application against one or more of their children. A childless senior citizen can make an application against a relative specified in Section 2(g). Section 4 recognises a corresponding obligation on the part of the children or relative to maintain a senior citizen, extending to such needs as would enable them to lead a normal life. In the case of a relative, the obligation is if they are in possession of the property of the senior citizen or would inherit property from them. Hence, in the case of the children of a senior citizen, the obligation to maintain a parent is not conditional on being in possession of property of the senior citizen or upon a right of future inheritance

[“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 grandparent, 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 senior 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.”]

*20. The procedure to be followed by a Maintenance Tribunal (constituted under Section 7) is of a summary nature as provided in Section 8(1) and with all the powers of a civil court, as provided in Section 8(2) [“8. **Summary procedure in case of inquiry.**—(1) In holding any inquiry under Section 5, the Tribunal may, subject*



*to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.(2) The Tribunal shall have all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).”]. Under sub-section (1) of Section 9, where a senior citizen is not able to maintain himself or herself and the children or relatives, as the case may be, neglect or refuse to maintain them, the Tribunal is empowered to order them to make a monthly allowance at such monthly rate for the maintenance of the senior citizen, as the Tribunal may deem fit [“**9. Order for maintenance.**—(1) If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance*



at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.”] . The amount of the monthly allowance can be altered inter alia upon a change in circumstances, under Section 10 [**“10. Alteration in allowance.—**

(1) On proof of misrepresentation or mistake of fact or a change in the circumstances of any person, receiving a monthly allowance under Section 9, for the maintenance ordered under that section to pay a monthly allowance for the maintenance, the Tribunal may make such alteration, as it thinks fit, in the allowance for the maintenance.

(2) Where it appears to the Tribunal that, in consequence of any decision of a competent civil court, any order made under Section 9 should be cancelled or varied, it shall cancel the order or, as the case may be, vary the same accordingly.”] .

21. Of particular relevance to the facts of the case at hand is Chapter V, which enacts provisions for protecting the life and property of a senior citizen. Section 23 proceeds in the following terms:



“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.”

22. Sub-section (1) of Section 23 covers a situation where property has been transferred after the enactment of the legislation by a senior citizen (by gift or otherwise) subject to the condition that the transferee must provide the basic amenities and physical needs to the transferor. In other words, sub-section (1) deals with a situation where the transfer of the property is accompanied by a specific condition to provide for the maintenance and needs of a senior citizen. In such an event, if the transferee fails to provide the maintenance and physical needs, the transfer of the property is deemed to have been vitiated by fraud, coercion or under undue influence. Sub-section (1), in other words, creates a deeming fiction of the law where the transfer of the property is subject to a condition and the condition of providing for maintenance and the basic needs of a senior citizen is not fulfilled by the person upon whom the obligation is imposed. Then, at the option of the transferor, the transfer can be declared as void by the Tribunal.

23. On the other hand, sub-section (2) of



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Section 23 envisages a situation where a senior citizen has a right to receive maintenance out of an estate. Where such a right exists, the right of maintenance can be enforced where the estate or a portion of it, is transferred against a transferor who has notice of the right; or if the transfer is gratuitous. The right however cannot be enforced against a transferee for consideration and without notice of the right. Now, sub-section (1) of Section 23 envisages a situation where the transfer of property is by the senior citizen. This is evident from the language of sub-section (1), namely, “where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property...”. On the other hand, sub-section (2) of Section 23 does not confine itself to a transfer by a senior citizen, unlike sub-section (1). Sub-section (2) uses the expression “such estate or part thereof is transferred”. Where a senior citizen has a right to receive maintenance out of the estate and any part of it is transferred, sub-section (2) permits the enforcement of the right to receive maintenance out of the estate against a transferee with notice or against a gratuitous transferee. Sub-section (2), in



other words, may cover a situation where the transfer of the estate (in which a senior citizen has a right to maintenance) is by a third party, in which event, the provision provides the right to enforce the claim of maintenance against such transferee (other than those transferees for consideration or without notice of the pre-existing right). Arguably, the language of sub-section (2) is broad enough to also cover a situation where the transfer is by the senior citizen, in which event the transferee with notice of the right; or a gratuitous transferee, can be made subject to the enforcement of the right against the transferred estate.

24. Another distinction between sub-section (1) and sub-section (2) of Section 23 must also be noticed. Under sub-section (1), where a transfer has been made by a senior citizen subject to the condition that the transferee will provide for basic amenities or physical needs of the transferor and if there is a failure of the transferee to fulfil the condition, two consequences follow : (i) the transfer of property shall be deemed to have been made by fraud or coercion or under undue influence; and (ii) the transfer shall, at the option of the transferor, be declared to be void by the



Tribunal. The deeming consequence which is provided for in sub-section (1) is not incorporated in sub-section (2). Sub-section (2), in contradistinction, stipulates that the right to receive maintenance can be enforced against a gratuitous transferee or a transferee with notice of the pre-existing right of a citizen to receive maintenance out of an estate notwithstanding who is the transferee of the estate. In keeping with the salutary public purpose underlying the enactment of the legislation, the expression “transfer” would include not only the absolute transfer of property but also transfer of a right or interest in the property. This would also be in consonance with the provisions of Section 2(f) which defines the expression “property” to include “rights or interests in such property”. The expression “transfer” not having been defined specifically by the legislation, it must receive an interpretation which would advance the beneficent object and purpose of its provisions. Sub-section (2) of Section 23 speaks of the enforcement of the “right to receive maintenance” which is more comprehensive in its nature, than merely enforcing an order for maintenance passed under Section 9



of the Act.

25. The substance of sub-section (2) of Section 23, as submitted by the second and third respondents, is that the Tribunal had the jurisdiction to pass an order directing the eviction of the appellant who is their daughter-in-law. According to the submission, the power to order eviction is implicit in the provision guaranteeing a “right to receive maintenance out of an estate” and the enforcement of that right. In supporting the submission, they have referred to the view which has been taken by several High Courts, indicating that the Tribunal may order the eviction of a child or a relative from the property of a senior citizen, where there has been a breach of the obligation to maintain the senior citizen. The Tribunal under the Senior Citizens Act, 2007 may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent. Eviction, in other words would be an incident of the enforcement of the right to maintenance and protection. However, this remedy can be granted only after adverting to the competing claims in the dispute. It is necessary to



recapitulate that the situation in the present case is that the eviction was sought of the daughter-in-law i.e. the appellant. The land, where the house has been constructed, was originally purchased by the son of the applicants who are seeking eviction of their daughter-in-law. The son had purchased the property a few months before his marriage to the appellant. He had subsequently transferred the property by a registered sale deed to his father and the fact that it was for the same consideration after the lapse of several years is of significance. The father, in turn, executed a gift deed in favour of his spouse. The appellant has asserted that she had been living in the house, as her matrimonial residence, until the application was filed. Her spouse has (according to her) deserted her and their minor daughter and left them in the lurch. The electricity to the premises was disconnected for non-payment of dues. Their daughter has sought admission to an engineering degree course however her father, fourth respondent has not provided any financial support. The transfers which took place cannot be viewed in isolation from the context of the ongoing matrimonial dispute which has taken place. The issue is



whether the appellant as the daughter-in-law and the minor daughter could have been ousted in the above manner.”

25. In the above judgment, the Apex Court, elaborated the scope of Section 23(1) of the Act and the statement of objects and reasons for the enactment of Senior Citizens Act. In order to provide speedy remedy to the Senior Citizens, the Act provides provisions to ensure their normal life during old-age.

*26. In the case of **M.Venugopal vs. The District Magistrate-cum-District Collector [(2014) 5 CTC 162 (Mad)]**, wherein the learned Single Judge of this Court, considered the scope of the Act as under:-*

“1. Indian society has a long cherished tradition to respect and protect the elders. It is the pious obligation of the siblings to maintain their Parents and grandparents. The great saint Tamil poet “Avvaiyar” said “Annaiyum Pithavum Munnari Deivam” which means mother and father are the first God known to the children. Until few decades, in the past, these traditions, heritage and moral values were taught at the Schools as part of curriculum. Since, the children learnt these



invaluable tenets, in their childhood, it was not required to remind them of their obligation towards the elders, by making any law to respect and protect them. In recent years, under the guise of preparing the younger generation to compete globally in knowledge sharing and employment, we have gradually removed the moral studies from the School curriculum. On the other side of the coin, when the Joint Family system was in prevalence, the grandparents, in order to at-least while away their time, used to tell moral stories to their grandchildren. “Patti Kathaigal” (Grandmother's stories) played a major role to imbibe good qualities in the children. Now joint family system has also slowly faded away. As a result, the children hardly have the golden opportunity of learning moral values from the elders also. As a consequence, we have witnessed crimes by juvenile delinquents on the increase. Even the Government is forced to amend the Juvenile Justice (Care and Protection) Act to treat the Juveniles on par with adults in respect of certain heinous crimes. Feeling of togetherness has vanished. Love and respect for the elders have diminished. Some, among the younger generation,



do also forget to maintain their parents. They are left in the lurch in the evening of their life. So, the Government had to think of converting the pious obligation to maintain the Parents as a legal obligation. Thus, for the first time in the Code of Criminal Procedure, 1973, provision was made for payment of maintenance to the Parents, who are unable to maintain themselves. Though a claim for maintenance is in the nature of a Civil claim, the said provision was inserted in the Criminal Procedure Code thereby giving jurisdiction to Judicial Magistrates hoping that it would be less expensive and speedy. But in course of time, the hope was belied. The aged Parents continue to suffer. Many of them have to spend their life in old age homes.”

*27. In the case of **Radhamani and Others vs. State of Kerala [2015 SCC OnLine Ker 33530]**, wherein the Kerala High Court observed as under:-*

“7. The Senior Citizens Act, 2007 has a pivotal role in Indian Societal frame work. The Act, in fact, comprehends a scheme of welfare provisions for senior citizens. The Act contemplates right of senior citizens beyond right



of maintenance. The word “welfare” has a significant importance in the context. The welfare is defined under Section 2(k) as follows:-

“2(k) “welfare” means provision for food, health care, recreation centres and other amenities necessary for the senior citizens.”

8. Section 23 of the Senior Citizens Act, 2007 gives right to senior citizens to approach the Tribunal to declare any transfer of property, by way of gift or otherwise, after the commencement of the above Act, as void, in certain circumstances. It stipulates that such transfer must be with the condition that (a) transferee shall provide the basic amenities and basic physical needs to the transferor and (b) such transferee refuses or fails to provide such amenities and physical needs. Therefore, a deed can be declared as void on fulfilling the two conditions enumerated as above, declaring transfer as a fraud or coercion or under undue influence, as the case may be at the option of the transferor.

9. The question in this case is in the absence of specific recital as conditions referred as above in the Settlement Deed, whether Tribunal has a power to declare transfer as void.



10. *Section 122 of Transfer of Property Act, 1882 (hereinafter referred for brevity, as 'the T.P. Act') defines "gift" as a transfer of certain existing moveable or immoveable property made voluntarily and without consideration. Section 126 of T.P. Act makes a provision to suspend or revoke the gift on happening of any specified event on which donor and donee may agree. The word 'consideration' in the context of Section 122 of T.P. Act, only refers to monetary consideration and does not include natural love and affection. However, it cannot be revoked on a mere Will of the donor. The gift or Settlement Deed on a promise to look after the donor at the old age is a transaction without any consideration. If such promise and expectation are treated to be a consideration, certainly transaction as a gift will be deemed to be void. Therefore, such conditions forming part of gift deed are also reiterated under Section 23 of the Senior Citizens Act, 2007.*

11. *Section 23 of the Senior Citizens Act, 2007 does not contemplate that the condition should form part as recital in the deed of transfer. It only refers that there should be a condition for such transfer. This condition can be either express*



or implied. If there is no express recital in the deed, the Tribunal has to look around circumstances to find out whether conduct otherwise dispel the intention of donor to revoke. The consideration for executing a gift deed or settlement deed is based on human conduct, caring and conscientious. Transfer admittedly is out of love and affection. Any donor in a gift deed would expect in a natural course of human conduct that donee continues to behave in same manner as behaved before execution of the deed. The love and affection influenced for execution of the deed certainly must be enduring and without any barrier. The human conduct in relation to a particular relation is presumed to exist in all set of circumstances for governing relationship of those individuals. Transferee cannot disown his own action of love and affection after the transfer comes into effect. The transfer itself being based on love and affection, that would form part as a condition of the transaction for future conduct as well. Thus, in the absence of any other circumstances to dispel, it must be presumed that transferor expects continuation of the care and love from the transferee even after execution of the



deed in same manner, he was taken care prior to execution of the deed.

12. It is to be noted that the special scheme in terms of Senior Citizens Act, 2007 could declare certain transfer as void, taking note of the fact that by taking advantage of the emotionally dependent senior citizens, relatives grab the property on the pretext of providing emotional support. Therefore, legislature thought such transaction could be declared as void as the conduct leading to transaction was based on malice or fraud. Therefore, condition referred in Section 23 has to be understood based on the conduct of the transferee and not with reference to the specific stipulation in the deed of transfer. Thus, this Court is of the view that it is not necessary that there should be a specific recital or stipulation as a condition in the transfer of deed itself. This condition mentioned in Section 23 is only referable as a conduct of the transferee, prior to and after execution of the deed of transfer. Thus, challenge based on the ground that there is no reference in the recital of deed that transferee will provide basic amenities and physical needs to the transferor is of no consequence.



13. Under Section 17 of the Indian Contract Act, 1872, 'fraud' includes a promise made without any intention of performing it. Section 92 of the Evidence Act places a restriction on the admissibility of evidence in variance or in contradiction of the term of a registered document in writing. However, under second proviso to Section 92, the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. Under third proviso to Section 92, the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property may be proved. Thus, there is no requirement under law that condition as such should form part of written document. It can be implied from the circumstances of human conduct."

28. In the case of **Premkumar vs. Krishan Kumar Sharma and Others [AIR 2016 P&H 40]**, wherein the Punjab and Haryana High Court in paragraph-12 observed as under:-

"12. Hon'ble Division Bench of this Court in Justice Shanti Sarup Diwan, Chief Justice



(Retired) v. Union Territory, Chandigarh, 2014 (5) R.C.R. (Civil) 656 has examined the scheme of the Act and almost identical issue.

“28. SCHEME OF THE ACT-

In order to appreciate and answer the aforesaid questions in the context of the factual matrix, it is necessary to analyze the relevant provisions of the said Act. The Statement of Objects and Reasons set out that the traditional norms and values of the Indian Society which lay stress on providing care for elderly getting diluted due to the withering of the joint family system, the elders are facing emotional neglect and lack of physical and financial support. Thus, aging has become a major social challenge and despite the provisions of the Code of Criminal Procedure, 1973 for maintenance, it was deemed necessary that there should be simple, inexpensive and speedy provisions to claim maintenance for the parents. The Act is not restricted to only providing maintenance but cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives. One of the major aims was to provide for the institutionalization of



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a suitable mechanism for the protection of 'life and property of older persons'.

*29. In the case of **Deepak Sharma vs. State of Rajasthan [(2017) 170 AIC 637]**, wherein the High Court of Rajasthan (Jaipur Bench), has observed in paragraphs-4, 9 to 14 as under:-*

“4. To borrow the words of Sanjay Kishan Kaul, J. in the judgment rendered in Justice Shanti Sarup Dewan, Chief Justice (Retired) v. Union Territory, Chandigarh, 2014 (14) RCR (Civil) 656, “The filial affections of a father have cost him dearly in the twilight years of his life.”

.. .. .

9. Section 27 of the Act of 2007 specifically states that no civil court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any civil court in respect of anything which is done or intended to be done by or under this Act.

10. Section 23(1) of the Act of 2007 specifically state that 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. Section 23(2) further states that 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.

11. Having heard the learned counsel for the petitioner, this Court is of the view that the Act of 2007 is not without teeth. To provide speedy redressal of grievance, the Act vests powers in the Tribunal to make any transfer of the property void. The petitioner as per his own averment in the application is unemployed. Nothing has been stated regarding source of income of the petitioner. On 22.1.1999, an agreement to sell and other papers were executed by Vijay Laxmi



Mathur. The petitioner and his wife were not possessed of the funds to pay the sale consideration, noted in the agreement to sell. The respondent no. 3 Hanuman Prasad Sharma has specifically stated that he had purchased the flat for his wife Pushpa Devi Sharma, and possession was handed over to him and the original agreement to sell and other original documents like allotment letters, letter of possession are with Hanuman Prasad Sharma. Thus, it is discernible that the father in old age being not able to move here and there, had asked the seller to execute power of attorney in favour of his son.

12. In the present case, attorney has cheated the person who had provided funds for execution of the agreement to sell. Scope of Section 23 of the Act of 2007 cannot be restricted as the Act of 2007 is beneficial legislation. The scope under Section 23 of the Act of 2007 can be enlarged and the Tribunal can hold an inquiry as to who had provided funds for purchase of flat by way of agreement to sell on 22.1.1999, what was the age of the petitioner on 22.1.1999 and when he was married, what were his resources, what were the resources of his wife to purchase the flat. In case,



the funds were provided by the father and the mother in the year 1999, out of love and affection, the petitioner and his wife cannot become ungrateful to the parents. By extending widest interpretation to Section 23 read with Section 4 of the Act of 2007, this Court is of the view that the Tribunal should have held an inquiry compelling the petitioner and his wife to return sale consideration of the flat to the parents so that they can survive with dignity.

13. However, since parents have not challenged the order passed by the Tribunal, this Court shall rest the matter, where it is.

14. Relief to be granted by the Tribunal in a beneficial legislation enacted for maintenance and welfare of parents cannot be dependent upon the prayer made in the application. In the present application, it has been specifically stated that wife of applicant/respondent no. 3 is having Arthritis in hands and other joints of the body. She is unable to cook food for herself and the husband. Thus, maintenance awarded by the Tribunal in favour of the parents is too meager. A pensioner requires additional amount to supplement his day to day living. Old parents have to maintain



standard of life which they were having when one of them was in service. A father who has given his life long savings to settle the son cannot be denied fruits of earning by the son, merely because he is getting pension.”

30. In the case of **Jayashree vs. Union of India [(2019) 200 AIC 708]**, wherein in paragraph-21, the Kerala High Court observed as under:-

“21. The purpose of the Act being to ensure that a senior citizen or parent is able to live a life of dignity and self-respect and the statutory obligation, as is resolutely specified in Section 4(3) of the Act, being cast on the children to maintain his/her parent, so that such parent may lead a normal life, it is ineffable to hear the petitioner say that the words “having care and protection” is not capable of a definite meaning.”

31. In the case of **Anirban Chakraborty vs. State of West Bengal [(2019) 201 AIC 647]**, wherein the High Court of Calcutta observed as under:-

“11. The Tribunals constituted under the said Act are an alternative dispute redressal mechanism but, adjudication by the Tribunal does



not infringe the power of this Court to issue writs under the Constitution by way of judicial review. Arriving at the conclusion that the writ petition is maintainable, this Court now proceeds to deal with the other questions which have arisen in this writ petition.

12. The order dated February 8, 2018 impugned to this writ petition has been passed in exercise of power under Section 23 of the said Act. The Appellate Tribunal affirmed the order. In this case, the provisions of Section 23 and Section 6 of the said Act are required to be discussed. Section 23 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



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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 or right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-section (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.”

13. Section 23 of the said Act provides that when a property has been transferred by way of a gift or otherwise, by a senior citizen on the condition that the transferee or the donee would provide the basic amenities and basic physical needs to the transferor or the donor but, such transferee or donee subsequently fails to provide such amenities then, it would be deemed that the transfer was made by fraud, coercion or undue influence and the transferor would have the option of obtaining a declaration from the Maintenance



Tribunal that such transfer was void.

14. Coming to the deed of gift in this case, it appears that the grandfather had gifted the property to the petitioner out of love and affection and as a reward for the respect, regard and care that the petitioner had shown to the grandfather. It has been specifically stated in the deed by the grandfather, that is, the respondent No. 5 that being pleased with the care, love, affection, respect and good behavior of the grandson, he was executing the deed of gift as a reward in favour of his grandson and in discharge of his responsibility towards the grandson as also as a future security for the grandson. Thus, the deed of gift in this case was not a conditional gift and no responsibility had been cast upon the petitioner to maintain the grandfather that is, the respondent No. 5. That apart, according to the respondent no. 5, the deed of gift was void and liable to be cancelled having been obtained fraudulently. This is also not a case where respondent No. 5 had a right to receive maintenance out of an estate which was transferred by way of a gift to the petitioner and the petitioner not having given the maintenance out of the said estate, the respondent



No. 5 in terms of Section 23(2) of the said Act had approached the Maintenance Tribunal. Section 27 of the said Act provides that a civil court shall not have any jurisdiction in respect of any matter to which the said Act applied and no injunction would be passed. However, the respondent No. 5 himself approached a civil court for cancellation of the deed of gift and also filed an application for temporary injunction prior to the order passed by the Chairman. The date of registration of Case No. 52 of 2017, before the Tribunal was November 7, 2017, that is, after the plaint was registered on October 26, 2017. The cause of action in the civil suit as pleaded in the plaint, had arisen due to creation of the deed of gift by fraud, coercion and undue influence by the petitioner and his father. The respondent No. 5 prayed that the deed of gift should be declared illegal, void and liable to be cancelled by the civil court with a further prayer for declaration of the right, title and interest of the respondent No. 5 in respect of the said property. Along with the plaint, the respondent No. 5 filed an application for temporary injunction under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, with a prayer for an



injunction upon the petitioner and the respondent No.6, restraining them from transferring and/or alienating the property in question as also from disturbing the peaceful possession and enjoyment of the property by the respondent No. 5 and 7. Thus, in this case, Section 27 of the said Act would not operate as a bar on the pending civil suit, inasmuch as, the ingredients of Section 23 of the said Act are not satisfied so as to enable the respondent no. 5 to maintain an application for a declaration that the deed of gift was void at his option under the said Act.”

*32. In the case of **Deepak Kumar vs. Phoolwanti Devi and Others [(2019) 201 AIC 395]**, the High Court of Rajasthan in paragraph-6 observed as under:-*

“6. I have given my thoughtful consideration to the arguments advanced at bar and gone through the material available on record. Indisputably, as per the sale deed placed on record with the reply by the respondents, the house in question is exclusively owned by the respondent Smt. Phoolwanti, who is registered owner thereof. The respondents while instituting the application under the Act of 2007,



categorically asserted that the petitioner was not maintaining them and rather was harassing and ill-treating them in their own house, significant portion thereof had been provided by the respondent No. 1 to the petitioner for residence and for running his business. Thus, unquestionably, the respondent No. 1 Smt. Phoolwanti has a right under the scheme of the Act of 2007 to get vacated the portion of her own house, which, the petitioner had simply been given permission to reside and to do business. As the petitioner has failed to perform a son's obligations towards the parents, he has no right to stay on in their house contrary to their wishes and to their detriment.”

DISCUSSIONS:

18. Close reading of the principles considered by the various High Courts and the Supreme Court, there is no ambiguity with reference to the purpose and object sought to be achieved under the provisions of the Senior Citizen Act. Section 4(2) of the Act, unambiguously stipulates that the obligation of the children or the 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.

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19. In the context of the adoption of the phrase “lead a normal life” Rule 20(2)(i) of the Maintenance of Senior Citizen Rules, enumerates that “it shall be the duty of the District Collector to ensure that life and property of senior citizens of the District are protected and they are able to live with security and dignity”. Therefore, normal life includes security and dignity. Thus the normal life as indicated under Section 4(2) of the Act, is not mere life, but a life with security and dignity. In the context of Article 21 of the Constitution of India, life includes decent medical facility, food, shelter with dignity and security. All such combined necessities of human life is falling under the term “Normal Life” emboldened under Section 4(2) of the Senior Citizen Act. Therefore, simply providing food and shelter would be insufficient. But life includes providing of decent medical facilities, food, shelter and other requirements with dignity in commensuration with the status of the family and taking into consideration of the living style of the senior citizen throughout.



20. Therefore, the children defending their case merely on the ground that they are willing to provide food and shelter, cannot be taken as a ground for the purpose of sustaining the Settlement Deed executed by the senior citizen. The requirement of the provisions are to be complied in its real spirit and in the event of an iota of doubt, the Authority Competent is empowered to cancel the Settlement Deed or Gift Deed, as the case may be, in order to protect the normal life of senior citizen.

21. Section 4(3) denotes, 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 parents may lead a normal life. Therefore, it is an obligation on the part of the children to maintain his or her parents and ensure the parents to lead a normal life. In the event of complaint, the Authorities Competent are expected to ensure that the senior citizen and their life and dignity are protected. The above provision is to be read in conjunction with the Rules framed under the Act.



22. Rule 20 of the Maintenance of Senior Citizen Rules, provide duties and powers of the District Collector. The District Collector is casted upon the duty to ensure that the life and property of citizens of the District are protected and other people to live with security and dignity. Therefore, it is the statutory duty on the part of the District Collector to protect the safety and security of senior citizens in his District. Thus the complaint filed by the senior citizen, cannot be treated lightly. Such complaints are to be enquired into in a pragmatic manner, so as to understand the real grievances of the senior citizen and accordingly, all appropriate actions are to be initiated to provide safety, security and to protect the dignity of the senior citizen.

23. The Kerala High Court observed in the case of **Radhamani and Others** (cited supra), Section 23(1) of the Senior Citizen Act, cannot be interpreted to the disadvantage of the senior citizen. Section 23(1) of the Act contemplates that “Where any senior citizen who, after the commencement of this Act, has 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”. The phrase “ subject to the condition that the transferee shall provide the basic amenities” does not mean that the Gift or Settlement Deed should contain any such condition expressly. “Subject to the condition” as employed in Section 23(1), is to be holistically understood with reference to the subsequent phrase i.e., “deemed to have been made by fraud or coercion or undue influence”. Both the phrases would amplify that the deeming clause should be considered so as to form an opinion that the phrase “subject to condition” amounts to an implied condition to maintain the senior citizen and any violation would be sufficient for the purpose of invoking Section 23(1) of the Act, to cancel the Gift or Settlement Deed executed by the senior citizen.

24. To elaborate, the phrase “subject to condition” employed under Section 23(1) of the Act, is to be understood with reference to the love and affection by the senior citizen towards the person in favour of whom such Gift or Settlement Deed has been executed.



25. “Love and Affection” is an implied condition in the context of Section 23(1) of the Act, and therefore, there need not be any express condition in the Settlement Deed for the purpose of maintaining the senior citizen. Refusal of maintenance after executing the Settlement Deed or Gift Deed, is the ground for invoking the deemed ground of fraud or coercion or undue influence. When the deeming clause has been incorporated under the provisions of Section 23(1) of the Act, 'Love and Affection' to be construed as the consideration for executing the Gift or Settlement Deed. Thus the condition need not be expressly made in the document and the love and affection, which resulted in execution of the Deed by the senior citizen is to be construed as a condition for the purpose of invoking the deeming clause for declaring the document as fraud or coercion or undue influence.

26. The entire purpose and object of the Senior Citizens Act, is to consider the human conduct towards them. When the human conduct is indifferent towards senior citizen and their security and dignity are not protected, then the provisions of the Act, is to be pressed into service to safeguard the security and dignity of senior citizen. Therefore, the purposive



interpretation of the provisions are of paramount importance and Section 23 of the Act, cannot be mis-utilised for the purpose of rejecting the complaint filed by the senior citizen on the ground that there is no express condition for maintaining the senior citizen. Even in the absence of any express condition in the document, “Love and Affection” being the consideration for execution of Gift or Settlement Deed, such love and affection becomes a deeming consideration and any violation is a ground to invoke Section 23(1) of the Act. Thus there is no infirmity in respect of the order passed by the second respondent in the present case.

27. The human conduct in the context of the senior citizen Act, is to be understood considering the relationship between the senior citizen and the beneficiaries of the Gift or Settlement Deed. Mostly the parents are executing the document in favour of their children. Since they may not be in a position to maintain the property at their old-age and more-so, they are intending to visibly express their love and affection towards their children by settling their properties. In some cases, the parents during their old-age are settling their property in order to avoid conflict between their children and to ensure that all children get equal share. If at all the parents decide to



settle the property in favour of a son or daughter, then they are doing so, only with love and affection and with a fond hope that they will be taken care of by the son or daughter during their old-age. Thus love and affection, being the consideration and implied condition, within the meaning of Section 23(1) of the Act. The subsequent non-maintenance of senior citizen would attract Section 23(1) of the Act and the Authorities in such circumstances are empowered to declare the document as null and void.

28. Therefore, Section 23 is referable as a conduct of the transferee prior to and after execution of the Deed of Gift or Settlement or Partition, as the case may be. For all purposes, Section 23 is to be understood taking note of the conduct of the transferee and not with reference to the specific stipulation of condition in the Deed of Gift or Settlement or Partition.

29. In respect of the judgment relied on by the petitioner in the case of **Sudesh Chhikara vs. Ramti Devi and Another** (cited supra), the Three Judges Bench of the Hon'ble Supreme Court of India in the case of **S.Vanitha vs. Deputy Commissioner, Bengaluru Urban and District and**



Others (cited supra) is to be followed. There are several judgments to establish that the purpose and object of the Senior Citizens Act, is to be complied with in its letter and spirit in order to protect the life, security and dignity of senior citizens. Thus the judgment relied on by the petitioner is of no avail as far as the present facts and circumstances of the case on hand is concerned.

CONCLUSION:

30. In the present case, the second respondent-senior citizen was thrown out from his residence by the wife of the writ petitioner. The petitioner is residing in Saudi Arabia. Thus, the senior citizen filed petition under the Act.

31. Pertinently, the mother of the writ petitioner and his own brother, have deposed that the senior citizen was thrown out from the residence. The brother of the writ petitioner gone to the extent of deposing before the Competent Authority that the Partition Deed itself is to be cancelled and the livelihood and the residence of the senior citizen, are to be protected.



32. That being the statement recorded by the Competent Authority, this Court do not find any infirmity in respect of the relief granted in favour of the senior citizen.

33. In view of the above facts and circumstances, the present writ petition is devoid of merits and it stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

24-04-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To



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1.The Principal Officer,
Maintenance Tribunal /
Revenue Divisional Officer,
Namakkal District,
Namakkal.

2.The Sub Registrar,
Vazhapadi,
Salem District.

S.M.SUBRAMANIAM, J.



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