

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1573 OF 2025

Baliquazamma Hanif Ansari

...Petitioner

Versus

Arif Hanif Ansari & Ors

...Respondents

- Mr. Amrut Joshi a/w Ms. Faiza Dhanani, Mr. Manal Dhanani and Mr. Udwadia i/b Cue Legal, for Petitioner.
- Mr. Rajkumar Awasthi a/w Ms. Bushra Sayed i/b Mr. Arman Parve, for Respondent No.1.
- Ms. Sulbha Chipade, AGP for Respondent Nos.2 and 3.

CORAM : MANISH PITALE, J.

DATE : 23rd JUNE 2025.

P. C. :

1. Heard learned counsel for the petitioner as well as the learned counsel appearing for the contesting respondent No.1.

2. The subject matter of challenge in this writ petition is an order dated 28th October 2024, passed by the respondent No.2 – Appellate Authority and Additional Collector. By the said impugned order, an order passed by the Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the “said Ac”), has been set aside. By the order of the Tribunal Gift Deed dated 20th July 2016 was set aside by exercising power under Section 23(1) of the aforesaid Act.

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3. The chronology of events in brief leading to filing of the present writ petition needs to be appreciated.

4. The mother of the petitioner and respondent No.1 i.e. the senior citizen concerned with the present controversy initiated a proceeding before the Tribunal under the provisions of the said Act. On the basis of the pleadings and the material brought on record by the parties, by an order dated 30th March 2022, the Tribunal held in favour of the senior citizen on all the issues and held that the aforementioned Gift Deed dated 20th July 2016, was null and void. Consequently, a further Gift Deed executed by respondent No.1 to the extent of 10% of his share was also declared as null and void. A direction was also issued for transferring tenancy in another property from the respondent No.1 in favour of the senior citizen. The subject properties in the said proceeding include a shop in respect of which the Gift Deed was executed and a residential room in respect of the tenancy. Aggrieved by the said order of the Tribunal, the respondent No.1 directly filed a writ petition before this Court bearing Writ Petition No.6145 of 2022. During the pendency of the writ petition, the senior citizen expired on 17th May 2024. In an order dated 20th June 2024, passed by this Court in the said writ petition, a submission was recorded on behalf of respondent No.1 that despite the death of the senior citizen, right to sue would still survive. In that light, hearing in the writ petition was adjourned. Eventually, by an order dated 02nd September 2024,

this Court remanded the matter to the Appellate Authority in the light of the Division Bench judgment of this Court in the case **Jagdish Pitamber Pawar vs Pitamber Pundalik Pawar and Others** (order dated 29th November 2023 passed in Writ Petition No.36 of 2023), whereby it was held that an appeal would be maintainable under Section 16 of the said Act even at the behest of children and other relatives.

5. In that light, the Appellate Authority entertained and took up the appeal filed by respondent No.1 challenging the aforementioned order dated 30th March 2022, passed by the Tribunal.

6. By the impugned order dated 28th October 2024, the respondent – Appellate Authority partly allowed the appeal and held that the Tribunal was not justified in declaring the Gift Deed as null and void by exercising power under Section 23(1) of the said Act, while the direction issued by the Tribunal as regards the tenancy was not interfered with. It is against the said order that the petitioner herein has filed the present writ petition. It is to be noted that the petitioner was also arrayed as respondent before the Tribunal and the senior citizen in her application had levelled certain allegations against the petitioner also.

7. It is also to be noted that by the aforesaid Gift Deed dated 20th July 2016, the senior citizen had gifted her share in the subject shop equally to

the petitioner and respondent No.1. The other son of the senior citizen admittedly has 50% share in the shop while the senior citizen had the balance 50% share. The present controversy is concerned only with 50% share in the subject shop gifted by the senior citizen equally to the petitioner and respondent No.1. Thus, it is clear that although upholding the order of the Tribunal, would result in the share under the Gift Deed coming to the petitioner also being taken away and it being open for the share of the senior citizen devolving through intestacy, the petitioner is pursuing the present petition and praying for restoration of the order passed by the Tribunal. It is undisputed that the direction pertaining to the tenancy would become irrelevant in the light of the fact that the senior citizen has expired and her legal heirs would be agitating their claims in accordance with law. Therefore, the present petition is really concerned with only the setting aside of the Gift Deed by the Tribunal and the said order being reversed by the Appellate Authority by the impugned order dated 20th August 2024.

8. The learned counsel appearing for the petitioner invited attention of this Court to the documents on record, as also the compilation of documents tendered for the assistance of this Court. It is submitted that in the statements before the Tribunal as well as oral account of the senior citizen recorded by the Tribunal, sufficient material was placed on record, on behalf of the senior citizen, to demonstrate that the Gift Deed had been executed on

a promise that the respondent No.1 would take care of the senior citizen and that the respondent No.1 allegedly along with the petitioner had failed to do so. But, it was highlighted that the allegations regarding ill-treatment to the senior citizen as well as physically and mentally challenged sisters of the petitioner and respondent No.1, were directed against the said respondent. According to the learned counsel for the petitioner, such material satisfied the requirement of Section 23(1) of the aforesaid Act and the position of law laid down by the Supreme Court in the case of **Sudesh Chhikara Vs. Ramti Devi and another**¹ and clarified by this Court in the case of **Ashwin Bharat Khater Adult and Another Vs. Urvashi Bharat Khater Adult and Another**².

9. It was further submitted that the Tribunal correctly appreciated the material on record to declare the Gift Deed null and void, but the Appellate Authority failed to appreciate the position of law and erroneously set aside the order of the Tribunal, simply because specific statement in the Gift Deed was missing that the respondent No.1 had given a promise to take care of the senior citizen. It was submitted that factual findings rendered by the Tribunal were untouched and on an erroneous appreciation of the position of law, the Appellate Authority had set aside the order of the Tribunal. On this basis, it was submitted that the impugned order deserves to be set aside. As regards the question of right to sue upon the demise of the senior citizen, it

1 2022 SCC OnLine SC 1684

2 2023 SCC OnLine Bom 1921

was submitted that the said contention cannot be accepted, for the reason that the senior citizen came with a specific case before the Tribunal expressing her desire for setting aside the Gift Deed, which was accepted by the Tribunal on factual findings and the same cannot be rendered ineffective, merely because the senior citizen expired during the pendency of the earlier petition before this Court.

10. On the other hand, the learned counsel appearing for respondent No.1 submitted that in the first place, the order of the Tribunal would remain in-executable in the face of the demise of the senior citizen. It was submitted that therefore, the whole purpose of deciding the present writ petition is rendered academic.

11. On the merits of the matter, it was submitted that the application filed, first in point of time, on behalf of the senior citizen, placed by the petitioner along with the present writ petition shows that there was no allegation relatable to Section 23(1) of the said Act and that it consisted of pure and simple allegation of fraud against respondent No.1. Such an allegation could be decided only in properly instituted proceedings before the Civil Court and that the Tribunal had no jurisdiction to go into such a question. It was submitted that the complaint pertaining to the year 2021 upon which the petitioner relies appears to be an afterthought, for the reason

that the complaint filed first in point of time in the year 2019 did not contain the necessary averments. Therefore, it was submitted that such an afterthought manifested in the complaint filed in the year 2021 and oral statements made by the senior citizen before the Tribunal would be of no avail in the light of Section 17 of the Evidence Act.

12. It was submitted that therefore, the position of law upon which the petitioner relies can be of no assistance, for the reason that neither does the Gift Deed contain any specific condition that respondent No.1 would take care of the senior citizen nor are their pleadings and material on record to support such an assertion. It was further submitted that the senior citizen in the present case being the mother of the petitioner and respondent No.1 made allegations even against the petitioner and therefore, he cannot be heard in the present petition to support the claim made by the senior citizen. On this basis, it was submitted that the petition deserves to be dismissed.

13. This Court has considered the rival submissions in the light of the oral arguments made and the documentary material on record. Before dealing with the rival submissions, it would be appropriate to refer to the relevant provisions and the position of law clarified in the aforementioned judgments. Section 23 of the said Act reads as follows :

“23. Transfer of property to be void in certain circumstances

1. 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.

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.”

14. The Supreme Court in the case of **Sudesh Chhikara Vs. Ramti Devi and another (supra)**, after considering the aforementioned provision held as follows :

“12. Sub-section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression “by way of gift or otherwise.” For attracting sub-section (1) of Section 23, the following two conditions must be fulfilled :

a. The transfer must have been made subject to the condition that the transferee shall provide the basic

- amenities and basic physical needs to the transferor; and*
- b. the transferee refuses or fails to provide such amenities and physical needs to the transferor.*
13. *if both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void.*
14. *When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.*
15. *Careful perusal of the petition under Section 23 filed by respondent No.1 shows that it is not even pleaded that the release deed was executed subject to a condition that the transferee (the daughters of respondent no.1) would provide the basic amenities and basic physical needs to respondent no.1. Even in the impugned order dated 2nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems that oral evidence was not adduced by the parties. As can be seen from the*

impugned judgment of the Tribunal, immediately after a reply was filed by the appellant that the petition was fixed for arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to a transferor – senior citizen is sine qua non for applicability of sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent no.1 that the release deed was executed subject to such a condition.”

15. This Court in a subsequent judgment while considering the very same provision in the case of **Ashwin Bharat Khater Adult and Another Vs. Urvashi Bharat Khater Adult and Another (supra)**, came to the conclusion that although the twin conditions identified by the Supreme Court in the said judgment are certainly required to be satisfied, it cannot be insisted that in all Gift Deeds executed after the aforesaid Act came into force must necessarily explicitly contain a condition that the beneficiaries under the Gift Deed had given a promise to take care of the senior citizen and that it was a pre-condition for such a Gift Deed being executed. It was emphasized that such a matter could be implicit even if the Gift Deed expressly stated that it was executed due to love and affection for the beneficiaries. In fact, it was recorded in the said judgment that an extreme argument sought to be made on behalf of the petitioners therein to the effect that such a condition must be explicitly stated in the Gift Deed, was rightly given up.

16. It was further held that the twin conditions would stand satisfied if there was pleading before the Tribunal on behalf of the senior citizen regarding such a condition for execution of the subject Gift Deed coupled with the evidence produced before the Tribunal to show that such a promise to take care was indeed breached by the beneficiaries under the Gift Deed.

17. Therefore, this Court is of the opinion that the senior citizen who approached the Tribunal in the present case was also required to plead and to place sufficient material on record before the Tribunal to demonstrate that the subject Gift Deed was executed on the condition that the beneficiaries therein would take care of the senior citizen and further that such a promise was breached.

18. On the touchstone of the aforesaid position of law, when the material on record is perused, this Court finds that the senior citizen in the present case did make statements to the effect that the respondent No.1 had held out a promise to take care of her and also two daughters, one of whom was physically challenged and the other was mentally challenged. Such specific statements are found in declaration dated 26th October 2021, filed alongwith the application as per the format provided under the said Act. There is indeed material indicating that apart from the focus of the allegations regarding such promise and subsequent breach of promise and also ill-

treatment being made against respondent No.1, there were allegations against the petitioner also of having failed to take care of the senior citizen. Such statements were elaborated in the body of the application itself and this is evident from the material placed on record before this Court. A perusal of the order of the Tribunal dated 30th March 2022, shows that even before the Tribunal the senior citizen appeared and made such specific allegations about the fact that the Gift Deed was executed on a condition that the respondent No.1 would take care, not only of the senior citizen but also the aforementioned daughters. The detailed allegations about ill-treatment by the respondent No.1 were reiterated before the Tribunal, which included an allegation to the effect that the respondent No.1 took the senior citizen from her place of residence with a promise that he would keep her and daughters at a rented place and eventually made them live in a room where they were virtually restricted. After taking into account such specific pleadings on record and statements made by the senior citizen, the Tribunal arrived at findings against respondent No.1.

19. The principal contention raised on behalf of respondent No.1 was that an application submitted by the senior citizen in the year 2019, much prior to the complaint submitted in 2021, did not contain specific allegations regarding the Gift Deed being executed subject to the aforesaid condition. It was submitted that therefore, the said admission ought to operate against the

senior citizen, due to which any amount of pleadings and oral evidence submitted subsequently in the year 2021 would be of no avail.

20. In respect of the aforesaid specific stand taken by respondent No.1, this Court has perused the document at Exhibit “3”, which is stated to be a prior application filed on behalf of the senior citizen. A perusal of the same shows serious allegations of ill-treatment made against respondent No.1. There is also reference to the manner in which the Gift Deed was got executed. Much emphasis has been placed on the timelines mentioned in the said application, to contend that the allegation regarding promise having been made of taking care of the senior citizen and the daughters was made in the year 2017, while the Gift Deed was already executed on 20th July 2016 and that the said application divulged only an allegation that the Gift Deed was executed fraudulently as the senior citizen was an illiterate person. This Court has considered this document at Exhibit “3” in detail and considering the overall contents of the said document, this Court is not impressed with the submissions made by the respondent No.1. The aforesaid Act is a beneficial legislation and the pleadings in such matters are not to be analyzed on the basis of the hairsplitting arguments. The Authorities under the said Act and the Court are supposed to consider the same in the light of the fact that an individual in the evening of his or her life is constrained to knock the doors of the Authorities under the provisions of the said Act, which in itself is meant

for the benefit of such senior citizens. In that light, when the document at Exhibit “3” is considered, this Court finds sufficient pleadings in the said document as against the respondent No.1 with regard to the aspect of the promise to take care being a condition for execution of the subject Gift Deed. In such matters, it is by inference that the Authorities and the Court have to arrive at findings as, on most occasions, the document in itself would expressly state only “love and affection” while the expectation that beneficiaries of such Gift Deed would take care of the senior citizen is implicit, to be derived from the overall pleadings and material on record.

21. This Court is of the opinion that the pleadings on record, as also oral statements made by the senior citizen before the Tribunal, sufficiently satisfy the requirements of law clarified by the Supreme Court **Sudesh Chhikara Vs. Ramti Devi and another (supra)**, and this Court in the case **Ashwin Bharat Khater Adult and Another Vs. Urvashi Bharat Khater Adult and Another (supra)**, in the context of Section 23(1) of the said Act.

22. On the question of right to sue, this Court is convinced that there is no substance in the objection sought to be raised on behalf of the respondent No.1 to claim that such an order would be in-executable. The provisions of the said Act were resorted to by the senior citizen during her lifetime. In fact, the record shows that she was about 91 years old when she

was constrained to institute such proceeding. Her desire to have the Gift Deed annulled was made out on merits and the Tribunal proceeded to hold in favour of the senior citizen. The respondent No.1 directly filed writ petition before this Court challenging the said order and during the pendency of said Writ Petition No.6145 of 2022, the senior citizen expired. If the objection raised on behalf of respondent No.1 is to be accepted, then all such orders that may be passed in favour of the senior citizens declaring gift deeds as null and void would be reduced to a nullity, only on occurring of the event of the death of such senior citizen. Such a proposition cannot be accepted.

23. At this stage, an objection was sought to be raised on behalf of respondent No.1 to the effect that the Tribunal did not frame a specific issue in the context of Section 23(1) of the said Act and the issue framed regarding the Gift Deed having been executed fraudulently, was an issue to be decided only by the Civil Court. This Court is of the opinion that the issue framed by the Tribunal was in the context of Section 23(1) of the Said Act. The above quoted provision specifies that when a senior citizen has transferred, by way of a gift, his or her property subject to a condition that the transferee shall provide basic amenities and basic physical needs to the transferor and such a transferor fails to do so, the transfer of property shall be “deemed” to have been made by fraud or coercion or under undue influence. Issue no.1 framed by the Tribunal was obviously in the context of said language of Section 23(1)

of the said Act and therefore, it cannot be said that the Tribunal ventured into deciding the question of fraud, which only the Civil Court could have decided. The deeming fiction incorporated under Section 23(1) of the said Act has to be given its full effect. Hence, the said contention is also rejected.

24. In fact, if the contention regarding absence of right to sue, due to death of the senior citizen was to be accepted, there was no reason for the respondent No.1 to have pursued the appeal before the Appellate Authority as the order of the Tribunal, would be rendered a nullity merely because of the death of the senior citizen. It is perhaps for this reason that even before this Court in Writ Petition No.6145 of 2022, when the fact about the death of the senior citizen was brought to light, a submission was made on behalf of respondent No.1, the petitioner therein, that the right to sue indeed survived in the context of the order passed by the Tribunal with respect to the Gift Deed.

25. It is also matter of fact that under the Gift Deed, the petitioner is also a beneficiary to the extent of half share of the senior citizen. The Gift Deed being declared null and void would obviously adversely affect the interest of the petitioner also, for the reason that the share of the senior citizen in the subject shop would devolve through intestacy. Despite the aforesaid fact, the petitioner has come forward to challenge the order of the Appellate

Authority and therefore, this Court is of the opinion that the contention being raised with regard to the maintainability of the writ petition on the ground of demise of the senior citizen is without any substance.

26. In view of the above, the writ petition is allowed. The impugned order is partly set aside and the order of the Tribunal declaring the Gift Deed dated 20th July 2016 as null and void, is restored, thereby also restoring the consequential direction of the Gift Deed executed by respondent No.1, as null and void.

27. It is made clear that this Court has not considered the question of devolution of right in the tenancy, if any, between the petitioner, respondent No.1 and the other legal heirs of the senior citizen.

28. At this stage, respondent No.1 sought for continuation of interim relief. In the light of the observations made hereinabove, this Court is not convinced that a ground is made out for continuing the interim relief.

29. Hence, the said prayer is also rejected.

30. Pending applications, if any, also stand disposed of.

(MANISH PITALE, J.)