

**Reserved on : 24.04.2024**  
**Pronounced on : 04.06.2024**



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04<sup>TH</sup> DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.14704 OF 2021 (GM - RES)

**BETWEEN:**

SRI VIVEK JAIN  
S/O JNANCHAN JAIN,  
AGED ABOUT 33 YEARS,  
RESIDING AT NO.3140,  
6<sup>TH</sup> CROSS, KUVEMPU NAGAR,  
CHANNAPATNA TOWN – 562 160.  
RAMANAGARA DISTRICT.

... PETITIONER

(BY SRI SANDESH J.CHOUTA, SR.ADVOCATE A/W  
SRI NARENDRA P.R., ADVOCATE)

**AND:**

- 1 . THE DEPUTY COMMISSIONER  
RAMANAGARA DISTRICT  
HAVING OFFICE AT VIJAYA NAGAR,  
RAMANAGARA DISTRICT,  
KARNATAKA – 562 159.

- 2 . THE PRESIDENT AND  
ASSISTANT COMMISSIONER,  
SENIOR CITIZEN TRIBUNAL,  
RAMANAGARA SUB-DIVISION,  
RAMANAGARA – 562 159.  
RAMANAGARA DISTRICT.
- 3 . SRI SRINIVAS  
S/O LATE S.R.SAMPATHU,  
AGED ABOUT 74 YEARS,  
RESIDING AT 3<sup>RD</sup> CROSS,  
KUVEMPU NAGAR,  
CHANNAPATNA TOWN – 562 160.  
RAMANAGARA DISTRICT.
- 4 . SRI C.S.HARSHA  
S/O SRI SRINIVAS,  
AGED ABOUT 41 YEARS,  
RESIDING AT 4<sup>TH</sup> BLOCK,  
5<sup>TH</sup> MAIN, VIVEKANANDANAGARA  
CHANNAPATNA TOWN – 562 160.  
RAMANAGARA DISTRICT.
- 5 . SRI C.S.THILAK  
S/O SRI SRINIVAS,  
AGED ABOUT 37 YEARS,  
RESIDING NEAR MAHADESHWARA TEMPLE  
AND DIVYA NIKETHAN SCHOOL,  
CHANNAPATNA TOWN – 562 160.  
RAMANAGARA DISTRICT.

... RESPONDENTS

(BY SMT.NAVYA SHEKHAR, AGA FOR R1 AND R2;  
SMT.LAKSHMY IYENGAR, SR.ADVOCATE A/W  
SRI SRIKANTH M., ADVOCATE FOR R-3 AND R-5;  
SRI SATYANARAYANA REDDY, ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 07.07.2021 PASSED BY THE R2 AS PER THE ANNEXURE-A AND I.E, PRESIDENT AND ASSISTANT COMMISSIONER SENIOR CITIZEN TRIBUNAL, RAMANAGARA SUB-DIVISION, RAMANGARA UNDER WHICH THE R2 CANCELLED THE GIFT DEED DATED 20.06.2019 EXECUTED BY R3 IN FAVOUR OF R4 AND SALE DEED DATED 19.12.2019 WHICH WAS EXECUTED BY THE R4 IN FAVOUR OF THE PETITIONER.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 24.04.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

### **ORDER**

The petitioner is before this Court calling in question the order dated 07-07-2021 passed by the 2<sup>nd</sup> respondent/Assistant Commissioner under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ('the Act' for short) cancelling the Gift Deed dated 20-06-2019 and subsequent sale deed dated 19-12-2019.

2. The facts, in brief, germane are as follows:

The 3<sup>rd</sup> respondent is the father of respondents 4 and 5. The 3<sup>rd</sup> respondent owned certain property; initially executes a gift deed

in favour of his wife in the year 2000. The wife of the 3<sup>rd</sup> respondent who was the donee dies in the year 2015. After the death of his wife, the 3<sup>rd</sup> respondent who was the donor, gifts the property again to the 4<sup>th</sup> respondent, his son by execution of a gift deed dated 20-06-2019. After the said gift deed, the name of the 4<sup>th</sup> respondent is entered in all revenue records depicting him to be the owner of the said property. On the strength of him becoming the absolute owner of the property, the 4<sup>th</sup> respondent sells the property in favour of the present petitioner on 19-12-2019 on certain consideration. Two years after the said sale, the 3<sup>rd</sup> respondent, earlier donor knocks at the doors of the Assistant Commissioner invoking Section 23 of the Act. The Assistant Commissioner, in terms of the impugned order, sets aside the Gift Deed, so executed on 20-06-2019 and the sale deed executed in favour of the present petitioner by the son on 19-12-2019 by which, the property that was purchased by the present petitioner is taken off. It is therefore, the petitioner is before this Court in the subject petition.

3. Heard Sri Sandesh J. Chouta, learned senior counsel appearing for the petitioner, Smt. Navya Shekhar, learned Government Advocate appearing for respondents 1 and 2, Smt. Lakshmy Iyengar, learned senior counsel appearing for respondents 3 and 5 and Sri Satyanarayana Reddy, learned counsel appearing for respondent No.4.

4. The learned senior counsel Sri Sandesh J.Chouta would vehemently contend that the gift deed did not contain any such condition for the Assistant Commissioner to have entertained the petition. The learned senior counsel would further contend that the Assistant Commissioner could not have set aside the sale deed executed in favour of the petitioner. He would submit that the issue stands answered by plethora of judgments of the Apex Court and this Court and even the High Court of Kerala interpreting the provisions of the Act. He would submit that the order of the Assistant Commissioner should be quashed and *status quo ante* should be restored in favour of the present purchaser/petitioner. He would further submit that all other issues between the parties can be agitated before the civil Court.

5. Per-contra, the learned senior counsel Smt. Lakshmy Iyengar appearing for respondent No.3/father/donor would seek to demonstrate that after the death of his wife the property would not devolve back to the to the hands of the donor and all the members of the family would become entitled to seek share in the property, as the donee of the gift is no more. The learned senior counsel would submit that the father has assumed that the property had devolved back to him and accordingly gifted the property in favour of the 4<sup>th</sup> respondent. The 2<sup>nd</sup> gift in line is in the year 2019 and the son/4<sup>th</sup> respondent has executed a sale deed on 19-12-2019. It is her submission that all the actions after the death of the wife of the 3<sup>rd</sup> respondent are all a nullity in law. The learned senior counsel would contend that all the parties have to approach the civil Court for determination of their right. The learned senior counsel would submit that the petitioner who is a subsequent purchaser cannot have a right more than what the 4<sup>th</sup> respondent would have. The 4<sup>th</sup> respondent is the donee of the gift deed. The learned senior counsel would submit that the property standing in the name of the father was a commercial property. He was deriving right over it till the

sale deed is executed. Therefore, on these grounds she would seek dismissal of the petition.

6. The learned senior counsel for the petitioner would join issue to contend that at the time of sale, the father was present. The petitioner and the 4<sup>th</sup> respondent together have transferred an amount of ₹15/- lakhs to the account of the father and an amount of ₹10,000/- as monthly interest is paid to the father out of the said funds. This is not disputed by the learned senior counsel for the 3<sup>rd</sup> respondent. This submission is also acknowledged by the learned counsel representing the son/4<sup>th</sup> respondent who has sold the property in favour of the petitioner. These submissions are made to contend that the father is not left high and dry. He has, in fact, amount in his account and ₹10,000/- every month is being paid to him. On these grounds, the learned senior counsel for the petitioner would contend that the Assistant Commissioner could not have exercised his jurisdiction to annul the gift deed.

7. I have given my anxious consideration to the submissions made by the learned senior counsel and have perused the material

on record. In furtherance whereof, the issue that falls for consideration is:

***'Whether the Assistant Commissioner could have entertained the petition under Section 23 of the Act and set aside the gift deed dated 20-06-2019 and the subsequent sale deed dated 19-12-2019?'***

8. The afore-narrated facts are not in dispute, but would require a little elaboration. The *lis* has three protagonists – one, the 3<sup>rd</sup> respondent/father (hereinafter referred to as the donor or father as the case may be), second, the 4<sup>th</sup> respondent (hereinafter referred to as 'the donee') and the third, the petitioner, purchaser from the hands of the donee. It is not in dispute that the donor owned certain property, which is the subject matter of the present petition. The said property becomes the subject matter of a gift executed by the donor initially on 15-03-2000 in favour of his wife, one Smt. Kalavathi. It is said that Smt. Kalavathi during her life time had executed a mortgage deed in favour of State Bank of India as security for the loan secured by her. The said deed was executed on 07-11-2012. The wife dies on 29-10-2015. After the

death of the wife, the records of the property again reverted back to the donor, the 3<sup>rd</sup> respondent as his wife was no more and the donor was alive. The donor enjoyed the property for over four years. He then executes a gift deed on 20-06-2019 in favour of the 4<sup>th</sup> respondent/donee. After execution of the gift deed, a release deed is executed by the 5<sup>th</sup> respondent, the other son of the donor. Therefore, the 4<sup>th</sup> respondent becomes the absolute owner of the property. The 4<sup>th</sup> respondent clears all the dues to the State Bank of India, a loan that was availed by the mother of the 4<sup>th</sup> respondent. Thereafter the State Bank of India executes a discharge deed in favour of the 4<sup>th</sup> respondent on 12-11-2019. Thus, the property becomes free from all encumbrances. It is then, the 4<sup>th</sup> respondent sells the property in favour of the present petitioner by execution of sale deed dated 19-12-2019. Now all the records are in favour of the petitioner pursuant to the said sale deed. The proceeds of sale were also distributed to the donor viz., ₹15/- lakhs was paid to him by way of deposit being made in the Life Insurance Corporation of India in favour of the donor and ₹10,000/- per month being remitted to the bank account of the

father/donor. The afore-quoted facts are admitted, as they are borne out of records. Then begins the problem.

9. The father/donor approaches the Assistant Commissioner invoking Section 23 of the Act contending that he is not being taken care of and the gift deed is taken by playing fraud upon him. The Assistant Commissioner issues notice to all the concerned. The present petitioner was also made a party before the Assistant Commissioner. He was 3<sup>rd</sup> respondent. The issue now would be whether the Assistant Commissioner could have entertained the petition before him in the teeth of recitals in the gift deed. Therefore, it becomes necessary to notice the gift deed. The gift deed reads as follows;

*“ಸನ್ ಎರಡು ಸಾವಿರದ ಹತ್ತೊಂಬತ್ತನೆ ಇಸವಿ ಜೂನ್ ಮಾಹೇ ತಾರೀಖು ಇಪ್ಪತ್ತರಲ್ಲು (20-06-2019) ರಾಮನಗರ ಜಿಲ್ಲೆ, ಚನ್ನಪಟ್ಟಣ ಟೌನ್, ಕುವೆಂಪುನಗರ, 3ನೇ ಅಡ್ಡರಸ್ತೆ, 2290/1ನೇ ನಂಬರ್ ಮನೆಯಲ್ಲಿ ವಾಸವಾಗಿರುವ ಶ್ರೀ ಎಸ್.ಶ್ರೀನಿವಾಸರವರ ಮಗ ಸುಮಾರು 39 ವರ್ಷ ವಯಸ್ಸುಳ್ಳ ಶ್ರೀ ಹರ್ಷ ಸಿ.ಎಸ್. ರವರಿಗೆ (ಆಧಾರ್ ನಂ.337498055290)*

*ರಾಮನಗರ ಜಿಲ್ಲೆ, ಚನ್ನಪಟ್ಟಣ ಟೌನ್. ಕುವೆಂಪುನಗರ, 3ನೇ ಅಡ್ಡರಸ್ತೆ, 2290/1ನೇ ನಂಬರ್ ಮನೆಯಲ್ಲಿ ವಾಸವಾಗಿರುವ ಲೇಟ್ ಎಸ್.ಆರ್.ಸಂಪತ್ ರವರ ಮಗ ಹಾಗೂ ನಿನ್ನ ತಂದೆಯು ಆದ ಸುಮಾರು 76 ವರ್ಷ ವಯಸ್ಸುಳ್ಳ ಶ್ರೀ ಎಸ್.ಶ್ರೀನಿವಾಸ ಅದ ನಾನು ಬರೆಸಿಕೊಟ್ಟ ದಾನಪತ್ರ.*

*ಆದಾಗಿ ಷೆಡ್ಯೂಲ್‌ನಲ್ಲಿ ನಮೂದಿಸಿರುವ ಸ್ವತ್ತು ನನಗೆ ಸ್ವಯಾರ್ಜಿತವಾಗಿ ಬಂದು ಅಂದರೆ ರಾಮನಗರ ಜಿಲ್ಲೆ, ಚನ್ನಪಟ್ಟಣ ಟೌನ್, ಬಿ ದಿವಿಜನ್‌ಗೆ ಸೇರಿದ ಎಂ.ಜಿ.ರೋಡಿನಲ್ಲಿರುವ ಮುನಿಸಿಪಲ್*

ಡೋರ್ ನಂ.1177 ಮತ್ತು 1178ರಲ್ಲಿ ದಾಖಲಾಗಿರುವ ಅಳತೆ 17x50 ಅಡಿವುಳ್ಳ ಅಂಗಡಿ ಮತ್ತು ಮನೆ ಸಹ ನೇರಿ ಪೂರ್ತಾ ಸ್ವತ್ತು ಮೇಲ್ಕಂಡ ಎಸ್.ಶ್ರೀನಿವಾಸ್ ಮತ್ತು ನನ್ನ ಸಹೋದರ ಹಾಗೂ ಲೇಟ್ ಎಸ್.ಆರ್.ಸಂಪತ್‌ರವರ ಮಗ ಎಸ್.ಪ್ರಕಾಶ್ ಆದ ನಮ್ಮಗಳಿಗೆ ಜಂಟಿಯಾಗಿ ದಿನಾಂಕ 04-01-1979 ಚನ್ನಪಟ್ಟಣ ಉಪನೋಂದಣಾಧಿಕಾರಿರವರ ಕಛೇರಿಯಲ್ಲಿ 1ನೇ ಪುಸ್ತಕದ 2741ನೇ ಸಂಪುಟದ 5-7ನೇ ಪುಟಗಳಲ್ಲಿ 2714/78-79ನೇ ನಂಬರಾಗಿ ರಿಜಿಸ್ಟ್ರಾರಿರುವ ಕ್ರಯಪತ್ರದ ಮೂಲಕ ನಟರಾಜಯ್ಯರವರ ಮಗ ಸಿ.ಎನ್ ಪ್ರಕಾಶ್‌ರವರಿಂದ ಬಂದು ನಂತರ ಮೇಲ್ಕಂಡ ಎಸ್.ಶ್ರೀನಿವಾಸ್ ಆದ ನನ್ನ ಹೆಸರಿಗೆ ನನ್ನ ಸಹೋದರ ಎಸ್.ಪ್ರಕಾಶ್‌ರವರು ದಿನಾಂಕ 08-12-1992ರಂದು ಚನ್ನಪಟ್ಟಣ ಉಪನೋಂದಣಾಧಿಕಾರಿರವರ ಕಛೇರಿಯಲ್ಲಿ 1ನೇ ಪುಸ್ತಕದ 3074ನೇ ಸಂಪುಟದ 12-14ನೇ ಪುಟಗಳಲ್ಲಿ 1841/92-93ನೇ ನಂಬರಾಗಿ ರಿಜಿಸ್ಟ್ರಾರಿ ಮಾಡಿಕೊಟ್ಟಿರುವ ರಿಲೀಜ್ ಯಾ ಹಕ್ಕು ನಿವೃತ್ತಿ ಪತ್ರದ ಮೂಲಕ ಬಂದು ನಂತರ ನನ್ನ ಹೆಸರಿಗೆ ಚನ್ನಪಟ್ಟಣ ನಗರಸಭೆಯಲ್ಲಿ ಖಾತೆಯಾಗಿ ಸದರಿ ಚನ್ನಪಟ್ಟಣ ನಗರಸಭೆಯಲ್ಲಿ ಗಣಕೀಕೃತ ಇ-ಖಾತೆಯಾಗಿ ನನ್ನ ಸಂಪೂರ್ಣ ಹಕ್ಕುಬಾಧ್ಯತೆಗೆ ಒಳಪಟ್ಟು, ಹಾಲಿ ನನ್ನ ಸ್ವಾಧೀನಾನುಭವದಲ್ಲಿದ್ದು ಸ್ವತ್ತಾಗಿರುತ್ತದೆ. ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿಗೆ ನಾನಲ್ಲದೆ ಬೇರೆ ಯಾರೂ ಹಕ್ಕುದಾರರು, ವಾರಸ್ಸುದಾರರು ಇರುವುದಿಲ್ಲ.

ಅದಾಗಿ ಮೇಲ್ಕಂಡ ಶ್ರೀ ಹರ್ಷ ಸಿ.ಎಸ್. ಆದ ನೀನು ನನ್ನ ಖಾಸಾ ಮಗನಾಗಿದ್ದು ನಾನು ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತನ್ನು ನಿನಗೆ ದಾನವಾಗಿ ಕೊಡುತ್ತೇನೆಂದು ಹೇಳಿದ್ದರ ಮೇರೆಗೆ ಈ ದಿವಸ ಈ ಪತ್ರದಲ್ಲಿ ಕಂಡ ಸಾಕ್ಷಿಗಳ ಸಮಕ್ಷಮ ಹಾಗೂ ನಮ್ಮ ಕುಲದೇವರ ಪ್ರೀತ್ಯರ್ಥವಾಗಿ, ಯಾರ ಪ್ರೇರಣೆಗೂ, ಯಾರ ಒತ್ತಾಯಕ್ಕೂ ಒಳಪಡದೆ ನನ್ನ ಸ್ವಇಚ್ಛೆಯಿಂದ ನಿಮಗೆ ದಾನವಾಗಿ ಕೊಟ್ಟಿರುತ್ತೇನೆ. ಷೆಡ್ಯೂಲ್ ದಾನದ ಸ್ವತ್ತನ್ನು ಸಹ ಈ ದಿವಸವೇ ನಿಮ್ಮ ಸ್ವಾಧೀನಕ್ಕೆ ಬಿಟ್ಟುಕೊಟ್ಟಿರುತ್ತೇನೆ.

ಇಲ್ಲಿಂದ ಮುಂದೆ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿಗೆ ನೀವೇ ಸಂಪೂರ್ಣ ಹಕ್ಕುದಾರರು ಮತ್ತು ಮಾಲೀಕರು ಆಗಿ ನಿಮ್ಮ ಹೆಸರಿಗೆ ನಗರಸಭೆಯಲ್ಲಿ ಖಾತೆ, ವ್ಯಾಜ್ಯ ಪರಿವರ್ತಿಸಿಕೊಂಡು ಸರ್ಕಾರಕ್ಕೆ ಕಂದಾಯವನ್ನು ಪಾವತಿ ಮಾಡುತ್ತ ನಿಮ್ಮ ಇಷ್ಟಾನುಸಾರ ನಿಮ್ಮ ಪುತ್ರ, ಪೌತ್ರ, ವಂಶ ಪಾರಂಪರ್ಯವಾಗಿ ಸುಖದಿಂದ ಅನುಭವಿಸಿಕೊಂಡು ಹೋಗುತ್ತಾ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನಲ್ಲಿ ಸಿಗಬಹುದಾದ ನಿಧಿ, ನಿಕ್ಷೇಪ ಜಲ, ತರು, ಪಾಷಣಾದಿ ಅಷ್ಟಭೋಗ ತೇಜ ಸೌಮ್ಯಗಳಿಗೂ ಬಾಧ್ಯರೆನಿಸಿ ಸದರಿ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತನ್ನು ಕ್ರಯ, ದಾನ, ಭೋಗ್ಯ, ಆಧಾರ. ಇತರೆ ವ್ಯಾಜ್ಯ ಪತ್ರಗಳನ್ನು ಮಾಡಿಕೊಂಡು ಹೋಗಲು ಮತ್ತು ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನ ಮೇಲೆ ಬ್ಯಾಂಕ್ ಮತ್ತು ಇತರೆ ಸಂಘ ಸಂಸ್ಥೆಗಳಲ್ಲಿ ಸಾಲ ವ್ಯಾಜ್ಯ ಪಡೆದುಕೊಂಡು ನಿಮ್ಮ ಇಷ್ಟಾನುಸಾರ ಅನುಭವಿಸಿಕೊಂಡು ಹಾಗೂ ವ್ಯವಹರಿಸಿಕೊಂಡು ಹೋಗಲು ಪೂರ್ಣ ಹಕ್ಕು ಳ್ಳವರಾಗಿರುತ್ತೀರಿ.

ಶಿವಾಯಿ: ಇಲ್ಲಿಂದ ಮುಂದೆ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನ ಮೇಲೆ ನಿನಗಲ್ಲದೇ ಮತ್ತು ನಿಮ್ಮ ಮಕ್ಕಳಿಗಲ್ಲದೆ ನನಗಾಗಲೀ, ನನ್ನ ಸಂತತಿಯ ಬೇರೆ ಯಾರಿಗೇ ಆಗಲಿ ಯಾವುದೇ ರೀತಿಯ ಹಕ್ಕುಬಾಧ್ಯತೆಗಳು ಇರುವುದಿಲ್ಲ. ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತನ್ನು ಈ ದಿವಸ ನಿಮಗೆ ದಾನವಾಗಿ ಬರೆದುಕೊಟ್ಟಿರುವುದಲ್ಲದೇ ಈ ಹಿಂದೆ ಬೇರೆ ಯಾರಿಗೂ ಯಾವುದೇ ರೀತಿಯ ಕ್ರಯ, ಭೋಗ್ಯ, ಆಧಾರ, ದಾನ, ವಿಭಾಗ ಇತರೆ ವ್ಯಾಜ್ಯ ಕರಾರು

ಪತ್ರಗಳನ್ನು ಮಾಡಿರುವುದಿಲ್ಲವೆಂದು ಪೂರ್ಣ ನಂಬಿಕೆ ಸಹ ಹೇಳಿರುವುದಲ್ಲದೆ ಸದರಿ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನ ಮೇಲೆ ಯಾವುದೇ ರೀತಿಯ ಸಾಲ ವ್ಯಯಗಳೇನೂ ಮಾಡಿರುವುದಿಲ್ಲವೆಂದು ಹಾಗೂ ಸದರಿ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತನ್ನು ಯಾವುದೇ ಬ್ಯಾಂಕುಗಳಿಗಾಗಲಿ ಅಥವಾ ಸಂಘ-ಸಂಸ್ಥೆಗಳಿಗಾಗಲಿ ಈಡು ಮಾಡಿರುವುದಿಲ್ಲವೆಂದು ಹಾಗೂ ಈ ತಹಲ್‌ವರೆಗೂ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನ ವಿಚಾರದಲ್ಲಿ ಯಾವುದೇ ರೀತಿಯ ತಂಟೆ ತಕರಾರುಗಳು, ವಾರಸು ತಕರಾರುಗಳು ಏನೂ ಇರುವುದಿಲ್ಲ ಪೂರ್ಣ ನಂಬಿಕೆ ಸಹ ಹೇಳಿರುತ್ತೇನೆ. ಹಾಗೂ ಒಂದು ವೇಳೆ ಮುಂದೆ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನ ಮೇಲೆ ಯಾವುದೇ ರೀತಿಯ ತಂಟೆ ತಕರಾರುಗಳು, ವಾರಸು ತಕರಾರು ಕಂಡು ಬಂದರೆ ನಾನೇ ಖುದ್ದು ಜವಾಬ್ದಾರಿಯಿಂದ ಬಗೆಹರಿಸಿಕೊಡಲು ಬದ್ಧರಾಗಿರುತ್ತೇನೆ.

-: ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನ ವಿವರ:-

ರಾಮನಗರ ಜಿಲ್ಲೆ, ಚನ್ನಪಟ್ಟಣ ಟೌನ್, ವಾರ್ಡ್ ನಂ.22, ಮಹಾತ್ಮ ಗಾಂಧಿ ರಸ್ತೆ (ಎಂ.ಜಿ.ರಸ್ತೆ), ನಂ.100 ಬ್ಲಾಕ್ 1 ಮುನಿಸಿಪಲ್‌ನಲ್ಲಿ ದಾಖಲಾಗಿರುವ ನಗರಸಭಾ ಸ್ವತ್ತಿನ ಸಂಖ್ಯೆ: 22-1-5-100 ನಗರಸಭಾ ಸ್ವತ್ತಿನ ಹಳೆ ಸಂಖ್ಯೆ: 1345/1177/1178 ನಿರ್ಧರಣಾ ಮುನಿಸಿಪಲ್ ಸಂಖ್ಯೆ 1466 ದಾಖಲಾಗಿರುವ ಅಳತೆ ಪೂರ್ವ ಪಶ್ಚಿಮ 5.18 ಮೀಟರ್, ಉತ್ತರ ದಕ್ಷಿಣ 15.24 ಮೀಟರ್ (ಒಟ್ಟು 78.99 ಚ.ಮೀಟರ್) ನಿವೇಶನ ಹಾಗೂ ಇದರಲ್ಲಿ ಕಟ್ಟಿರತಕ್ಕ 65.05 ಚ.ಮೀಟರ್‌ವುಳ್ಳ ಆರ್.ಸಿ.ಸಿ. ನೆಲ ಅಂತಸ್ತು ವಾಣಿಜ್ಯ ಮಳಿಗೆ ಮತ್ತು 65.05 ಚ.ಮೀಟರ್‌ವುಳ್ಳ ಆರ್.ಸಿ.ಸಿ. ಒಂದನೇ ಅಂತಸ್ತು ವಾಣಿಜ್ಯ ಮಳಿಗೆ ಸಹ ಸೇರಿ ಪೂರ್ತಾ ಸ್ವತ್ತಿಗೆ ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕೆ:	22-1-5-102
ಪಶ್ಚಿಮಕ್ಕೆ	22-1-5-98
ಉತ್ತರಕ್ಕೆ	22-1-5-ರಸ್ತೆ
ದಕ್ಷಿಣಕ್ಕೆ	22-1-512-127

ಈ ಮಧ್ಯೆ ಇರುವ ಪೂರ್ತಾ ಸ್ವತ್ತನ್ನು ಮೇಲ್ಕಂಡಂತೆ ನನ್ನ ಮಗ ಶ್ರೀ ಹರ್ಷ ಸಿ.ಎಸ್. ಆದ ನಿಮಗೆ ದಾನವಾಗಿ ಕೊಟ್ಟಿರುತ್ತೇನೆಂದು ಒಪ್ಪಿ ಬರೆಸಿಕೊಟ್ಟ ದಾನ ಪತ್ರ ಸಹಿ, ಸದರಿ ದಾನದ ಸ್ವತ್ತನ್ನು ಮೇಲ್ಕಂಡ ಶ್ರೀ ಹರ್ಷ ಸಿ.ಎಸ್. ಆದ ನಾನು ಸಹ ಒಪ್ಪಿ ಮುಪ್ಪತ್ತಿನಿಂದ ದಾನವಾಗಿ ಸ್ವೀಕರಿಸಿರುತ್ತೇನೆ."

The gift deed *supra* admittedly does not contain any condition that the son should take care of the necessities basic or otherwise of the father during his life time and in the absence of such condition, whether the Assistant Commissioner could have annulled the gift

deed is the issue that needs consideration. The said issue need not detain this Court for long or delve deep into the matter. It has borne consideration by the Apex Court and by judgments rendered by this Court and other High Courts.

10. The Apex Court in the case of **SUDESH CHHIKARA v. RAMTI DEVI**<sup>1</sup> has held as follows:

**"CONSIDERATION OF SUBMISSIONS**

**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**

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<sup>1</sup> 2022 SCC OnLine SC 1684

**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, 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.

**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 22<sup>nd</sup> 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 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."**

*(Emphasis supplied)*

Following the said judgment, a Division Bench of this Court in the case of **NANJAPPA v. STATE OF KARNATAKA**<sup>2</sup> has held as follows:

".... ....

18. On careful reading of the aforesaid provisions makes it clear that all kinds of transfers as is clear from the use of the expression 'by way of gift or otherwise' so as to attract the provisions of Sub-section (1) of Section 23 of the Senior Citizens Act, 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

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<sup>2</sup> W.A.No.573 of 2022 Decided on 17-03-2023

- b) *The transferee refuses or fails to provide such amenities and physical needs to the transferor.*

19. *If both the aforesaid conditions are satisfied, by a legal action, 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.*

**20. *Though a specific contention is urged by the learned Senior Counsel for the appellant that in view of the scope and object of the Senior Citizens Act, it is deemed 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 made by him would be null and void, it is an undisputed fact that 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 of the Senior Citizens Act are attached to a transfer, existence of such conditions must be established before the Tribunal.***

**21. *In the present case, on careful perusal of the document executed by the appellant in favour of the 3rd respondent, who happens to be the brother of the appellant, it does not contain any stipulation that the 3rd respondent is under the obligation to maintain the present appellant. In the absence of the same and in view of the provisions of Sub-sections (1) and (2) of Section 23 of the Senior Citizens Act, the transaction could be declared as null and void provided the same contains the stipulation that the transferee shall maintain the senior citizen and the aforesaid Gift Deed does not contain any such stipulation. In the absence of any condition stipulated in the documents, the***

**provisions of Sub-sections (1) and (2) of Section 23 of the Senior Citizens Act are not attracted.**

22. Our view is fortified by the dictum of the Hon'ble Supreme Court in the case of **Sudesh Chhikara -vs- Ramti Devi reported in LAWS (SC) 2022-12-17** wherein at paragraphs-12, 13 and 14 it is held as under:

"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, 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.*

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 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 no. 1 that the release deed was executed subject to such a condition."***

23. Though in the present case, a specific contention is being taken by the learned Senior Counsel for the appellant that, the appellant being the absolute owner of the property in question, out of love and affection executed a Gift in favour of his brother/respondent No.3 under a Gift Deed, dated 23.2.2012, with a ray of hope that the 3rd respondent/brother would take care of basic needs of medical necessities as his son was not keeping well and his daughter was settled with her husband, but respondent No.3 has changed attitude towards him and has failed to show even love and affection towards him. The fact remains that, on the application filed by the appellant against respondent No.3, the Assistant Commissioner, who is the authority under the provisions of Sub-sections (1) and (2) of Section 23 of the Senior Citizens Act has allowed the application filed by the present appellant ignoring the conditions stipulated under the provisions of Sub-sections (1) and (2) of the Senior Citizens Act as held by the Hon'ble Supreme Court. Thereby, the learned Single Judge has rightly allowed the writ petition. In identical circumstances, the Full Bench of the Kerala High Court in the case of **Subhashini -vs- District Collector, Kozhikode reported in LAWS (KER)-2020-9-81** at paragraph-52 has held as under:

"52. We conclude by answering the reference, that the condition as required under Section 23(1) for provision of basic amenities and basic physical needs to a senior citizen has to be expressly stated in the document of transfer, which transfer can only be one by way of gift or which partakes the character of gift or a similar gratuitous transfer. It is the jurisdictional fact, which the Tribunal will

*have to look into before invoking Section 23(1) and proceeding on a summary enquiry. We answer the reference agreeing with the decision in W.A. No. 2012 of 2012 dated 28.11.2012 [Malukutty Ponnarassery v. P. Rajan Ponnarassery]. We find Shabeen Martin v. Muriel [2016 (5) KHC 603] and Sundhari v. Revenue Divisional Officer [2018 KHC 4655 = (2013) 3 KLT 1082] to be wrongly decided. We approve Radhamani v. State of Kerala [2016 (1) KHC 9] which had a recital in the document akin to that required under Section 23(1)."*

**24. On careful reading of the contents of the Gift Deed, dated 23.2.2012, the impugned order passed by the learned Single Judge of this Court is in consonance with the provisions of Sub-sections (1) and (2) of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, as the Gift Deed, dated 23.2.2011, does not contain any stipulation that respondent No.3 is under obligation to maintain the present appellant. In the absence of the same, it cannot be held that the impugned order passed by the learned Single Judge is not in consonance with the provisions of Section 23 of the Senior Citizens Act.**

**25. Though our conscious is in favour of the welfare of the Senior Citizens considering the scope and object of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, but our hands are tied in view of the dictum of the Hon'ble Supreme Court in the case of Sudesh Chhikara, wherein while interpreting the very provisions of Sub-section (1) of Section 23 of the said Act, it has been held that the two conditions must be stipulated in the document, which is binding on all including this Court as contemplated under Article 141 of the Constitution of India.**

**26. The judgments relied upon by the learned Senior Counsel for the appellant are not applicable to the peculiar facts and circumstances of the present case, in view of the latest dictum of the Hon'ble Supreme Court rendered on 6th December 2022 in the**

***case of Sudesh Chhikara -vs- Ramthi Devi reported in LAWS(SC) 2022-12-17.***

*27. For the reasons stated above, the point raised in the present Intra Court Appeal is answered in the negative holding that the appellant has not made out any ground to interfere with the impugned order, dated 26.2.2019, passed by the learned Single Judge in Writ Petition No.52010/2016."*

*(Emphasis supplied)*

In the light of the aforesaid judgment of the Apex Court and that of the Division Bench of this Court what would unmistakably emerge is, the Assistant Commissioner could not have annulled the gift deed, unless the condition that is observed by the Apex Court in ***RAMTI DEVI*** is fulfilled in a gift deed.

11. Two divergent opinions emerge before the High Court of Kerala in ***SUBHASHINI v. DISTRICT COLLECTOR***<sup>3</sup>. The matter was then referred to a Full Bench. The reference was made by a Division Bench in the light of conflict of two Benches where the conflict is answered in the following manner:

".... ....

*25. Sundhari again was a case in which the parents gifted their property to their daughter. The father expired and*

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<sup>3</sup> W.A.No.1460 of 2015 decided on 22-09-2020

problems arose between the mother and the daughter. The mother approached the Tribunal and though the Tribunal set aside the gift deed as such, **the learned Single Judge found that the gift made by the father, who is no more, cannot be set aside under Section 23. The Division Bench agreed with that and found that on setting aside of gift made by the mother, she along with her daughter becomes co-owners of the property.** Their right to residence as found in the deed was held to be sufficient satisfaction of the condition under Section 23(1), reckoning it to be a provision for basic amenity or physical need.

26. Section 23 (1) & (3) 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 the transferor be declared void by the Tribunal.

xxx xxx xxx

(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".

27. None of the words employed in Section 23(1) has been defined in the Act except 'senior citizen'. The other words which have definite legal connotation, have to be understood in the context in which the same has been used, which is discernible from the general scope of the statute as is laid down by the Hon'ble Supreme Court in Kotak Mahindra Bank Limited; with reliance placed on an authoritative text on interpretation. Section 3 only saves any provision in the Act of 2007, inconsistent with any other enactment. The various legal terms are not differently defined and no substantive right is intended to flow from the enactment of 2007. It has to be

*understood as not intending any conferment of rights or imposition of liabilities hitherto not conferred or imposed by the various other enactments. The Act and Section 23(1) only provides a speedy remedy. If at all there is any right conferred, it can only be that of declaration of a gift or a similar transaction, as void, on the grounds of fraud, coercion and undue influence, which otherwise would make it voidable under Section 19 of the Contract Act. The context in which the enactment was brought in, as we have already seen, is to curb the evil of alienation of senior citizens from society and the purpose is to provide expeditious adjudication and recovery of maintenance. The remedy available, prior to the Act, insofar as maintenance is concerned, which is sought to be bypassed, as has been referred to in the Act itself, is Section 125 of the Code of Criminal Procedure ['Cr.P.C.' for brevity). The relevant statutes insofar as transfer of property is concerned, would be the T.P. Act, the Indian Contract Act, 1872 and so on and so forth. The remedy to enforce a right or to annul one created by a document executed, is before the Civil Court. Does Section 23(1) relate to every such remedy, against all known forms of transfer of property, which otherwise is enforceable before the Civil Court is the vexing question we have to first deal with in considering whether the condition has to be expressly specified in the document for the jurisdiction of the Tribunal to arise.*

**28. Section 23 does not create or negate any substantive rights; except the one mentioned above and merely provides a procedure for speedy recovery, to ensure which a deeming fiction is created with respect to certain categories of transfer of property, made subject to a condition. The fiction created; on a breach of the specified condition, deems the transfer itself to be vitiated by reason of fraud, coercion or exercise of undue influence. The transfer of property as spoken of in the provision has to concede to the various transfers spoken of in the T.P Act. The vitiating factors are those available under common law and defined under the Indian Contract Act. Normally the transferor will have to approach the civil courts to enforce his claim to get the transfer set aside. When a remedy is sought before the**

***Civil Court, the normal rules of evidence applies and the adjudication is carried on by a judicial officer.***

....                      ....                      ....

***49. One other aspect is that the option if exercised, cannot be withdrawn and if the senior citizen expires immediately after the declaration by the Tribunal, the property would revert as the estate of the deceased and every legal heir acquires a right to inherit. We specifically notice the Division Bench judgment of this court in Antony Scaria & Anr. v. District Collector & Ors. [2020 (3) KLT 183], wherein before the death of the transferor there was no declaration made by the Tribunal. The writ petition was filed by the transferor against the refusal of the Tribunal and the appellate authority to invoke its jurisdiction under Section 23(1). Pending writ petition, the transferor died when the other legal heirs sought to continue the proceedings. It was held that the right to approach the Maintenance Tribunal is in the personal capacity of the senior citizen and not a heritable right under common law. The situation would be quite different if in the life time of the senior citizen the declaration is made by the Tribunal. On his death the property devolves on the legal heirs.***

....                      .....                      ....

***52. We conclude by answering the reference, that the condition as required under Section 23(1) for provision of basic amenities and basic physical needs to a senior citizen has to be expressly stated in the document of transfer, which transfer can only be one by way of gift or which partakes the character of gift or a similar gratuitous transfer. It is the jurisdictional fact, which the Tribunal will have to look into before invoking Section 23(1) and proceeding on a summary enquiry. We answer the reference agreeing with the decision in W.A.No.2012 of 2012 dated 28.11.2012 [Malukutty Ponnarassery v. P.Rajan Ponnarassery]. We find Shabeen Martin v. Muriel [2016 (5) KHC 603] and Sundhari v. Revenue Divisional Officer [2018 KHC 4655 = 2013 (3) KLT 1082] to be wrongly decided. We***

***approve Radhamani v. State of Kerala [2016 (1) KHC 9] which had a recital in the document akin to that required under Section 23(1)."***

*53. In the facts and circumstances of the case, we are of the opinion that nothing further arises, for us to remand the matter to the Division Bench for consideration of the appeal itself. The document, which is the subject matter of dispute, is a settlement deed wherein there is a reservation of right of residence in the residential building as also to take usufructs from the standing coconut trees in the property. There is no condition as required under Section 23(1) expressly stated in the document. The life interest reserved in the document cannot also lead to such a condition being implied or inferred. There can be no consideration of the circumstances under which the document was executed, as has been attempted by the appellate authority. We hence, dismiss the appeal and restore the order of the Tribunal granting maintenance of Rs. 2,500/-. We are quite conscious of the fact that there is an interim order passed granting Rs. 5,000/- per month during the pendency of the appeal. The respondent is said to have complied with that order till date. We are of the opinion that what is required is the restoration of the order of the Tribunal in the facts and circumstances, leaving open the remedy of the appellant to approach the Civil Court for enforcement of any rights reserved on her under the document. We specifically restore the order of the Tribunal also in the context of the admission of the appellant that she has other children with whom she is residing. There is a contention raised that she had also resided in an Ashram for a period. If she wishes to claim further maintenance, she could approach the Tribunal in which event, the quantum would have to be proportionately shared by all the children."*

*(Emphasis supplied)*

The Full Bench of the High Court of Kerala interpreting Section 23 of the Act and analyzing the law on the point holds that unless a condition is stipulated in favour of the senior citizen in the recitals

of the gift deed, the Assistant Commissioner would not get jurisdiction to annul the gift deed. The Full Bench of the High Court of Kerala after answering the reference as afore-quoted left it open to the senior citizen to approach the Assistant Commissioner if the senior citizen would need enhancement of maintenance, as maintenance was already directed to be paid in the afore-quoted paragraphs.

12. Then comes certain line of judgments of the High Court of Bombay and the High Court of Madras which follow a three Judge Bench judgment of the Apex Court in the case of **S.VANITHA v. DEPUTY COMMISSIONER**<sup>4</sup>. The High Court of Bombay and High Court of Madras declined to follow the judgment of the Apex Court in the case of **RAMTI DEVI** and hold that under the Act it is presumed that the donor should be taken care of, as love and affection cannot be restricted to just love and affection, but care and necessities. The judgments of the learned Judges of respective High Courts would only have a persuasive value. The Division Bench of this Court in the case of **NANJAPPA** *supra* has clearly

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<sup>4</sup> (2021) 15 SCC 730

held following the judgment in **RAMTI DEVI**, in its judgment rendered on 17<sup>th</sup> March 2023, that unless there is a condition, the gift deed cannot be annulled. I deem it appropriate to follow the judgment of the Apex Court in the case of **RAMTI DEVI** on the issue and that of the Division Bench of this Court in the case of **NANJAPPA**, as this Court has held following the said judgment in **RAMTI DEVI** in the case of **S. SURESH v. ASSISTANT COMMISSIONER**<sup>5</sup> as follows:

"..... .."

9. *It is further germane to refer to the judgment of the Division Bench of this Court passed in **W.A.No.96/2019 and connected matters** disposed on **29.06.2022**, wherein, the Division Bench considering the purport of Section 23 of the Act, has held as follows:*

"5. We have considered the submissions made on both sides and have perused the records. Section 23(1) 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 the transferor be declared void by the Tribunal.

<sup>5</sup> W.P.No.24162 of 2022 decided on 29<sup>th</sup> March, 2023

**6. Thus, from the perusal of the aforesaid provision, it is evident that if the Senior Citizen after commencement of the Act has gifted the property subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and in case transferee refuses or fails to do so, the transfer of the 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.**

**7. In the instant case, deceased-respondent No.4, who was the mother of the appellant had executed the gift deed dated 08.07.2015. The aforesaid gift deed does not contain any stipulation with regard to maintenance of deceased-respondent No.4. The relevant extract of the Gift deed is reproduced below for the facility of reference.**

**"That, because of love and affection and you, my daughter viz., N.D. Vanmala is being looked after me in all manner, today, I am gifting the below mentioned schedule property, through this gift deed and along with possession of the schedule property. Hereinafter, you are required to get transfer the Khata of the schedule property in your name and to pay the revenue and also to enjoy the same with complete ownership at your wish. That except you, neither myself nor any other of my successors have no any kind of rights or interest over the schedule property hereinafter."**

**8. Thus from the perusal of the relevant extract of the Gift deed, it is evident that the Gift deed does not contain any condition that the transferee, namely, the appellant shall provide the basic amenities and basic physical needs to the transferor. On the other hand, Gift deed has recorded that the appellant has taken care of respondent No.4. Respondent No.4 has expired during the pendency of the appeal. In the absence of any stipulation in the gift deed with regard to the maintenance of respondent No.4, the Assistant**

***Commissioner had no authority under Section 23 of the Act to declare the Gift deed to be void. However, the aforesaid aspect of the matter has not been appreciated by the learned Single Judge.***

9. For the aforementioned reasons, the order dated 15.03.2017 passed by the Assistant Commissioner, the order dated 08.11.2017 passed by the Deputy Commissioner and the order dated 14.11.2018 passed by the learned Single Judge are hereby quashed and set aside."

*(emphasis supplied)*

10. The afore-quoted judgments, both of the Apex Court in the case of **SUDESH CHHIKARA** (*supra*) and the order of the Division Bench would clearly indicate that the Assistant Commissioner cannot annul a gift deed, if the deed does not contain any conditions of amenities or the donor to be taken care of with all physical means. The issue in the case at hand is identical and in the considered view of this Court, stands covered on all its fours to the afore-quoted judgments. Therefore, the order of the Assistant Commissioner is rendered unsustainable, only insofar as annulment of the gift deed. The order of maintenance stands sustained."

This Court disposed of the petition following the Division Bench judgment of this Court in **W.A.No.96 of 2019** disposed of on **29-06-2022**.

13. On a coalesce of the judgments quoted hereinabove, what would unmistakably emerge is, that the Assistant Commissioner would get jurisdiction to annul the gift deed only if the recitals in

the gift deed have the condition, as observed by the Apex Court in **RAMTI DEVI**. The gift deed is quoted *supra*. There is no condition in the gift deed that would satisfy the test laid down in **RAMTI DEVI**. Therefore, this Court cannot but interfere with the order passed by the Assistant Commissioner.

14. There are certain developments whereby the 4<sup>th</sup> respondent/son sells the property to the petitioner, all of which are narrated hereinabove. Learned senior counsel for the 3<sup>rd</sup> respondent contends that the petitioner has no right to question the order passed by the Assistant Commissioner. I decline to accept the said submission. Before the Assistant Commissioner, the petitioner was a party; he was respondent No.3. He had to protect his property which he had purchased in accordance with law. There was nothing contrary to law when the petitioner purchased the property from the hands of the 4<sup>th</sup> respondent. Against the order passed by the Assistant Commissioner, the petitioner had approached the Deputy Commissioner by filing an appeal. The appeal is dismissed for want of maintainability and, therefore, the petitioner is before this Court. If he is to be driven to the civil

Court, the present order of the Assistant Commissioner will always stare at him, as he has lost the property by a stroke of pen, of the Assistant Commissioner, which I have found fault with, following the afore-quoted judgments. Therefore, the petitioner does have all the right to call the said order of the Assistant Commissioner in question before this Court, as he cannot be left remediless; more so, in the light of the fact that the order of the Assistant Commissioner cannot be interfered with by the civil Court in exercise of any jurisdiction. Therefore, the remedy lies only before this Court.

15. With regard to other submission whether the property would devolve back to the hands of the father after the death of his wife who was the recipient of the first gift deed is concerned, I leave the issue open to be agitated by the parties before a competent civil Court, as the submission of the learned senior counsel for the father is, notwithstanding he himself having executed gift deed, he had no power to execute a second gift deed, as the property even according to him did not come to him and he could not have executed the gift deed and the family members

were entitled to a share in the property. All these factors will have to be thrashed out before a competent civil Court, and therefore, I leave open to the parties to approach the competent civil Court for redressal of their residuary grievances.

16. It is an admitted fact that the father is getting ₹10,000/- from out of the deposit made on ₹15/- lakhs in Life Insurance Corporation of India. But, in the growing cost of living the said amount would not be enough. Therefore, I deem it appropriate to direct the beneficiary of the gift deed viz., the 4<sup>th</sup> respondent/son to pay maintenance to the 3<sup>rd</sup> respondent/father of ₹10,000/- per month apart from ₹10,000/- that he is getting out of the interest of the deposit from the LIC and also reserve liberty to the father to seek enhancement of maintenance, if need arises before the Assistant Commissioner.

17. In the light of the preceding analysis, I deem it appropriate to pass the following:

**ORDER**

- (i) Writ Petition is allowed.

- (ii) The order of the Assistant Commissioner dated 07-07-2021 stands quashed. Consequently, the gift deed and the sale deed that stood annulled by the impugned order, stands restored.
- (iii) The donor of the gift deed is held entitled to maintenance at ₹10,000/- to be paid by the 4<sup>th</sup> respondent/son apart from ₹10,000/- that the deposit with the LIC is earning, with liberty to seek enhancement of maintenance on any warranting circumstance, before the Assistant Commissioner.
- (iv) The 3<sup>rd</sup> respondent/father or any other family members are at liberty to approach the civil Court for redressal of their residuary grievance, if they so desire and if it is permissible in law.
- (v) All contentions of parties, apart from the one that is considered in the case at hand, would remain open.

Consequently, pending applications also stand disposed.

**Sd/-  
JUDGE**

Bkp/CT:MJ