



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1691 OF 2022

Savita Balasaheb Malgunde And Others

VERSUS

Shankar Bapu Malgunde And Others

- Mr. K. N. Shermale, Advocate for the Petitioners
- Mr. M. R. Khuntwad, Advocate for Respondent Nos. 1 and 2
- Mr. R. D. Raut, AGP for the Respondent Nos. 4 and 5/State

CORAM : R. M. JOSHI, J
DATE : SEPTEMBER 10, 2025

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This is one of the example as to how the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act') could be misused/abused by the parties. Here in this case Respondent ("Senior Citizen") has sought declaration before the said Authority that the judgment and decree passed in RCS No. 1285/2017 is illegal and not binding upon the Senior Citizen. The Maintenance Tribunal accepts the said contention of Senior Citizen

and declares that judgment and decree passed by competent Civil Court is illegal and not binding on the parties, which is highly objectionable order.

3. Though ordinarily it would have been necessary to direct the Petitioner to prefer an Appeal under Section 16 of the Act against the order passed by Maintenance Tribunal, in view of the fact that order impugned is wholly without jurisdiction and unsustainable and also clearly on the face of it being abuse of process of law, present Petition is entertained.

4. Learned Counsel for the Petitioners submits that the suit came to be filed bearing RCS No. 1285/2017 wherein a compromise was arrived at between parties. Pursuant to said compromise, decree came to be passed. Decree was executed and the name of the Petitioners were mutated in the revenue record. It is his further submission that Senior Citizen filed suit bearing no. 634/2020 seeking declaration that the decree passed in RCS No. 1285/2017 is illegal and not binding upon him. It is his further submission that this suit came to be dismissed and it is thereafter the

Respondent filed application under Section 23 of the Act being Application No. 188/2021 before the Maintenance Tribunal. Along with order of maintenance, a declaration is sought that the judgment and decree passed by the competent Civil Court in RCS No. 1285/2017 is illegal and does not bind the Senior Citizen. He placed reliance on the judgment of Karnataka High Court in case of Smt Lakshamma and Anr vs Sr M. K. Thimmegowda and Others, Writ Petition NO. 11991/2021 (GM-RES), in order to submit that even deed of partition is not covered by sub-section (1) of Section 23 of the Act. It is his submission that leave apart the fact that the issue with regard to the partition cannot be gone into by the Maintenance Tribunal, question of entertaining a prayer for declaration of a decree passed by the competent Civil Court to be null and void does not arise.

5. Learned Counsel for the contesting Respondent/Senior Citizen sought to support the impugned order. It is his grievance that this Court has directed the Petitioners to pay sum of Rs. 2,000/- per month, which has not been paid by them.

6. This contention of learned Counsel for Senior Citizen is opposed by Counsel for Petitioners by pointing out the order passed by this Court on 05.08.2025. It is his further submission that the amount of maintenance directed by Maintenance Tribunal is used to be paid by money order, however, recently the Senior Citizen has stopped accepting the same. He, however, undertakes to pay the said amount, if directed.

7. Time and again this Court has come across with the cases wherein the provisions of the Act are misused. These provisions are considered to be a shortcut or substitute for substantiating the rights of the parties, which require adjudication by Civil Courts. Present case is one of such example. Perusal of the provisions of the Act indicate that they are aimed at providing maintenance to senior citizen to lead a normal life. Appropriate procedure has been provided for making application under Sections 5 and 6 of the Act. Mechanism is also in place for the enforcement of the order of maintenance. It further makes provision for medical support through State Government. Chapter

IV of the Act deals with the protection of life and property of senior citizen. Section 23 enables Maintenance Tribunal to declare the transfer effected of properties by senior citizen to be void. Though, this provision enables such declaration to be given in case of transfer of gift or otherwise, the term "otherwise" cannot be construed to cover transfer effected by the judgment and decree of competent Civil Court. More particularly, when a compromise decree has been passed by the Court, the challenge thereto could be only by way of procedure laid down in the law and not otherwise. The Maintenance Tribunal in no circumstances can assume jurisdiction to cause interference in the judgment and decree passed by the Civil Court either on merits or even by way of compromise decree. The Karnataka High Court in case of Smt Lakshamma and Anr (supra) has rightly held that even transfer by way of partition cannot become a subject matter of challenge in the proceedings under the Act.

8. Coming back to the facts of the instant case, admittedly, the suit bearing no. 1285/2017 came to be decided between the parties therein. There was a

compromise deed and pursuant to the said compromise, a decree came to be passed by the competent Civil Court. Once such decree is passed, unless the said decree is challenged in accordance with law, the same binds all the parties.

9. Here in this case, the Senior Citizen has filed suit bearing no. 634/2020 for declaration of the said decree to be null and void and not binding upon them. The suit came to be dismissed for want of prosecution. It is thereafter the present Application came to be filed with a novel prayer that the Maintenance Tribunal to declare a decree passed by the competent Civil Court to be null and void and not binding upon the parties.

10. As observed herein above, the entire provisions of the Act nowhere contemplates any such power being vested with the Maintenance Tribunal to grant such relief as prayed by Senior Citizen. The Maintenance Tribunal, however, in the present case by passing impugned order has given such declaration, which is wholly erroneous. This indicates complete non application of mind on the part of Presiding Officer of

Maintenance Tribunal. Since the Maintenance Tribunal has no jurisdiction to give any declaration as done, the order impugned cannot be sustained. This Court is of the view that since there is non application of mind and as the order is contrary to the provisions of law, the entire order deserves to be set aside.

11. In view of above discussion, Petition stands allowed in terms of prayer clause "B".

12. Needless to say that it is open for the Senior Citizen to pursue said application before Maintenance Tribunal on merit and the Maintenance Tribunal is expected to pass order on merit in respect of grant of maintenance only. It is clarified that Application to the extent of declaration sought in respect of the judgment and decree passed in RCS No. 1285/2017 is hereby dismissed.

13. Since the order passed by the Maintenance Tribunal is set aside, all consequences to follow including the restoration of mutations effected in favour of the Petitioners.

(R. M. JOSHI, J.)