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

+ **W.P.(C) 10073/2024 & CM APPLs. 41230-41231/2024**
CHOLAMANDALAM INVESTMENT AND FINANCE
COMPANY LTDPetitioner

Through: Mr. Sidharth Chopra and Mr.
Navneet, Advocates.

versus

DEEPAK SHARMA & ORS.Respondents

Through: Mr. Manoj Kumar, Advocate for R-1
& 2.
Ms. Charu Anand, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
23.07.2024

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1. The Petitioner, Cholamandalam Investment and Finance Company Ltd., has filed the present petition assailing order dated 14th March, 2024¹ passed by the Additional District Magistrate, Tribunal of Welfare & Maintenance of Parents and Senior Citizens, District South East, Govt. of NCT of Delhi².

2. The factual backdrop leading to the filing of the present petition is recounted as follows:

2.1. The Petitioner contends that they sanctioned a loan facility in favour of all the three Respondents to the tune of Rs. 1,72,00,000/-. To secure the

¹ "Impugned Order"

² "ADM"



said loan, the property bearing No. A-8/72, Swapan Kunj, Kalkaji Extension, New Delhi³ was mortgaged in favour of the Petitioner by way of deposit of the original title deeds.

2.2. Subsequently, Petitioner received a notice from the office of the ADM to participate in the proceedings in case ID No. 36344 titled as **Raman Lal Sharma v. Deepak Sharma & Anr.**, being adjudicating by the District Magistrate under the Maintenance of Parents & Senior Citizens Act, 2007⁴.

2.3. When the Petitioner participated in the said proceedings, they learnt that Mr. Raman Lal Sharma (Respondent No. 2), a senior citizen, had filed a petition seeking cancellation of a gift deed dated 17th March, 2023⁵ whereby the Subject Property had been gifted in favour of Ms. Roopal Sharma (Respondent No. 3), the daughter-in-law of Respondent No. 2.

2.4. The Petitioner presented their contentions before the District Magistrate. They argued that since the Subject Property was mortgaged with the Petitioner prior to the Gift Deed's registration, the said property stood encumbered. Thus, the Subject Property could not have been gifted and the registration of the Gift Deed was impermissible in law. Despite this encumbrance, the Petitioner pointed out that Respondent No. 2 has expressly stated that the Subject Property is free from any mortgage at Clause No. 6 of the Gift Deed, which reads as follows:

“6. That the DONOR further assures the DONEE that the above said property hereby gift is free from all kinds of encumbrances such as prior sale, gift, mortgage, exchange, will, lease, loan, lien of any court of person, litigations, stay order, notices, charges, family or

³ “Subject Property”

⁴ “the Act”

⁵ “Gift Deed”



religious disputes, acquisitions, decree, injunction, surety, hypothecation, Income Tax or Wealth Tax attachments or any other registered or unregistered encumbrances whatsoever.”

2.5. In view of the above, the Petitioner contended that all the Respondents to the present petition, acting in collusion, have suppressed material facts from the Sub-Registrar at the time of registration of the Gift Deed and thus the same is liable to be cancelled.

2.6. The ADM took note of the aforementioned contentions of the Petitioner, however, rendered the following conclusions in the Impugned Order, which has led to the Petitioner filing the instant petition:

“09. In view of the above observations, I, Shailendra Kumar Singh, Additional District Magistrate, District South East, through the powers conferred upon me vide ‘The maintenance and Welfare of Parents and Senior Citizens Act, 2007, on considering the facts and appreciating the evidence brought on records, pass the following orders:

(i) No sufficient grounds could be established before this Tribunal for cancellation of Gift Deed dated 17-04-2023 with respect to property bearing House No. 72A, Pocket A-8, Kalkaji Extension, New Delhi- 110019 in favour of Roopal Sharma. The Appeal is hereby dismissed.”

3. At the outset, the Court notes that the Petitioner has not availed the appellate remedy available to them by filing an appeal against the Impugned Order before the District Commissioner. Nonetheless, considering the short question involved, the Court had entertained the present petition.

4. The Petitioner’s grievance is that since the ADM has not ordered for cancellation the Gift Deed, the Petitioner’s rights as a mortgagee would be compromised. They apprehend that the observations made in the Impugned Order may be relied upon by the Respondents to argue that the Gift Deed is valid, thereby defeating the Petitioner’s rights.



5. In the opinion of the Court, the order passed by the ADM declining to cancel the Gift Deed has been rendered upon consideration of the provisions of the Maintenance of Parents & Senior Citizens Act, 2007. Therefore, the request for cancellation of the Gift Deed has been rejected having regard to the provisions of the said Act, and such observations cannot in any manner affect the rights of the Petitioner as a mortgagee. Nonetheless, to avoid any ambiguity, it is clarified that none of the observations made in the Impugned Order shall come in the way of the Petitioner in case they were to assert their rights as a mortgagee over the Subject Property and take recourse for recovery of their dues in accordance with law.

6. With the aforesaid, the present writ petition, along with the pending applications, stand disposed of.

SANJEEV NARULA, J

JULY 23, 2024/as