



**IN THE HIGH COURT OF KARNATAKA,
KALABURAGI BENCH**



DATED THIS THE 29TH DAY OF JULY, 2024

BEFORE

**THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO. 202832 OF 2019 (GM-RES)**

BETWEEN:

SMT. SHOBA
W/O PRAHALADRAO KULKARNI
AGE: 65 YEARS, OCC: HOUSEWIFE,
R/O. H.NO.8-11-180/227,
VIDYANAGAR, RAICHUR.

...PETITIONER

(BY SRI SHIVANAND PATIL, ADVOCATE)

AND:

1. DR. ANIL.P.KUMAR
S/O PRAHALADRAO KULKARNI
AGE: 32 YEARS, OCC: DOCTOR,
R/O J.P.NAGAR, BANGALORE-01
2. THE ASST. COMMISSIONER
& THE CHAIRMAN SENIOR
CITIZEN WELFARE COMMITTEE
RAICHUR-584 101.

...RESPONDENTS

(BY SRI GANESH S. KALBURAGI, ADVOCATE FOR R1;
SRI SHIVAKUMAR R. TENGLI, AGA FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE
IMPUGNED ORDER DATED 25.05.2019 IN FILE
NO.SUM/KUM/HINARAKAA/03/2018-19/69 OF THE RESPONDENT





NO.2 AS PER ANNEXURE-E TO THE WRIT PETITION AND CONSEQUENTLY ALLOW THE APPLICATION OF THE PETITIONER DATED 11.12.2018 AS PER ANNEXURE-C TO THE WRIT PETITION, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

(PER: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ)

1. The petitioner is before this Court seeking for the following reliefs:

- a) *Issue a writ of certiorari or any other writ of the like nature and quash the impugned order dated 25.05.2019 in file No.SUM/KUM/HINARAKAA/03/2018-19/69 of the respondent No.2 as per Annexure-E to the writ petition and consequently allow the application of the petitioner dated 11.12.2018 as per Annexure-C to the writ petition, in the interest of justice and equity.*
- b) *Any other relief to which the petitioner would be entitled to in facts and circumstance of the case.*

2. Petitioner is the mother of respondent No.1. Petitioner claims to have gifted the property bearing



Plot Nos.73 and 74, Municipal No.8-13-4/73 and 74 situated at Raichur, to respondent No.1-son in the belief that he will take care of the basic requirements of the petitioner. The petitioner claiming that respondent No.1 had completely shown disinterest in the welfare of the petitioner and her husband and not provided basic amenities and physical needs to her during her old age had filed an application in File No.3/2018-19 which came to be opposed by respondent No.1 and dismissed by respondent No.2. It is challenging the same, the petitioner is before this Court seeking for the aforesaid reliefs.

3. Learned counsel for the petitioner submits that

3.1. Respondent No.2 has not considered the matter in proper perspective. Respondent No.2 has rejected the application filed by the petitioner on two grounds. Firstly, on the ground that the Gift Deed did not have any clause indicating that the donee would take care of the interest



of the petitioner. Secondly, on the ground that at the time of Gift Deed being executed, the petitioner was not a senior citizen but was aged only about 53 years.

3.2. He submits that the very purpose of executing the Gift Deed in favour of her son-respondent No.1, was in order to enable respondent No.1 to build a Nursing Home in furtherance of the education which had been imparted by the petitioner and her husband by incurring huge expenses for the education of respondent No.1, so that from the earning of the Nursing Home Respondent No.1 son could take care of the parent in their old age.

3.3. Respondent No.1 had approached the petitioner to gift the aforesaid property so that the property stands in his name enabling him to obtain all and necessary permissions to set up a Nursing Home on the said property. It is out of



love and affection and with the intention to see a better future for their son, gift of the property was made. Being parents, there was also expectation from the petitioner that respondent No.1-son would take care of them in their old age.

3.4. It is only because respondent No.1 did not take care of the basic necessities, the application was filed by the petitioner before the Assistant Commissioner which has been wrongly rejected by the Assistant Commissioner.

4. Sri.Ganesh S.Kalburgi, learned counsel for respondent No.1 submits that

4.1. Without a clause in the Gift Deed being present as regards an obligation on the donee to take care of the basic necessities of the donor-parent, there cannot be an obligation so imposed.



4.2. In this regard, he relied upon the decision of the Hon'ble Supreme Court in the case of ***Sudesh Chhikara vs. Ramti Devi and another*** in Civil Appeal No.174/2021 disposed of on 06.12.2022, more particularly, paragraphs-11 to 14 of the said judgment which are reproduced hereunder for easy reference:

"11. We have given careful consideration to the submissions. Before dealing with the factual aspects, it is necessary to advert to the legal aspects. The Sub-Divisional Magistrate acting as the Maintenance Tribunal under the 2007 Act has invoked the power under Section 23 to declare that the subject release deed was void. The 2007 Act has been enacted for the purposes of making effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution of India. The Maintenance Tribunal has been established under Section 7 to exercise various powers under the 2007 Act. Section 8 provides that the Maintenance Tribunal, subject to any rules which may be framed by the Government, has to adopt such summary procedure while holding inquiry, as it deems fit. Apart from the power to grant maintenance, the Tribunal exercises



important jurisdiction under Section 23 of the 2007 Act which reads 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."

(emphasis added)



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.

If both the aforesaid conditions are satisfied, by a legal fiction, transfer shall be deemed to have been made by fraud or coercion or undue influence. Such a transfer the n becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void.

13. *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.*



14. 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 transferees (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 22nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems that oral evidence was no 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 no.1 that the release deed was executed subject to such a condition.”

4.3. By relying on the above judgment, he submits that when a Gift Deed has been executed out of natural love and affection, there cannot be any obligation imposed to take care of the basic requirements of the donor-parents and since that test has not been satisfied, the Assistant Commissioner has rightly rejected the petition filed by the mother.



4.4. He reiterates that when the Gift Deed was executed, the petitioner was aged 53 years as shown in the Gift Deed though wrongly mentioned as 57 years in the order of the Assistant Commissioner. Hence, he submits that the Gift Deed having been executed when the petitioner was not a senior citizen, the petitioner cannot claim the benefit of the provisions of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (for short, hereinafter referred to as 'the Act').

4.5. He submits that the mother having filed an application for maintenance, the said application has been dismissed and therefore, he submits that the obligation of maintenance cannot be imposed on the son.

4.6. His last submission is that the petitioner's husband i.e., the father was a retired Range



Forest Officer who had enough and adequate properties, income and pension amount which was sufficient to take care of the interest of the petitioner and as such, there is no requirement for respondent No.1 to take care of the petitioner, but respondent No.1 undertakes to take care of the medical treatment or otherwise of the petitioner.

5. Heard Sri.Shivanand Patil, learned counsel for the petitioner, Sri.Ganesh S.Kalburgi, learned counsel for respondent No.1 and Sri.Shivakumar R.Tengli, learned Additional Government Advocate for respondent No.2. Perused the papers.
6. It is not in dispute that the petitioner is the mother and respondent No.1 is the son. An application under Section 23 of the Act was filed by the petitioner contending that the petitioner was presently aged 64 years and her husband was 69 years and both are residing at Vidyanagar locality, Raichur. It was



further stated that respondent No.1 was working as Senior Resident Medical Officer in Jayadeva Cardio-Vascular Sciences and Research Institute, Bengaluru, he having completed his Medicine in Mysore and post graduation in Imphal. Thereafter, he was appointed in Jayadeva Cardio-Vascular Sciences and Research Institute, Bengaluru.

7. It is also not in dispute that property bearing No.8-13-4/73-74 has been purchased by the husband of the petitioner in petitioner's name and that the petitioner had gifted the property to respondent No.1-son under a registered Gift Deed dated 04.03.2014 i.e., to say if not for the gift the Respondent No.1 son would not derive any right, title or interest in the property gifted.
8. It is stated in the petition that the petitioner and her husband out of love and affection towards their son had maintained him during his studies, supported



him during his education and made payment of all the educational expenses. After completion of his education, when the son expressed his desire to set up a Nursing Home at Raichur, in order to enable their son so to set up a Nursing Home, the petitioner had transferred her property under a Gift Deed to enable easy construction by obtaining all permissions in the name of the Respondent No.1 son.

9. It is categorically averred in paragraph-6 of the petition that the son had promised that he will provide basic amenities and physical needs to his mother and thereby, with a fond hope that the son will take care of her interest, during old age, the Gift Deed was executed by the mother in favour of son.
10. The judgment which has been relied upon by the learned counsel for respondent No.1 in ***Sudesh Chhikara's case*** (*supra*) would not be applicable to the present case for the reason that in paragraph-14 which has been extracted hereinabove, the Hon'ble



Apex Court has taken into consideration that in the petition filed under Section 23 of the Act, in that case, it was not even pleaded that Release Deed was executed subject to the condition that the transferee will provide the basic amenities and basic physical needs to parents. The Hon'ble Apex Court has not in as many words categorically stated that the condition for providing basic amenities and basic physical needs is to be incorporated in the Gift Deed and Release Deed, but what has been held in that case is that the pleadings did not indicate any such obligation having been undertaken by the donee or the releasee made in an application filed under Section 23 of the Act.

11. Therefore, the contention of Sri.Ganesh S.Kalburgi, that there is no obligation imposed in the Gift Deed and therefore, jurisdiction under Section 23 of the Act cannot be exercised is not countenanced by the said judgment.



12. As aforesaid, it is not in dispute that the property was owned by the mother and has been gifted to the son. A mother or father if during their lifetime were to transfer a property by way of gift, leaving them without the benefit of the property during their lifetime, a reasonable expectation that their offspring be it either a son or a daughter would take care of their requirements in their old age can be so imputed, when there is a specific pleading in the application filed under Section 23 of the Act.
13. Now the contention of the son is that the father was a retired Range Forest Officer and that he has enough resources to take care of himself and his wife. Unfortunately, during the pendency of the above petition, the father has also expired leaving behind only the mother.
14. In such circumstances, I am unable to countenance the stand of the son that there is no obligation on the



part of the son to take care of his mother during her old age, merely because, there is no such obligation imposed in the Gift Deed. The mother out of frustration has filed said application against her son, since the son is not taking care of her and has categorically averred in the petition that there was fond hope that her son will take care of her during her old age after building a Nursing Home in the property which belonged to the mother. This statement made in the pleading would suffice the requirement of the decision of the Hon'ble Apex Court in ***Sudesh Chhikara's case*** (*supra*).

15. One other contention that has been urged by Sri.Ganesh S.Kalburgi, learned counsel for respondent No.1 is that when the Gift Deed was executed, the mother was aged 53 years as such, the benefit of Section 23 of the Act cannot be availed of by her. I am unable to again accept this contention for the reason that the



application/petition under Section 23 of the Act would have to be considered as on the date of the application so long as the applicant satisfies the requirement of being a senior citizen as on that day, the same would be sufficient and it is not required for the donor or releasor to be a senior citizen on the day on which the Gift or Release is executed. Thus, this contention also stands rejected.

16. The last contention that is urged by Sri.Ganesh S.Kalburgi, learned counsel for respondent No.1 is that the maintenance petition filed by the Petitioner is dismissed and therefore, no obligation could be imposed in a petition under Section 23 of the Act on Respondent No.1 to take care of the basic needs and requirements of the mother, he will only take care of medical expenses, this being supported by the contention that the father was a Range Forest officer, who was drawing pension, subsequent to his expiry



the mother will be entitled to family pension hence, there is no requirement to maintain the mother.

17. This submission would only indicate that the Petitioner Mother was constrained to move the Court seeking for maintenance which was also contested by the Respondent No.1 son, thus leaving the Petitioner mother without any manner of taking care of her interest. Despite enquiry the submission on behalf of respondent No.1 is that he will not take care of the day to day needs of the Petitioner Mother but would only make payment of medical expense, this according to me would not satisfy the requirements of the mother, the son despite receipt of the property is unwilling to take care of the requirements of the aged mother. The submission would also indicate that the father Range Forest Officer has expended monies from his earnings to educate his son to an extent of enabling him to be a doctor, now to contend that the mother can take care of herself



from the family pension after the expiry of the father during the pendency of this petition, would only indicate the conduct and attitude of Respondent No.1 Son. This Court refrains from making any further observations on the same. The Act has been brought into force to provide adequate maintenance and effective welfare to old parents and senior citizens, by making it a legal obligation on adult children and heirs by way of inexpensive and speedy procedures. The aim and objectives of the Act are required to be given due effect.

18. In that view of the matter, the Assistant Commissioner having dismissed the application filed by the petitioner only on the ground that there is no obligation under the Gift Deed for respondent No.1 to take care of the petitioner, does not stand the test as laid down by the Hon'ble Apex Court in ***Sudesh Chhikara's case*** (*supra*) and as such, it is required to be set aside.



19. Accordingly, I pass the following:

ORDER

- i. The Writ Petition is ***allowed***.
- ii. A Certiorari is issued, the order dated 25.05.2019 in File No.SUM/KUM/HINARAKAA/03/2018-19/69 passed by respondent No.2 at Annexure-E is hereby quashed. Consequently, having come to a conclusion that the petition of the mother was maintainable and grounds have been made out, the said petition filed under Section 23 of the Act is allowed.
- iii. The Gift Deed registered as document No.10333/2013-14 dated 04.03.2014 registered in the office of Senior Sub-Registrar, Raichur, is declared void. Respondent No.1 son is directed to hand over the property subject matter of the Gift Deed to the mother within sixty days from the date of receipt of copy of this order.
- iv. Insofar as other immovable and movable properties said to be in the custody of



respondent No.1, liberty is reserved to the petitioner to file such other and appropriate proceedings for recovery of the same as may be available in law.

**Sd/-
(SURAJ GOVINDARAJ)
JUDGE**

NB
List No.: 1 Sl No.: 54.1
Ct:RBM