



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF APRIL, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 4533 OF 2023 (GM-RES)

BETWEEN:

1. SMT. BHARATHI
W/O LATE DHARMALINGARAJU
AGED ABOUT 57 YEARS,
R/AT NO 35, 2ND CROSS,
HANUMANTHAPPA LAYOUT,
CHIKKALSANDRA,
BENGALURU -560 057
2. SRI. POORNATHEJASVI RAJU
S/O LATE DHARMALINGARAJU
AGED ABOUT 31 YEARS,
R/AT NO 35, 2ND CROSS,
HANUMANTHAPPA LAYOUT,
CHIKKALSANDRA,
BENGALURU- 560 057

...PETITIONERS

(BY SRI. SAMARTH S. MURTHY, ADVOCATE A/W
SRI.S.G.MUNISWAMY GOWDA, ADVOCATE)



AND:

1. THE ASSISTANT COMMISSIONER
BANGALORE NORTH SUB DIVISION,
KANDAYA BHAVAN,K G ROAD,
BENGALURU -560 009
2. SMT.APARNA
D/O LATE DHARMALINGA RAJU
AGED ABOUT 29 YEARS,
R/AT NO 37/5, 4TH CROSS,



NAGAPPA BLOCK, SRIRAMPURAM,
BENGALURU -560 021

AND ALSO
C/O RAGHUKUMAR,
NO 08, 2ND FLOOR,
BUDDAJYOTHI LAYOUT,
VEERUPAKSHAPURA,
KODIGEHALI,
BANGALORE -560 097

3. SRI ASHWIN B.,
S/O LATE DAYAKARA,
AGED ABOUT 36 YEARS,
R/AT NO 143/1, 4TH CROSS,
NAGAPPA BLOCK,
SRIRAMPURAM,
BENGALURU -560 021

...RESPONDENTS

(BY SRI.MAHANTESH SHETTAR, AGA FOR R1
SRI.B.MANJUNATH, ADVOCATE FOR R2 & R3)

THIS WP IS FILED UNDER ARTICLE 226 AND 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO QUASHING THE
IMPUGNED ORDER DATED 20.07.2018 PASSED BY THE R1 IN
CASE NO.MSC/CR/60/2017.18 FOUND AT ANNEXURE-A, ALLOW
THIS WRIT PETITION WITH COSTS.

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

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI



ORAL ORDER

The present writ petition is filed aggrieved by the order passed in Case No.MSC/CR/60/2017-18 dated 20.07.2018 by the respondent No.1/Assistant Commissioner, under the Maintenance and Welfare of Parents and Senior Citizens Act, by cancelling the Gift Deed dated 20.01.2016 and subsequent Gift Deed dated 03.08.2016.

2. The petitioner No.1 is the wife of one Dharmalingaraju and petitioner No.2 is the son of Dharmalingaraju. The respondent No.2 is the daughter and respondent No.3 is the purchaser of the property. The husband of petitioner No.1 and father of petitioner No.2 and respondent No.2 had executed a Gift Deed in favour of his wife on 20.01.2016. After that, the husband of petitioner No.1 has given a complaint on 03.08.2016 stating that due to diabetes, his right leg was amputated and he was thrown out of the house by the petitioners and on the same day, the petitioners have given a statement that she will take care of her husband and will not throw him out. Thereafter, petitioner No.1 has executed a Gift Deed in favour of petitioner No.2 on 03.08.2016. Thereafter,



the husband of petitioner No.1 had approached the Assistant Commissioner seeking cancellation of both the documents.

3. The respondent No.1/Assistant Commissioner, by order impugned, had cancelled the documents and it was observed that the petition is filed by the petitioner therein who is a senior citizen. He has transferred his property on 20.01.2016 by way of a Gift Deed to the petitioner No.1 herein. She in turn to deprive the right of the husband has transferred the same to petitioner No.2 herein. It is observed that the Tribunal is constituted under Section 7 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'Act') to follow a summary procedure and may declare that the transfer by the senior citizen in favour of the petitioners herein by exercising fraud or coercion or undue influence. In this case, the husband with his hard earned money had acquired the scheduled property. But because of the callous attitude of his wife and son, he is suffering. The wife only pleaded before the Police that the husband is taken care of with love and affection, but the same is nothing but a lip service. If the petitioners had taken care of the aged and disabled man, he would not have



taken shelter at the orphanage. The husband has provided sufficient documents in support of his case. In view of the same, the application filed by the husband under Section 23 of the Act was allowed by setting aside the Gift Deeds executed by the husband in favour of the wife and the Gift Deed executed by her in favour of the son.

4. Learned counsel appearing for the petitioners submits that as on the date when the application is filed, the husband is not a senior citizen. The property that is gifted is to the wife in the year 2016. The wife in turn has gifted the property in favour of the son. The transaction that had taken place i.e., the Gift Deed between the wife and the husband would not come under the provisions of the Act. It is submitted that according to the husband, there is a fraud played by the wife and the only remedy that is available to the husband is to file a civil suit. But he cannot approach the Assistant Commissioner under the Act. The order impugned is beyond the jurisdiction that is conferred on the Assistant Commissioner. It is submitted that before the Assistant Commissioner, no notice is served on the petitioners. In that regard, learned counsel has placed the order sheets



before this Court. The petitioners came to know about the proceeding when respondent No.3 instituted a collusive suit against the respondent No.2 seeking specific performance when the said suit is decreed. It is submitted that all the original documents are with the petitioner and when the execution is filed, at that point of time, the petitioners came to know about all these proceedings and has come before this Court questioning the same. It is submitted that in view of the above there is a delay in questioning the order passed by the Assistant Commissioner. When the petitioners have filed a petition as objectors, that came to be dismissed by the executing Court in the light of the order passed by the Assistant Commissioner. Against that, they had preferred an appeal and the appeal is pending consideration. Further, it is submitted that the applicant was 58 years as on the date of the application, he is not a senior citizen and the Act has no application to him and the order impugned needs to be set aside.

5. Learned counsel appearing for respondent No.3 who is the purchaser of the property submits that the petitioners had



failed to take care of the husband/father which made him to live in an orphanage. Thereafter, the daughter has taken care of him and both his legs were amputated and after the order passed by the Assistant Commissioner, the applicant/husband died. It is submitted that the evidence of petitioner No.2 in the execution case makes it clear that the applicant/husband/father was not taken care of by the petitioners. In those circumstances, the Assistant Commissioner had rightly passed the order. It is submitted that Section 2(d) of the Act states that "parent" means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen. Relying on this, it is submitted that the Act applies to the husband and he had rightly filed an application before the Assistant Commissioner and the Assistant Commissioner has jurisdiction to entertain the petition. It is submitted that there are no grounds to interfere with the order passed by the Assistant Commissioner.

6. Learned Additional Government Advocate appearing for respondent No.1/Assistant Commissioner submits that in the



light of the definition of parent and also Section 4 and 5 of the Act makes it clear that whether a parent is a senior citizen or not, this Act would apply and the Assistant Commissioner has rightly exercised the jurisdiction and passed the order and there are no grounds to interfere with the order passed by the Assistant Commissioner.

7. Having heard the learned counsels on either side, perused the entire material on record. The applicant is the husband of petitioner No.1 and father of petitioner No.2. Undisputedly, he was 58 years as on the date the application is filed before the Assistant Commissioner. The first contention that is put forth is the Act has no application as the applicant was 58 years old. The second limb of the submission is that when the husband has executed a Gift Deed in favour of petitioner No.1/wife and the petitioner No.1/wife in turn has executed a Gift Deed in favour of petitioner No.2/son, whether the provisions of this Act would apply to the said transaction? As per Section 2(d) of the Act, the definition of parent is very clear. It means father or a mother whether biological, adoptive or step father or step mother, as the case may be, whether or



not the father or the mother is a senior citizen. Section 4 of the Act deals with maintenance of parents and senior citizens. It states that a senior citizen including a parent, who is unable to maintain himself from his own earning or property owned by him, shall be entitled to make an application under Section 5 of the Act. The petition was filed under Section 23 of the Act. At this juncture, it is appropriate to look at Section 23 of the 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 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."



8. A bare perusal of Section 23 of the Act discloses that the transfer of property will be void in certain circumstances where it specifically mentions that any senior citizen who, after commencement of this Act has by way of gift or otherwise transferred his property, subject to the condition that the transferee shall provide the basic amenities and fails to fulfil the same. Section 4 of the Act speaks about the maintenance of parents and senior citizens and as per the definition of a parent he/she need not be a senior citizen. But Section 23 of the Act is very specific and it specifically mentions about the senior citizen and a document that is executed, where there is a clause with regard to providing the basic amenities and basic physical needs. In the present case, the order of the Assistant Commissioner cannot be sustained for two reasons (1) the Gift Deed that is executed by the applicant is in favour of his wife and that transaction also does not fall under the Act, (2) Section 23 of the Act only refers to senior citizen. Admittedly, as averred and as stated by the applicant, he is not a senior citizen as on the date of application. On all these counts, the order of the Assistant Commissioner has to be set aside. Hence, this Court is passing the following order:



ORDER

- i. The order passed in Case No.MSC/CR/60/2017-18 dated 20.07.2018 by respondent No.1/Assistant Commissioner, The Tribunal of Maintenance and Welfare of Parents and Senior Citizens and Assistant Commissioner, Bengaluru, is ***set aside***.
- ii. Accordingly, the writ petition is ***allowed***.
- iii. All I.As. in this petition shall stand closed.

**SD/-
(LALITHA KANNEGANTI)
JUDGE**

MEG
List No.: 1 Sl No.: 70