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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15947 OF 2023

VAIBHAV
RAMESH
JADHAV

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Balkrushna Shivajirao Katare

... Petitioner

V/s.

District Magistrate Solapur & Ors.

... Respondents

Mr. Ritesh Thobade with Mr. Changdev Shirgade and
Ms. Ankita Rai for the petitioner.

Mr. Umesh R. Mankapure for respondent No.3.

Ms. Savita A. Prabhune, AGP for the State - respondent
Nos.1 and 2.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 18, 2025

P.C.:

1. The present writ petition, filed under Article 226 of the Constitution of India, assails the order dated 18 September 2023 passed by the Appellate Authority under the provisions of the *Maintenance and Welfare of Parents and Senior Citizens Act, 2007* ("the Act"). The impugned order confirms the judgment and order dated 28 March 2023 passed by respondent No.2, the Deputy Collector and Presiding Officer, under Section 16 of the Act, whereby the registered gift deed dated 14 August 2020 was declared cancelled. Additionally, the petitioner was directed to pay a sum of Rs.10,000/- as maintenance to respondent No.3, his

mother.

2. The facts giving rise to the present dispute are as follows:

Respondent No.3, the mother of the petitioner, executed two registered gift deeds on 14 August 2020 in favor of the petitioner, transferring ownership of property bearing City Survey No.1325/B, admeasuring 117.1 square meters. Subsequently, on 25 November 2022, respondent No.3 filed Application No.13 of 2022 before respondent No.2, seeking cancellation of the gift deed pertaining to the said property, which included a constructed portion on the first and second floors measuring 192.98 square meters.

3. Respondent No.3 contended that the property in question was her self-acquired property, and she had been residing therein on the first and second floors. She asserted that the petitioner was not residing with her at the relevant time, as he lived in Solapur with his wife and daughter, while her second son resided in Akkalkot. However, during the COVID-19 pandemic in March 2020, the petitioner started residing with her. She maintained herself through her pension, but the petitioner persistently insisted on the transfer of the property. Initially reluctant, respondent No.3 eventually agreed to execute the gift deed upon assurances given by the petitioner that he would take care of her until her lifetime.

4. Respondent No.3 alleged that the petitioner obtained the registered gift deeds bearing No.2036 of 2020 (for a shop on the ground floor) and No.2037 of 2020 (for the first and second floors) on 14 August 2020. Subsequently, on 12 November 2020, half of the shop premises was alienated for a nominal

consideration through a sale deed. Respondent No.3 alleged that after the execution of the gift deed, the petitioner subjected her to mental and physical harassment, forcing her to vacate the premises. She was compelled to reside with her second son. Respondent No.3, having undergone knee surgery, required medical care and financial assistance, which the petitioner allegedly failed to provide. Consequently, she sought the cancellation of Gift Deed No.2037 of 2020.

5. The petitioner contested the application by filing a reply, denying the allegations made in paragraph No.4 of the application, which stated that the gift deed was executed based on an assurance that the petitioner would take care of respondent No.3 till her death. However, in paragraph No.3 of his reply, the petitioner admitted that he had always protected respondent No.3 from her second son and had provided her with medical care. This, according to the petitioner, instilled a sense of love and faith in respondent No.3, which ultimately led her to execute the gift deeds in his favor. The petitioner further contended in paragraph No.8 that he had been taking care of respondent No.3 and would continue to do so in the future.

6. Respondent No.2, after affording a full opportunity of hearing to both sides, rendered a judgment and order dated 28 March 2023, whereby the registered Gift Deed No.2037 of 2020 was declared cancelled. The primary reason assigned for the cancellation was that the gift deed was executed upon the representation made by the petitioner that he would take care of respondent No.3, which he ultimately failed to fulfill.

7. Aggrieved by the order, the petitioner preferred an appeal before respondent No.1, the Appellate Authority. By order dated 18 September 2023, the Appellate Authority dismissed the appeal, concurring with the findings of respondent No.2 that the petitioner had failed to honor his commitment to maintain respondent No.3, justifying the cancellation of the gift deed. Consequently, the petitioner has filed the present writ petition.

8. Mr. Thobade, learned advocate for the petitioner, invited my attention to the gift deeds to contend that the reason for execution of the gift deeds was to prevent disputes between the two sons and not to ensure the future care of respondent No.3. He submitted that before setting aside a gift deed, it must be established that the gift was executed with the specific promise to provide basic amenities and physical needs. He further argued that respondent No.3 failed to prove such an intention, either from the recitals in the gift deed or from the evidence on record. In the instant case, there is no recital in the gift deed nor any cogent evidence produced by respondent No.3 to substantiate her claim that the execution of the gift deed was conditional upon the petitioner's undertaking to provide care and maintenance. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court in *Sudesh Chhikara v. Ramti Devi & Another*, 2022 SCC OnLine SC 1684.

9. Per contra, learned advocate for respondent No.3 referred to the averments in the application and the statement made on oath by respondent No.3. He emphasized that both respondent Nos.1 and 2 had recorded concurrent findings that the execution of the

gift deed was premised on the assurance given by the petitioner to provide basic needs to respondent No.3. He further argued that the factual matrix of *Sudesh Chhikara* (supra) is distinguishable, as in that case, there was neither an assertion made nor a finding recorded by the Tribunal that the gift deed was executed based on a representation by the son to provide maintenance and physical care to the transferor.

10. With the assistance of learned advocates for the parties, I have perused the application, reply filed by the petitioner, judgments cited by both parties, and the material on record. On examining the pleadings, it is evident that respondent No.3 specifically pleaded in paragraph No.3 of her application that she executed the registered gift deed bearing No.2036 of 2020 based on the representation made by the petitioner to take care of her, including medical care, clothing, and medical expenses. Curiously, despite denying the allegations in paragraph No.4 of the application, the petitioner, in his reply, has categorically admitted that he used to take medical care of respondent No.3 and also shield her from her second son, Dattatray. Such consistent acts of care and protection on the part of the petitioner created an atmosphere of trust, affection, and reliance in the mind of respondent No.3 towards the petitioner. It is this very trust and faith, arising out of the petitioner's conduct, that ultimately motivated respondent No.3 to execute the gift deeds dated 14 August 2020 bearing Nos.2036 and 2037 of 2020 in favor of the petitioner.

11. Once the petitioner himself has admitted in unequivocal terms that the gift deeds were executed by respondent No.3 based on the love, affection, and faith engendered by his acts of care and protection, it follows that there was an implied representation on the part of the petitioner to continue providing such care. Such an implied representation satisfies the statutory requirement under Section 23(1) of the Act, which renders a transfer of property void if the transferee fails to provide for the basic amenities and needs of the transferor, where such transfer was made with that expectation.

12. The judgment in *Sudesh Chhikara v. Ramti Devi & Another*, 2022 SCC OnLine SC 1684, relied upon by the petitioner, is distinguishable on facts. The Hon'ble Supreme Court, in the said case, observed that the applicant did not plead that the release deed was executed on the condition that the transferee would provide basic amenities and physical needs. Moreover, the order of the Tribunal did not record any such finding, nor was oral evidence led to establish this assertion. However, in the present case, the facts are starkly different. The petitioner himself, in his written statement, categorically admitted that the gift deed was executed based on the faith and trust respondent No.3 reposed in him, owing to his acts of care and protection. This crucial distinction renders the judgment in *Sudesh Chhikara* inapplicable to the present case.

13. Further, the Co-ordinate Bench of this Court in *Nitin Rajendra Gupta v. Deputy Collector and Others*, 2024 SCC OnLine Bom 1031, in paragraph No.44, held that the condition of

providing basic amenities and physical needs need not be expressly stipulated in the form of a covenant or recital in the transfer document under Section 23(1) of the Act. The presence of such a condition can be established based on pleadings and evidence. I am in agreement with the view taken by the Co-ordinate Bench of this Court.

14. In my considered opinion, the categorical admission in the reply filed by the petitioner before the competent authority under the Act makes it abundantly clear that the registered gift deed was executed in his favor based on the faith and trust respondent No.3 had in him due to his acts of care and assistance. The petitioner having failed to honor the implied condition underlying the execution of the gift deed, no interference is warranted in the findings of respondent Nos.1 and 2.

15. For the reasons stated above, no interference is called for in the impugned order. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)