IN THE HIGH COURT AT CALCUTTA
CIVIL REVISONAL JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Md. Shabbar Rashidi

CO 157 of 2020

Brojo Kishore Pal

Vs.

Dipti Pal & Ors.

For the petitioner	:	Mr. Sarbananda Sanyal, Adv. Ms. Paulami Chakraborty, Adv.
Heard on	:	07.10.2026
Judgment on	:	07.10.2026
Uploaded on	:	08.10.2026

MD. SHABBAR RASHIDI, J.:

1. Petitioner is represented.

2. None appears for the substituted opposite partiers, despite service.

3. The revisoinal application is taken up for consideration.

4. The instant revisional application has been filed by the petitioner aggrieved with an order dated November 14, 2019 passed by the learned Sub-Divisional Officer at Jangipur, Murshidabad in Misc. Case No. 57 of 2018.

5. By the impugned order, the Sub-Divisional Magistrate passed an order cancelling the deed of gift executed in favour of the present petitioner who was an opposite party in Misc. Case No. 57 of 2018.

6. Learned advocate for the petitioner submits that the impugned order was passed in violation of the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

7. Learned advocate for the petitioner also submits that the deed of gift in question did not contain a condition that the present petitioner would be liable to provide maintenance to the executor of the deed for gift. Moreover, during pendency of the present proceeding, the original executor of the deed of gift has already expired.

8. In support of his contention, learned advocate for the petitioner relied upon ***(2024) 14 SCC 225 (Sudesh Chhikara vs. Ramti Devi & Anr.)***.

9. The original opposite party in the present revisional application filed an application under Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, the 'Act of 2007') before the Sub-Divisional Officer, Jangipur, Murshidabad, which was registered as Misc. Case No. 57 of 2018. It was the case of the petitioner of such Misc. Case, who happens to

be the father of the present petitioner, that the opposite party no. 1 executed and registered a deed of gift in favour of the petitioner out of love and affection on February 21, 2014. It was alleged in the petition filed by the opposite party that after obtaining the deed, the present petitioner did not look after the opposite party no. 1 and has been inflicting torture upon him.

10. In course of hearing of the Misc. Case No. 57 of 2018, the Senior Citizen Tribunal passed an order on November 29, 2018 directing the present petitioner to pay an amount of Rs. 15,000/- per month as maintenance to the opposite party. Challenging such order, the present petitioner moved before this Hon'ble Court by filing writ petition No. WP 26311(W) of 2018. However, this Court refused to interfere with the order dated November 29, 2018 at a preliminary stage with liberty to the petitioner to raise the points with regard to quantum of the maintenance amount before the learned Tribunal in terms of Section 9 of the Act of 2007.

11. Subsequently, by an order dated February 28, 2019 the Tribunal directed the present petitioner to deposit the maintenance amount in terms of its order dated November 29, 2018 within seven days of each succeeding months. Later on by the impugned order, the Tribunal proceeded to declare the deed of gift as void.

12. The impugned order has been challenged by the present petitioner on the ground that the same has been passed in violation of the provisions of the Act of 2007 as well as without considering the order passed by this Hon'ble Court in writ petition No. 26311(W) of 2018.

13. Section 23 of the Act of 2007 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 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 or 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. It was specifically argued on behalf of the petitioner that Section 23 is pressed into service where the deed in question contains specific direction that the receiver of the property shall provide maintenance to the executant. Whereas no such condition was there in the deed of gift executed in favour of the petitioner. The said deed was executed out of love and affection by the father of the petitioner in his favour. Be it mentioned here, that the executor of the deed, i.e., father of the present petitioner who was entitled for maintenance in terms of the provisions of the Act of 2007, died during pendency of the instant proceeding on November 29, 2023. As legal heirs, i.e. brothers and sisters of the petitioner were substituted in place of the original opposite party.

15. In ***Sudesh Chhikara*** (supra), the Hon'ble Supreme Court was pleased to observe as follows:-

> *"14. 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.*

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.

15. 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.

16. Careful perusal of the petition under Section 23 filed by Respondent 1 shows that it is not even pleaded that the release deed was executed subject to a condition that the transferees (the daughters of Respondent 1) would provide the basic amenities and basic physical needs to Respondent 1. Even in the impugned order dated 22-5-2018 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 the 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 1 that the release deed was executed subject to such a condition."*

16. The impugned order records that the gift deed was made in favour of the son of the petitioner who was not paying maintenance in spite of regular order and/or reluctant to pay such maintenance. In such situation, the learned Sub-Divisional Magistrate recorded that the gift deed was declared void so that the senior citizen could maintain himself out of the property that has been given to the present petitioner.

17. The impugned order does not record that the deed in question contained any stipulation that upon execution and registration of the deed in question, the present petitioner was under the obligation to pay maintenance to the petitioner in Misc. Case No. 57 of 2018 i.e. his father.

18. In the aforesaid facts and circumstances of the case and applying the ratio laid down in ***Sudesh Chhikara*** (supra) as well as taking into account the relevant provisions of the Act of 2007, the impugned order cannot be sustained. The same is hereby set aside.

19. Accordingly, **CO 157 of 2020** is disposed of.

20. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Md. Shabbar Rashidi, J.)

tbsr/138