



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

WRIT PETITION NO.23221 OF 2022 (GM-RES)

BETWEEN:

1. SALMA AL-NAHAZ
D/O LATE P.B. YUSUF,
AGED ABOUT 27 YEARS.
2. MOHAMMED ALTHAF RAHMAN
S/O LATE P.B. YUSUF,
AGED ABOUT 23 YEARS.

BOTH ARE RESIDING AT:
NO.9-232/B, ALTHAF COTTAGE,
BANTWALA, KASABA VILLAGE,
BANTWALA TALUK,
DAKSHINA KANNADA - 574 243.

...PETITIONERS

(BY SRI. ANIKETH K.U., ADVOCATE FOR
SRI. SACHIN B.S., ADVOCATE)

AND:

1. SMT. MARIYAMMA
W/O LATE P. MOHAMMED,
AGED ABOUT 79 YEARS,
R/AT DOOR NO.9-19,
NEAR BADRIYA MASJID,
KELAGINAPETE,
BANTWALA TALUK - 574 259.
2. ABDUL KHAYYAM
AGED ABOUT 63 YEARS,
R/AT DOOR NO.9-16A,
KELAGINAPETE,
BANTWALA TALUK - 574 211.





3. P.V. SALEEM
S/O LATE P.B. MOHAMMED,
AGED ABOUT 60 YEARS,
R/AT DOOR NO.1-81,
PERLAKKE MANE, THUMBE,
BANTWALA TALUK - 574 211.
4. P.B. HASIF
S/O LATE P.B. MOHAMMED,
AGED ABOUT 47 YEARS,
R/AT DOOR NO.15-06-268/3,
G-4, PRESIDENCY AVENUE,
ARYA SAMAJA ROAD,
BALMATA,
MANGALURU - 575 008.
5. THE DISTRICT COMMISSIONER
MANGALURU,
MAINTENANCE AND WELFARE OF PARENTS AND
SENIOR CITIZENS APPELATE AUTHORITY,
DAKSHINA KANNADA DISTRICT - 575 001.
6. ASSISTANT COMMISSIONER
MANGALURU TALUK,
DAKSHINA KANNADA DISTRICT - 575 001.
7. PHATHIMATH JOHARA
W/O LATE P.B. YUSUF,
AGED ABOUT 48 YEARS.
8. MARYAM AL-MASH
D/O LATE P.B. YUSUF,
AGED ABOUT 29 YEARS.
9. ABDUL KHADAR ALFAS
S/O LATE P.B. YUSUF,
AGED ABOUT 16 YEARS,
MINOR,
REP. BY NATURAL GUARDIAN/MOTHER
RESPONDENT NO.7.



RESPONDENTS 7 TO 9 ARE
R/AT NO.9-232/B, ALTHAF COTTAGE,
BANTWALA, KASABA VILLAGE,
BANTWALA TALUK - 574 243.

...RESPONDENTS

(BY SRI. KRISHNAMOORTHY D., ADVOCATE FOR R1;
SRI. SHASHANK C., ADVOCATE FOR
SRI. M.S. VENUGOPAL, ADVOCATE FOR R2 TO R4;
SMT. B.P. RADHA, AGA FOR R5 AND R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET-ASIDE THE ORDER DATED 20.04.2022 PASSED BY THE RESPONDENT NO.5-CHAIRMAN AND DISTRICT COMMISSIONER, MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS APPELLATE TRIBUNAL, MANGALURU, DAKSHINA KANNADA DISTRICT VIDE ANNEXURE-A; SET-ASIDE THE ORDER DATED 17.10.2016 PASSED BY THE RESPONDENT NO.6-ASSISTANT COMMISSIONER VIDE ANNEXURE-B; AND ETC.

THIS PETITION COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE M.G.S. KAMAL

ORAL ORDER

Petitioners, who are the grandchildren of the respondent No.1 are before this Court being aggrieved by the order dated 17.10.2016 (Annexure-B) passed by the respondent No.6-Assistant Commissioner in exercise of his powers under Section 5 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, hereinafter referred to as '*Parents*



and Senior Citizens Act'), which is confirmed by the respondent No.5-Deputy Commissioner vide order dated 20.04.2022 (Annexure-A).

2. Brief facts for adjudication of this writ petition are as follows:

(a). That the respondent No.1 being a absolute owner of the properties in question bearing Survey No.239/2BP5 measuring 0.38.50 acre; Survey No.239/2BP6 measuring 0.10 acre; Survey No.239/2BP measuring 0.50 acre; Survey No.239/1 measuring 0.46 acre; and Survey No.236/1 measuring 0.32 acre all situate at B. Mooda Village, Bantwal Taluk and the property bearing Survey No.153/2B measuring 2.53 acre situate at Navooru Village, Bantwala Taluk, having acquired the same by virtue of three Sale Deeds dated 15.06.1996 had executed two Gift Deeds dated 26.08.2010 conveying the same in favour of her four sons namely, Abdul Khayyam (respondent No.2), Sri. P.B. Saleem (respondent No.3), P.B. Hasif (respondent No.4) and one late P.B. Yusuf (father of petitioners herein) each being entitled for *one-fourth* share in the aforesaid properties.



(b). Sri. P.B. Yusuf, who is the father of petitioners and respondents 8 and 9; and husband of respondent No.7 passed away on 05.09.2013. Thereafter, it is alleged that the respondent No.1 in collusion with respondents 2 to 4 initiated the proceedings before the respondent No.6-Assistant Commissioner invoking provisions of Sections 5 and 23 of the Parents and Senior Citizens Act, alleging that the deceased P.B. Yusuf and respondents 2 to 4 had taken the respondent No.1 to the Sub-Registrar office and obtained her signatures without informing her the nature of the documents and got executed the Gift Deeds thereby committed fraud on her and, as she had no other source of income for her livelihood, seeks intervention of the respondent No.6-Assistant Commissioner.

(c). The respondent No.6-Assistant Commissioner accepting the allegations made by the respondent No.1, passed the impugned order dated 17.10.2016 (Annexure-B), cancelling the Gift Deeds dated 26.08.2010 (Annexures 'C' and 'D') and Mutation in the revenue records made in favour of the father of petitioners and respondents 2 to 4.



(d). Being aggrieved by the said order of the Assistant Commissioner, respondents 7 to 9 and petitioners herein preferred the appeal before the respondent No.5-Deputy Commissioner, who by the impugned order dated 20.04.2022 (Annexure-A), dismissed the appeal and confirmed the order of the respondent No.6-Assitant Commissioner. Hence, the petitioners are before this Court.

3. Learned counsel appearing for petitioners taking this Court through the records at the outset submits that the only persons aggrieved by the orders passed by the respondents 5 and 6 are the petitioners, who are the children of deceased P.B. Yusuf, while the respondents 2 to 4 were also the beneficiaries of the said Gift Deeds had not whispered, which would indicate about the collusion of the respondent No.1 with the other respondents, only to deprive and deny the legitimate right that has accrued in favour of petitioners and respondents 7 to 9 in terms of the Gift Deeds which were executed by the respondent No.1 validly in favour of the father of petitioners, respondents 8 to 9 and husband of the respondent No.7 respectively. Learned counsel also refers to



the averments made in the petition produced along with the Memo dated 14.12.2022, which was filed by the respondent No.1 before the respondent No.6-Assistant Commissioner to point out that, except alleging fraud and misrepresentation, no averment is made requiring the compliance of Section 23. Thus, he submits that the petition at the outset was not maintainable before the respondent No.6-Assistant Commissioner. He also takes this Court through the records produced at Annexure-F and Annexure-J series to indicate that the respondent No.1 still holds and possesses commercial as well as agricultural properties in her name and thereby, the averments made by her of she not having any source of income for her livelihood was also baseless.

4. Learned counsel appearing for petitioners further submits that, in any event the petitioners were directed by this Court by the interim order dated 14.12.2022 to pay Rs.10,000/- per month as maintenance, for which they would abide and continue to pay without any default. Learned counsel also submits that, should there be any arrears of maintenance, petitioners would pay the same and continue to



pay during the life time of the respondent No.1. Accordingly, he seeks for allowing the present petition.

5. Per contra, learned counsel appearing for the respondent No.1 submits that, none of the children of the respondent No.1 including the petitioners, who are the grandchildren are taking care of her. He also submits that, the respondent No.1 rendered homeless and she is with one of her widowed daughter having no source of income for her sustenance. He also submits that the respondent No.6-Assistant Commissioner and the respondent No.5-Deputy Commissioner taking into consideration of these aspects of the matter have come to the right conclusion and have passed the orders, which cannot be found faulted. Accordingly, he seeks for dismissal of the present petition. He also submits that the other properties which are shown as per Annexure-J series have been partitioned and other sons have taken away, leaving nothing in the hands of the respondent No.1. Therefore, he insists to the order passed by the respondent No.6-Assistant Commissioner, confirmed by the respondent No.5-Deputy Commissioner, be sustained.



6. Heard and perused the material on record.

7. The jurisdiction of the Assistant Commissioner can be invoked by a Senior Citizen only in respect of the grievance and in the manner provided under Sections 5 and 23 of the Parents and Senior Citizens Act, which read as under:

"5. Application for maintenance.-

(1) *An application for maintenance under section 4, may be made -*

a. by a senior citizen or a parent, as the case may be; or

b. if he is incapable, by any other person or organisation authorised by him; or

c. the Tribunal may take cognizance sua motu.

Explanation: For the purposes of this section "organisation" means any voluntary association registered under the Societies Registration Act, 1860, or any other law for the time being in force.

(2) *The Tribunal may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this section, order such children or relative to make a monthly allowance for the interim maintenance of such senior citizen including parent and to pay the same to such senior citizen including parent as the Tribunal may from time to time direct.*

(3) *On receipt of an application for maintenance under sub-section(I), after giving notice of the application to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance.*



- (4) *An application filed under sub-section (2) for the monthly allowance for the maintenance and expenses for proceeding shall be disposed of within ninety days from the date of the service of notice of the application to such person:*

Provided that the Tribunal may extend the said period, once for a maximum period of thirty days in exceptional circumstances for reasons to be recorded in writing.

- (5) *An application for maintenance under sub-section (I) may be filed against one or more persons:*

Provided that such children or relative may implead the other person liable to maintain parent in the application for maintenance.

- (6) *Where a maintenance order was made against more than one person, the death of one of them does not affect the liability of others to continue paying maintenance.*

- (7) *Any such allowance for the maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or expenses of proceeding, as the case may be.*

- (8) *If, children or relative so ordered fail, without sufficient cause to comply with the order, any such Tribunal may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person for the whole, or any part of each month's allowance for the maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made whichever is earlier:*

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Tribunal to levy such amount within a period of three months from the date on which it became due.



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.*

8. The Apex Court in the case of **SUDESH CHHIKARA vs. RAMTI DEVI AND ANOTHER** reported in **(2024) 14 SCC 225** at paragraphs 14 and 15 held as under:

"14. *Sub-section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression "by way of gift or otherwise". For attracting sub-section (1) of Section 23, the following two conditions must be fulfilled:*



(a) The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and

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

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

15. *When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal."*

9. Perusal of the petition filed by the respondent No.1 before the respondent No.6-Assistant Commissioner would indicate that, her sons Abdul Khayyam (respondent No.2), Sri. P.B. Saleem (respondent No.3), P.B. Hasif (respondent No.4) and one late P.B. Yusuf (father of petitioners) without informing her about the purpose, had taken her for some reason to the Sub-Registrar Office and obtained her signatures. Later she learnt that the said four sons had transferred the immovable properties in question without her knowledge. That one of her



sons namely P.B. Yusuf passed away due to heart attack about three years ago. This is the basis of the filing of petition by the respondent No.1 before the respondent No.6-Assistant Commissioner. The averments in the petition view in the light of the provisions of Sections 5 and 23 of the Parents and Senior Citizens Act and the law laid down by the Apex Court in the case of **SUDESH CHHIKARA** (supra) makes it clear that the petition of this nature could not have been entertained by the respondent No.6-Assistant Commissioner. The adjudication of dispute involving allegations of fraud, misrepresentation, coercion and undue influence, if any, is beyond the purview and jurisdiction of the Assistant Commissioner. The same has to be adjudicated and determined before the Civil Court of competent jurisdiction. A limited power assigned to the Assistant Commissioner is specifically falls within Sections 5 and 23 of the Parents and Senior Citizens Act i.e., the deed of conveyance shall contain the recitals of same being conditional and there should be a allegation and proof of violation of said conditions. The said requirement is completely absent in the instant case. Therefore, as rightly contended by the learned counsel appearing for petitioners, the order passed by the Assistant



Commissioner lacks jurisdiction and is completely unsustainable.

10. In the light of submission made by learned counsel appearing for the respondent No.1 that the respondent No.1 had no source of income for her livelihood and the petitioners and other respondents are not providing anything for her livelihood, this Court inclined to pass the following:

ORDER

- (i) Writ Petition is ***disposed of;***
- (ii) Order dated 17.10.2016 (Annexure-B) passed by the respondent No.6-Assistant Commissioner and order dated 20.04.2022 (Annexure-A) passed by the respondent No.5-Deputy Commissioner are hereby quashed;
- (iii) The petitioners being the grandchildren and respondents 2 to 4 being the sons of the respondent No.1, who are also the beneficiaries of the Gift Deeds dated 26.08.2010 (Annexures 'C' and 'D') shall each pay Rs.5,000/- per month as a maintenance to the respondent No.1 from 14.12.2022, the date on which this Court passed interim order in the present petition;



- (iv) In addition, the petitioners and respondents 2 to 4 together shall pay Rs.1,00,000/- towards Medical Expenses for the respondent No.1 as one time measure. It is made clear that, out of Rs.1,00,000/- granted towards Medical Expenses, the petitioners shall pay Rs.50,000/- and respondents 2 to 4 together shall pay the remaining amount Rs.50,000/-;
- (v) Arrears along with Medical Expenses for a sum of Rs.1,00,000/- as directed above shall be paid within two weeks from today;
- (vi) Consequent to this order, the revenue entries shall stand restored in terms of Gift Deeds dated 26.08.2010;
- (vii) It is also made clear that, should there be any failure on the part of the petitioners or respondents 2 to 4 in complying with this order, the respondent No.1 is entitled to seek revival of this order.

**SD/-
(M.G.S. KAMAL)
JUDGE**

ARK
List No.: 1 Sl No.: 4