

JPD-04
Ct No.01
22.07.2025
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CO 36 of 2024

Manoranjan Gope
Vs.
Bhuban Gope

Mr. Bikramaditya Ghosh,
Mrs. Supriya Singh,
Mr. Ved Rai,
Mr. Mayank Bhandari,
Mr. Vivek Saha

... for the petitioner

Mr. Bapi Sarkar

...for the opposite party

1. The present challenge has been preferred by the father of the opposite party against an order whereby the Appellate Forum under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, "the 2007 Act") dismissed an appeal preferred against an order of the First Forum whereby the First Forum, that is, the concerned Sub Divisional Officer, instead of cancelling the gift deed purportedly executed by the petitioner

in favour of the opposite party, granted a meagre amount of maintenance to the petitioner.

2. Learned counsel for the petitioner submits that neither the Appellate Tribunal's order nor the order of the Sub Divisional Officer are backed by reasons. Without granting any opportunity to adduce evidence or interpret the deed in appropriate manner, both the fora proceeded to decide the matter.
3. As such, the impugned orders, being not sustainable in law and devoid of reasons, ought to be set aside.
4. Learned counsel for the petitioner places reliance on the language of Section 23 of the 2007 Act in support of his contentions.
5. Learned counsel appearing for the opposite party-son submits that the basic ingredients of Section 23 of the 2007 Act are missing from the pleadings, that is, the application made under the said provision by the petitioner before the Sub Divisional

Officer. Secondly, the deed itself does not contain any provision that it would be incumbent on the opposite party, as a pre-requisite of such transfer, to provide basic amenities to and meet the physical needs of the petitioner.

6. Learned counsel places reliance on the judgments of the Supreme Court in *Sudesh Chhikara Vs. Ramti Devi and another* reported at 2022 SCC OnLine SC 1684 as well as *Naseem Kahnam and others v. Zaheda Begum (dead) by LRs. and others*, reported at (2024) 7 SCC 245 in support of his propositions.
7. Upon going through the materials before the Court, it is seen that the impugned order of the Appellate Tribunal is palpably vitiated by lack of reasons.
8. In an utterly casual and cursory manner, the Appellate Tribunal simply observed that it had perused the “appeal petition” and relevant documents/gift deed carefully and was satisfied that the appeal did not meet

the proviso of Section 23 of the 2007 Act.

9. The Sub Divisional Officer, by the order which was challenged by the petitioner in appeal, instead of advertng to the basic ingredients of Section 23 of the 2007 Act at all, merely shirked his duty by granting maintenance of a meagre amount of Rs. 3,000/- per month only to the petitioner from the month of October, 2023 instead of deciding the substantive prayer of the petitioner for cancellation of the gift deed executed by him in favour of the opposite party.
10. Thus, both the Appellate Tribunal and the Sub Divisional Officer palpably shirked their duty and refused to exercise their jurisdiction under the statute by passing cursory orders without advertng to the merits of the matter and/or granting opportunities to the parties to adduce appropriate evidence at all.
11. The premise of the arguments of the opposite party herein is that the ingredients of Section 23 were not

disclosed in the gift deed itself. However, it is nowhere stipulated in Section 23 of the 2007 Act that the conditions precedent for cancellation of a gift deed must be contained in the concerned gift deed and the said deed alone.

12. Section 23(1) provides that where any senior citizen who, after the commencement of the 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.
13. Thus, the very language of Section 23(1) does not require that the condition as to the transferee providing basic amenities and physical needs to the transferor

needs to be incorporated in the gift deed itself. Such pre-requisite can even otherwise be proved by cogent evidence adduced by the petitioner.

14. Insofar as the ratio laid down in *Sudesh Chhikara* (supra) is concerned, the Hon'ble Supreme Court merely observed therein that for passing an order of cancellation of a gift deed under Section 23 of the 2007 Act, both the conditions as stipulated in the said provision are to be satisfied.
15. In the case of *Naseem Kahn timer* (supra), the consideration before the Hon'ble Supreme Court was different than the present case and the dispute did not arise out of the 2007 Act at all; as such, the ratio laid down therein is not germane for the present consideration. It is well-settled that a judgment is only a binding precedent for what it holds and can be applied only under similar factual circumstances.
16. That apart, the ratio laid down in *Naseem Kahn timer* (supra), has no applicability in the present context. In

the said judgment, the Supreme Court merely observed that for the purpose of construction/interpretation of the terms of a deed or document, the literal rule of construction should be applied first and the intention of the parties are to be gathered from the clear and unambiguous language of the said document itself. Only in the event when the language has any ambiguity can external aids be resorted to for such interpretation.

17. The question before this Court is not about the interpretation of the gift deed or the purport of the same. It is an admitted position that the gift deed was executed by the petitioner in favour of the opposite party. What has been contended by the petitioner is that the petitioner was made to execute the same under the impression that the transferee/opposite party, who is the son of the petitioner, shall provide basic amenities and basic physical needs to the transferor but has subsequently refused to do so.

18. There are two components in the said contention. First, it had to be gathered by the Sub Divisional Officer and thereafter the Appellate Tribunal as to whether there was any such condition agreed between the parties, irrespective of whether such condition was stipulated in the deed itself or was evident from the conduct otherwise of the parties at the contemporaneous period, which can also be proved by oral evidence by producing witnesses.
19. The second aspect is as to whether the transferee subsequently refused or failed to provide such basic amenities and physical needs. In fact, a tacit acceptance of the second limb is found from the order of the Sub Divisional Officer since the Sub Divisional Officer has directed maintenance to be paid to the petitioner by the opposite party, which pre-supposes that such needs of the petitioner are not being met by the opposite party, his son.
20. In any event, in view of the above observations, it is clear that neither of

the fora below complied with the requirements of the statute by adverting to the materials of the case and/or granting opportunity to the parties to prove their respective cases under Section 23 of the 2007 Act by cogent evidence.

21. Moreover, the impugned orders are devoid of reasons and, as such, are palpably vitiated by law and principles of natural justice.

22. Accordingly, CO 36 of 2024 is allowed on contest, thereby setting aside the impugned order bearing Order No. 2 dated January 10, 2024 passed by the Appellate Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 of District: Alipurduar in Appeal Petition No. 09/2023, thereby affirming the order dated October 09, 2023 passed by the Sub Divisional Officer, Alipurduar in Petition No. 34/23 under the 2007 Act.

23. The matter is hereby remanded to the Sub Divisional Officer, Alipurduar for a

fresh adjudication on merits, upon granting adequate opportunity to both the parties to adduce evidence – oral or documentary - in support of their respective cases. Upon such opportunity being given and the parties being heard on their respective contentions, the Sub Divisional Officer shall pass a reasoned order on the application under Section 23 of the 2007 Act filed by the petitioner afresh.

24. It is expected that in view of the nature of the urgency involved, such exercise shall be concluded by the Sub Divisional Officer within six months from the date of communication of this order to the Sub Divisional Officer.
25. There will be no order as to costs.
26. At this juncture, learned counsel for the parties seek liberty for the parties to be represented by legal practitioners before the Sub Divisional Officer.
27. Although Section 17 of the 2007 Act debars parties to be represented by legal practitioners, keeping in view that both the present parties are laymen in

law and do not have any specialized knowledge of the nuances of law or legal acumen, the parties are granted liberty to be accompanied by their agents, who may be legal practitioners, in order to assist the parties in making out their respective cases before the Sub Divisional Officer.

28. Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)