

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24<sup>TH</sup> DAY OF APRIL, 2024

PRESENT

THE HON'BLE MR. N.V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE KRISHNA S DIXIT



WRIT APPEAL NO.339 OF 2023 (GM-RES)

BETWEEN:

1 . SRI JAYASHANKAR

... APPELLANT

(BY SRI VIKAS M, ADVOCATE)

AND:

1 . THE ASSISTANT COMMISSIONER  
NORTH TALUK,  
THE PRESIDENT,  
THE MAINTENANCE AND  
WELFARE OF PARENTS AND  
SENIOR CITIZENS TRIBUNAL  
NORTH SUB-DIVISION,  
BENGALURU – 560 001.

SRI LATE K. V. NANJAPPA  
SINCE DEAD LRS BROUGHT AS BELOW

2 . SRI K.N. PRAKASH  
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3. SRI K. N. LOKESH

4. SMT. KAIVALYA  
D/O LATE K. V. MANIABBA

5. SMT. KOMALA

6. SMT. ANNAPURNA

7. SMT. K. N. PRAMEELA

... RESPONDENTS

(BY SMT. NILOUFER AKBAR, AGA FOR R1;  
SMT. USHA PRAKASH, ADVOCATE FOR C/R-2)

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THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 03.03.2023 PASSED BY LEARNED SINGLE JUDGE IN WRIT PETITION No. 12226 OF 2020 AND CONSEQUENTLY ALLOW THE WRIT PETITION No. 12226 OF 2020.

THIS APPEAL, HAVING HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **CHIEF JUSTICE** DELIVERED THE FOLLOWING:

### **JUDGMENT**

Heard learned advocate Mr. Vikas for the appellant, learned Additional Government Advocate Ms. Niloufer Akbar for respondent No.1 and learned advocate Smt. Usha Prakash for respondent No.2.

2. Preferred by the original petitioners under Section 4 of the Karnataka High Court Act, 1961, this writ appeal is directed against the judgment and order of learned Single Judge dated 03.03.2023 passed in Writ Petition No.12226 of 2020, dismissing the petition.

2.1 What was prayed in the petition was to set aside the order dated 06.01.2014 passed by the President, Maintenance and Welfare of Parents and Senior Citizens Tribunal, North Sub-Division, Bengaluru. It was an order passed under 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act'). The Tribunal

declared that the registered Gift Deed dated 28.01.2014 was liable to be treated as cancelled since transfer of the properties thereunder was void.

3. The gift deed was in respect of the properties bearing Survey Nos.99/3, 99/4 and 130/10 situated at Kananuru Village, Kuduru Hobli, Magadi Taluk, Ramanagara District. The Tahsildar, Magadi Taluk, was directed to take steps to cancel the said gift deed and effect mutation entries in the name of one K.V. Nanjappa- the complainant, who happened to be the father of the petitioner-apellant Mr. Jayashankar.

3.1 It was stated in the complaint filed by the said K.V. Nanjappa that he was aged about hundred years and had 4 daughters and 3 sons who all were married and leading their life happily. It was stated that the ancestral and joint properties of the family were partitioned and the complainant had retained one house, certain sites and 5 acres of land. It was stated that the younger son of the complainant-Jayashankar alias Rajanna took the complainant to the Taluka Office by misrepresentation that his presence was needed in respect of pension case and that at same time he got registered a document from the complainant in his favour.

3.1.1 It was further stated in the complaint that the said Jayashankar, the petitioner-appellant had also sold four sites situated at Kuduru Village which belonged to the complainant, pocketed the entire sale consideration and did not pay any amount to the complainant. It was the say of the complainant that his son, the said Jayashankar, also received Rs.20,000/- from the pension amount kept in the bank.

3.1.2 The complainant's case was also that he had recently learnt that his younger son Jayashankar had got registered one gift deed from the complainant in respect of the entire land which was owned by the complainant. The complainant stated that he did not execute any such gift deed in favour of his son Jayashankar and despite that, Jayashankar had been trying to alienate the land.

3.2 It was upon such complaint made to the competent authority under the Act that upon adjudication, the order under 23(1) of the Act came to be passed by the Tribunal providing cancellation of the said gift deed.

3.3 Learned Single Judge noticed the contents and recitals in the Gift Deed in question dated 28.01.2014. The conditions and stipulations thereof was reproduced. It was held and

observed by learned Single Judge that the gift deed was unequivocal and provided that the property was gifted to the petitioner-son on the condition that he was to take care of the donor-the transferor and that such care of the father-the transferor will be taken throughout the lifetime of the father. The petitioner was found to be not taking care of the father, the condition of the gift deed was thus breached.

3.3.1 It was further recorded by learned Single Judge that the complaint was given by the father to the Assistant Commissioner, who the competent authority under the Act, after nine months when the father was driven out of the house by the petitioner-appellant. It was observed that the petitioner-son admitted that the father had not been residing in his house when the proceedings were pending before the competent authority. It was on the basis of such admission that the competent authority found that there is breach of the conditions of the gift deed and therefore, the transfer effected thereunder was liable to declared as void in law in light of Section 23(1) of the Act.

4. While assailing the judgment and order of learned Single Judge, learned advocate for the appellant submitted that

learned Single Judge overlooked the aspect that while providing the gift deed and transfer made thereunder, the competent authority came to the conclusion that the gift deed was acted upon by fraud. However, it was submitted that there was no evidence much less proof before the authority that the gift deed was executed by fraud.

4.1 It was also submitted that after the death of the father, it came to light that his late father had executed a Will in his lifetime, but respondent No.2(a)-the son and the elder brother of the appellant was not happy with the Will and he, through his wife, got registered First Information Report against the appellant for the offences punishable under Sections 379, 420, 447, 448, 465, 468, 471 and 506 of the Indian Penal Code, 1860.

4.2 It was further submitted that the children of respondent No.2(a) instituted Original Suit No.70 of 2019 in the Court of the Additional Senior Civil Judge at Magadi and in that suit also, the relief was prayed for to declare as null and void the registered Will dated 28.01.2014. It was submitted that all these material aspects were disregarded by learned Single Judge to confirm the judgment and order of the Tribunal.

5. Now Section 23 of the Act reads as under,

**“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 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 organization referred to in *Explanation* to sub-section (1) of section 5.”

5.2 In **Sudesh Chhikara vs Ramti Devi (2022 SCC OnLine SC 1684)**, the Supreme Court discussed the scope and purport of Section 23(1) of the Act. In the case before the Apex Court, the



transfer deed did not contain the specific condition of maintaining the transferor. It was observed thus,

“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.”

(Para 12)

5.2.1 The Supreme Court observed further,

“When a senior citizen parts with his or her property by executing a gift or 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.”

(Para 13)

5.2.2 The said provision contemplates that whereas any senior citizen has transferred any property by way of gift etc., post-commencement of the Act and such transfer is compelled with the condition that transferee shall provide basic amenities and basic physical needs to the transferor and subsequently such transferee refused to provide such amenities etc, the transfer of the property shall be treated to have been made by fraud, coercion or undue influence and it is further provided that such transfer shall be liable to be declared at the option of the transferor void by the Tribunal.

5.3 The facts of the case suggests that the obligation was cast unequivocally on the petitioner-appellant to take care of the father-K.V. Nanjappa and on such condition and such recital, the gift deed was executed. The said condition was breached as per the finding recorded by the competent authority as well as learned Single Judge. It was observed that the petitioner had admitted about the father not residing with him and therefore, breach of the condition of taking care of the father was manifestly breached. The complainant-father had to stay at the residence of elder son .

5.4 The condition of treating the gift deed void was satisfied. In that regard, therefore, no error could be said to have been committed by learned Single Judge in confirming the order of the Tribunal treating the gift deed as cancelled. It was proper exercise of powers to that extent under Section 23(1) of the Act.

5.5 However, the matter does not rest there. The Tribunal, while ordering cancellation of the gift deed under Section 23(1) of the Act, proceeded to observe and opine on certain aspects on the basis of which, the conclusion was drawn by the Tribunal that the gift deed was fraudulently executed.

5.5.1 The findings and observations on such score may be noticed in paragraph 13 of the order of the Tribunal. It reads thus,

“Further, the said Gift Deed was executed on 28-01-2014 and the complaint is filed on 11-11-2024. On perusal of the said Gift Deed dated 28-01-2014 alleged to have been executed by the complainant in favour of the respondent shows that the complainant-the K.V.Nanjappa had put his Thumb impression on the registered document but at the time of filing the present complaint, the said K.V.Nanjappa has put his signature as the complainant and also has put his signature on the order sheet in the present complaint. When the complainant-the father of the respondent is capable

of subscribing his signature to any document, what was the necessity of putting his Thumb impression on the alleged Gift Deed and this creates serious doubts about the consent and knowledge of the complainant with regard to the execution of the said Gift Deed in favour of the respondent.”

(Para 13)

5.5.2 Thus, it could be seen that finding was recorded by the Tribunal that on one hand, the complainant-K.V.Nanjappa had put his thumb impression on the registered document, whereas on the other hand, he had signed on the order sheet of the complaint. It was thus the view taken that when the complainant-father was capable of subscribing the signature to any document, serious doubts were created when he put his thumb impression on the gift deed. The gift deed was treated to be void with such finding and came to be cancelled in exercise of the powers under Section 23(1) of the Act.

5.5.3 The aforesaid finding by the Tribunal about the fraudulent nature of the transaction on the ground that the complainant had put thumb impression at one place and signature on the other place was not only unwarranted, but it travelled beyond the operational realm of Section 23(1) of the Act. The power to declare the transaction void under the said

Section could be exercised only within the confines of the provision.

6. It is true that the Section treats the transfer of the property acted upon in particular manner to be deemed to have been made by fraud or coercion or under undue influence, but the concept of fraud or coercion incorporated in the Section to be the ground to declare the instrument void is limited to the breach of condition. Since the Section provides for the condition that the transferee shall provide basic amenities and physical needs to the senior citizen-transferor to be abided by and in the event such condition is not abided by, it would constitute a ground to declare the instrument of gift or transfer instrument to be void. the idea of fraud or coercion encapsulated in Section 23(1) of the Act is referable to the breach of such condition only.

6.1 The words 'fraud and coercion' mentioned in the Section could not be enlarged to the normal concept of 'fraud' or 'coercion' in civil law. In order to establish 'fraud' or 'coercion' a foundation of established facts is needed to conclude about 'fraud' as understood in common legal parlance, establishing a fraud or fraudulent conduct by any person would indispensably

require leading of evidence to prove the facts of fraud. For the purpose of Section 23(1), fraud is that the transfer is effected and the condition therein about providing basic amenities and physical needs to the transferor by the transferee, is not observed and abided by the transferee.

6.2 The group of words 'since the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence' creates a deeming fiction. The deeming fiction is referable to and is delimited to the breach of condition as above on the basis of which, the transfer has been made. It is in this limited sense that 'fraud' or 'coercion' or 'undue influence' mentioned in this Section has to be understood and applied.

6.3 The Tribunal exercising powers under Section 23(1) of the Act is not a civil court, nor the powers exercised by the Tribunal under the said provision are the powers of civil court. They are the powers in the context of the provisions of the Act which have their own purpose and object, which is to provide more effective recourse in law for maintenance and welfare of parents and senior citizens and to guarantee and recognize for them their rights.

6.4 In the above view, it will not be permissible in law for the Tribunal, while exercising powers under Section 23(1) of the Act, to pronounce upon generally that the transfer of the property by way of gift or otherwise was fraudulent or that the transferor was guilty of fraud or coercion in the general sense of the term. The rights and obligations arising for the parties in the context of commission of fraud as is to be applied in general law, are the civil disputes. It is not open for the Tribunal functioning under the Act to pronounce upon such fraud having committed in effecting the transfer.

6.5 In view of the above position obtaining, this Court is of the view that the Tribunal misdirected itself in law in making the observations in paragraph 13 of its order by suggesting that the gift deed was fraudulently obtained from the complainant. The aspects mentioned by the Tribunal in that regard are to be proved by leading of evidence. It was not permissible for the Tribunal to arrive at a different finding in that regard. Even otherwise, recording of such finding was beyond the powers and jurisdiction of the Tribunal.

6.6 Accordingly, the observations in paragraph 13 of the order of the Tribunal are not sustained and are set aside. The

judgment and order of learned Single Judge is modified to the aforesaid extent. The rest of the part thereof is confirmed.

7. Accordingly, the writ appeal is dismissed subject to above observations and findings, standing in modification.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**

THM