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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1455/2024 & CM APPLs. 6008/2024, 15555/2024**

PRAKRITISHRI ALDAAN & ANR.

..... Petitioners

Through: Mr. Manav Gupta, Mr. Sahil Garg,
Mr. Abhinav Jain, Mr. Ankit Gupta
and Ms. Samiksha Jain, Advocates.

versus

DEEPIKA MITTAL

..... Respondent

Through: Ms. Shobhana Takiar, Advocate.
Mr. Prasoon Kumar and Ms. Deepali,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

04.04.2024

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1. Challenge in this writ petition is to the Order dated 03.01.2024 passed by the Appellate Authority/District Magistrate under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter referred to as "Senior Citizens Act"*) in Appeal No.34/2023 by which the Appellate Authority has held that the Gift Deed executed on 20.12.2017 in respect of build up property bearing No.41, Gujarat Vihar, Vikas Marg, Delhi-110092 (*hereinafter referred to as "property in question"*) by the Respondent herein be treated as cancelled and null and void from the date of its execution and has upheld the Order dated 08.08.2023 passed by the Ld. Addl. District Magistrate allowing the application filed by the Respondent under Section 23 of the Senior Citizens Act.

2. Shorn of unnecessary details, the facts leading to the filing of the

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instant writ petition are that the Respondent herein had filed an application under Section 23 of the Senior Citizens Act before the Ld. Addl. District Magistrate stating that she is the owner of the built up property bearing No.41, Gujarat Vihar, Vikas Marg, Delhi-110092 and she was made to execute the Gift Deed under fraud. It is stated that the Petitioners herein are daughter and son-in-law of the Respondent and under the garb of executing a Power of Attorney from the Respondent, a Gift Deed dated 20.12.2017 was executed by the Respondent which was registered before the office of S.R. VIIIA, Preet Vihar, Delhi.

3. It is contended by the Respondent that she is being harassed by her daughter and son-in-law and the Gift Deed came to be executed by playing fraud upon her due to which the Respondent approached the authority under the Senior Citizens Act by filing an application under Section 23 of the Senior Citizens Act. The said application was allowed *vide* Order dated 08.08.2023 passed by the Ld. Addl. District Magistrate. The appeal filed, thereafter, against the said Order dated 08.08.2023 stands rejected by the Appellate Authority.

4. The short contention raised by the learned Counsel appearing for the Petitioner is that the authorities under the Senior Citizens Act have exceeded their jurisdiction under Section 23 of the Senior Citizens Act. Section 23 of the Senior Citizens Act is being reproduced 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 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.”

5. It is stated by the learned Counsel for the Petitioner that the Gift Deed does not state that the same has been executed *in lieu of* maintenance to be provided by the Petitioners herein to the Respondent. He states that the proceedings under the Senior Citizens Act are summary in nature and the authorities under the Senior Citizens Act ought not to have entered into the disputed question of facts and law as to whether the Gift Deed came to be executed fraudulently or not. He very candidly states that the daughter and son-in-law do not intend to dispossess the Respondent from the property in question. He, however, states that the findings of the authorities under the Senior Citizens Act regarding the validity of the Gift Deed cannot be sustained in view of the fact that such a finding can only be rendered by a Civil Court.

6. *Per contra*, learned Counsel for the Respondent contends that the Gift Deed dated 20.12.2017 came to be executed by playing fraud, coercion and undue influence upon the Respondent. She states that the daughter was



living with the Respondent and the marriage of the daughter of the Respondent took place on 13.12.2017 which was thereafter registered on 15.12.2017. She states that the Gift Deed was executed by the Respondent within seven (7) days from the date of marriage of the daughter i.e., 13.12.2017. She, therefore, states that the facts of the case speak for itself and that there was no occasion for the Respondent to execute any kind of a Gift Deed which would gift her only dwelling unit to the Petitioner herein.

7. Heard learned Counsel appearing for the Parties and perused the material on record.

8. The proceedings under the Senior Citizens Act are summary in nature. Section 6 of the Senior Citizens Act lays down the procedure for taking evidence. The purpose of the Senior Citizens Act is to provide for effective maintenance and welfare of the parents and Senior Citizens which is guaranteed and recognized under the Constitution. A reading of Section 23 of the Senior Citizens Act postulates that only such of those Gift Deeds which have been executed after the commencement of the Senior Citizens Act in view of maintenance alone would come under the ambit of the Senior Citizens Act. There is no recital in the Gift Deed dated 20.12.2017 that the same has been executed in view of maintenance.

9. The Apex Court in “Sudesh Chhikara vs. Ramti Devi and Another”, **2022 SCC OnLine SC 1684** while dealing with the scope and ambit of Section 23 of the Senior Citizens Act, has observed 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.*

13. 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.

14. 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.

15. 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 22nd 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 to 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 stated earlier, it is not even pleaded by respondent no. 1 that the release deed was executed subject to such a condition.

16. 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.”

10. A perusal of the Gift Deed and the application filed under the Senior Citizens Act does not disclose that the Gift Deed was executed by the Respondent in view of maintenance, rather the stand of the Respondent is that a fraud was played upon her in getting the Gift Deed executed. The Authorities under the Senior Citizens Act, therefore, could not have gone into the question as to whether a fraud was played upon the Respondent in getting the Gift Deed executed or not. The Authorities ought to have referred the matter to the Civil Court. It is also undisputed that the Respondent has not filed any suit for getting the Gift Deed set aside on the ground of fraud played upon her nor have any criminal proceedings been initiated by the Respondent against the Petitioners by contending that a fraud has been played upon her in getting the Gift Deed executed.

11. As stated above, the purpose and object of the Senior Citizens Act is to ensure the welfare and maintenance of the Senior Citizens. Undisputedly, the property in question is the only property which is in the possession of the Respondent. Keeping in mind the object of the Senior Citizens Act, this



Court is not inclined to put back the Petitioners in possession of the property in question. The Respondent is, therefore, permitted to stay in the property in question.

12. Chapter VII of the Transfer of Property Act, 1882 deals with Gifts. Section 122 of the Transfer of Property Act, 1882 defines gifts which reads as under:

“122. “Gift” defined.—“Gift” is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.—Such acceptance must be made during the lifetime of the donor and while he is till capable of giving,

If the donee dies before acceptance, the gift is void.”

13. Section 123 of the Transfer of Property Act, 1882 deals with as to how a Gift Deed is to be executed. Section 123 of the Transfer of Property Act, 1882 reads as under:

“123. Transfer how effected.—For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.”



14. The issue as to whether there was an acceptance of Gift, whether the Petitioners were put in possession of the property in question, whether the gift was executed by fraud etc. are all question of facts which can only be determined in a properly instituted suit before a Competent Court.

15. In view of the above, this Court is inclined to set aside the Impugned Order dated 03.01.2024 passed by the Appellate Authority/District Magistrate and the Order dated 08.08.2023 passed by the Ld. Addl. District Magistrate.

16. It is always open for the Respondent to institute a proper suit before a Competent Court for getting the Gift Deed set aside on the ground of fraud being played upon her.

17. In view of the submissions made by the Petitioners, the Respondent can continue to stay in the property without interference from the Petitioners. It is open for the Respondent to give the property in question on rent for her sustenance and living since the Respondent is staying alone. However, the same is subject to any Interim Order passed by a court of competent jurisdiction and will be applicable till a court of competent jurisdiction decides on the same in the proceedings initiated for this purpose.

18. The Petitioners and the Respondent are restrained from alienating, mortgaging and creating third party rights in the property in question.

19. With these observations, the writ petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

APRIL 4, 2024

S. Zakir

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