

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8625 OF 2024

Kokilaben Deepak Rathod

...Petitioner

V/s.

Ld. Additional Collector Mumbai
M.S.D. Suburban District and Anr.

...Respondents

Mr. Rajesh G. Singh *i/b. Mr. Rishabh D. Sing (Legal Liaisons)*
for Petitioner.

Ms. Snehal S. Jadhav, *AGP for Respondent -State.*

Ms. Jai Kanade, *i/b. Ms. Suman Kotian for Respondent No.2.*

CORAM: SANDEEP V. MARNE, J.

Dated: 30 April 2025.

P.C:

1) Petition challenges order dated 5 April 2024 passed by the Appellate Authority and the order dated 14 June 2023 passed by the Maintenance Tribunal established under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (**Act of 2007**) partly allowing the application filed by Petitioner-senior citizen. The Maintenance Tribunal has directed the second Respondent to pay to the Petitioner monthly maintenance amount of Rs. 5,000/- and has also injuncted him from causing any acts constituting mental or physical torture to

the senior citizen. However, the Maintenance Tribunal has not granted the relief sought for by the Petitioner for declaration of registered Gift Deed dated 16 March 2021 as null and void under the provisions of Section 23 of the Act of 2007. Aggrieved by non-grant of relief of revocation of Gift Deed dated 16 March 2021, Petitioner filed Appeal No.10 of 2024 before the Appellate Authority, which has proceeded to reject the appeal by order dated 5 April 2024, which is also subject matter of challenge in the present Petition.

2) I have heard Mr. Singh, the learned counsel appearing for the Petitioner, Ms. Kanade, the learned counsel appearing for Respondent No.2 and Ms. Jadhav, the learned AGP for Respondent -State.

3) The Petitioner has sought cancellation of registered Gift Deed executed by her in favour of second Respondent-son on 16 March 2021 in respect of Flat No.703, 7th floor, admeasuring 560 sq.mts. in Madhav Co-operative Hsg. Society Ltd., Plot No.452, Link Road, Borivali (West), Mumbai-400091. In her application filed before the Maintenance Tribunal she had sought twin reliefs of (i) revocation of Gift Deed dated 16 March 2021 under the provisions of Section 23 of the Act of 2007 and (ii) direction for payment of monthly maintenance of Rs.5,000/- by the second Respondent. As observed above, the prayer for monthly maintenance is already allowed by the Maintenance Tribunal, which direction has not been challenged by the second Respondent.

4) This leaves the issue of non-grant of relief of revocation of Gift Deed dated 16 March 2021 by the Maintenance Tribunal. Section 23 of the Act of 2007 provides thus:-

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) Thus, the Tribunal assumes the jurisdiction to declare the Gift Deed to be null and void only if the ingredients of Section 23(1) get satisfied. Satisfaction of all the ingredients of Section 23(1) constitutes jurisdictional fact, in absence of which, Maintenance Tribunal cannot assume jurisdiction to declare a Gift Deed to be null and void. Two ingredients, which are required to be satisfied for exercise of jurisdiction under Section 23(1) of the Act of 2007 are:-

- (i) transaction of transfer being premises on condition that the transferee would provide basic amenities and basic physical needs to the transferor.

- (ii) refusal or failure by the transferor to provide such amenities or physical needs, to the transferee-senior citizen.

6) This Court has already taken a view in ***Ashwin Bharat Khater and Anr. V/s. Urvashi Bharat Khatel and Anr.***¹ that the first element of existence of condition for provision of basic amenities and basic physical needs need not be incorporated in the Gift Deed and that the same can also be pleaded and proved before the Maintenance Tribunal. This view is taken by this Court after following the judgment of the Apex Court in ***Sudesh Chhikara Vs. Ramti Devi and Another***². The view taken by this Court in ***Ashwin Bharat Khater*** (supra) has further been reiterated by this Court in ***Nitin Rajendra Gupta V/s. Deputy Collector, Mumbai and Others***³.

7) Mr Singh has strenuously relied on judgment of this Court in ***Ashwin Bharat Khater*** and ***Nitin Rajendra Gupta*** (supra) in support of his contention that Gift Deed in question ought to have been set aside by the Maintenance Tribunal even in absence of existence of condition for provision of basic amenities and basic physical needs in the Gift Deed. However, what is important to note is that though the jurisdiction under Section 23(1) of the Act of 2007 can be exercised by the Maintenance Tribunal in absence of incorporation of condition for provision of basic amenities and basic physical needs in the

¹ 2023 SCC online BOM 1921

² 2022 Online SC 1684

³ 2024 SCC online BOM 1031

Gift Deed, existence of such condition must atleast be pleaded and proved before the Maintenance Tribunal. This law is expounded by this Court in ***Ashwin Bharat Khater*** and ***Nitin Rajendra Gupta*** (supra) after considering the judgment of the Apex Court in ***Sudesh Chhikara*** (supra).

8) Perusal of the application filed by the Petitioner before the Maintenance Tribunal would indicate that following pleadings were raised therein:

7. That it is the contention of the Applicant that in the year 2021, the Respondent in connivance amongst each other had started illtreating the Applicant and had assaulted her physically and harassed her mentally and physically.
8. The Applicant states that the Applicant was coerced by the Respondent by taking advantage of the medical ailments of the Applicant by illegally inducing and forcing the Applicant to execute and register a Gift Deed in his favour on 16.03.2021. The said Gift Deed has been registered vide Registration No.BRL-2/3425/2021 before the office of the Sub Registrar of Assurances. It is illegal under law and humanity and totally unfair. The Applicant was a joint owner of the said flat alongwith her deceased husband and therefore the entire transaction was executed in an extremely illegal manner. The Respondent has not followed the provisions of the Hindu Succession Act, 1956 as well as the Transfer of Property Act, 1882. The Respondent showed his bad conduct by forcing the Applicant to execute the said Gift Deed and forced the Applicant to transfer the title and interest in the said flat in favour of the Respondent and the same is not binding on the Applicant and the Respondent. The Applicant states that it is a shame that the Respondent -Shri Hitesh Deepak Rathod who is her real son wants the Applicant who is his mother aged 74 years to be homeless and destitute. Hereto annexed and marked as "Exhibit (Legal) C" is a copy of Gift Deed dated 16.03.2021.
9. The Applicant states that after execution of illegal Gift Deed which was against the will of the Applicant and without the knowledge and consent of the Applicant. That it is worth noting that the Respondent started physically and mentally harassing and assaulting the Applicant who is the mother of the Respondent. That the Gift Deed dated 16.03/2021 is illegal and vexatious and

bad as per law. That after the demise of the Applicant's husband, the Applicant is entitled to 62.5% in the said flat.

Legal heirs of the deceased	Percentage
1. Shri Hitesh Deepak Rathod	12.5%
2. Shri Kiran Deepak Rathod	12.5%
3. Smt. Mamta J. Jariwala	12.5%
Total	<u>37.50%</u>

And therefore, as per the provisions of the Hindu Succession Act, 1956, it was only the Applicant who was legally entitled to receive 62.5% share in the said flat. However, the same was not followed due to the ulterior and ill motive of the Respondent the Gift Deed dated 16.03.2021 came to be executed and the same is declared as illegal, null and void as detailed in the above paragraph.

- 10 The Applicant further states that after the execution of the Gift Deed dated 16.03.2021, the Respondent has failed and neglected to take proper care and provide the basic amenities and support to the Applicant who is the real mother of the Respondent. And therefore, the Applicant is invoking the provisions of Section 23 of the Parents and Senior Citizens Act, 2007.

“23. Transfer of property to be void in certain circumstances.
Where any senior citizen who, after the commencement of this Act, has 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.”

That due to the misconduct on the part of the Respondent, as per the provision of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the Gift Deed executed by the Respondent under force and coercion be declared null and void.

- 9) Thus, there is no specific averment in the application that execution of the Gift Deed dated 16 March 2021 was on a condition of providing basic amenities and basic physical needs to the senior citizen. What is pleaded instead is that Petitioner was suffering from medical ailments and second Respondent

induced and forced her to execute the Gift Deed. If the Gift Deed is not executed by the Petitioner out of her free will and any of the provisions of the Indian Contract Act are violated, the remedy for the Petitioner lies elsewhere. In its limited jurisdiction under Section 23(1) of the Act of 2007, the Maintenance Tribunal cannot expand the contours of its jurisdiction and act as a civil court to examine whether the Gift Deed has been executed by inducement or force. The Maintenance Tribunal is a creature of Act of 2007. The remit of its jurisdiction is limited by the provisions of the Act. The moment there is absence of jurisdictional fact, the Tribunal would automatically lose its jurisdiction. A special remedy is created for senior citizens to have a gift revoked under Section 23(1) of the Act of 2007 without approaching the Civil Court. However, for exercising remedy under Section 23(1) of the Act of 2007 and for seeking relief thereunder, what is mandatory is to plead and prove existence of conditions specified under Section 23(1) of the Act of 2007.

10) In the present case, Petitioner has failed to plead that execution of Gift Deed dated 16 March 2021 was subject to the condition of provision of basic amenities and basic physical needs. Though the Petitioner has pleaded the second element of failure on the part of the second Respondent to provide proper care and to provide basic amenities, post execution of the Gift Deed, however there is no specific pleading that the Gift Deed was executed on a condition of provisions of basic amenities and basic physical needs. Since there is absence of pleadings, no

evidence is led by Petitioner to prove existence of condition of provision of basic amenities and basic physical needs. In my view therefore, in absence of pleadings and proof of existence of condition under Section 23(1) of the Act of 2007, the Tribunal lacked jurisdiction to declare the Gift Deed dated 16 March 2021 to be null and void. The Tribunal has rightly rejected the prayer of Petitioner for setting aside Gift Deed dated 16 March 2021.

11) It is also contended by Mr. Singh that Petitioner is not the sole owner in respect of the concerned flat. It is contended that her other son- Shri Kiran Deepak Rathod and daughter-Smt. Mamta J. Jariwala also have 12.5% share each in the said flat. If that is the position, it is for the said son and daughter to exercise their remedies before the civil court, in the event second Respondent claims absolute ownership in flat in question. In the limited remit of enquiry under Section 23 of the Act of 2007, the Tribunal cannot determine issue of title in respect of the flat in question. Therefore, there is no warrant for interference in the impugned order passed by the Maintenance Tribunal and the Appellate Authority. Petitioner as well as other alleged sharers would be at liberty to file appropriate proceedings before the Civil Court seeking declaratory and injunctive reliefs. Reserving the liberty as observed above, Petition is **rejected**.

12) After the order is pronounced, Mr. Singh would pray for continuation of interim order granted by this Court on 15 July 2024. The prayer is opposed by Ms. Kanade. By order dated

15 July 2024, this Court had restrained the second Respondent from executing the Sale Deed or from parting with possession of the flat during pendency of the present Petition. As observed above, opposition to sale of flat by the second Respondent is premised on other son and daughter owning shares in the flat. They will have to file a suit to restrain second Respondent from alienating the flat and pray for interim injunction therein. In a petition filed by the senior citizen, the other sharers cannot seek injunctive relief. In that view of the matter, it is not necessary to continue the interim order dated 15 July 2024 any further. Request for stay is accordingly rejected.

[SANDEEP V. MARNE, J.]