



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2024

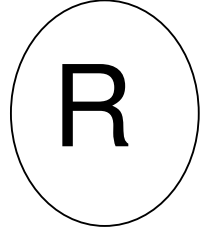
PRESENT

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

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

WRIT APPEAL No. 254 OF 2024 (GM-RES)



BETWEEN:

1 . SRI K. LOKESH,
S/O LATE P. KRISHNA,
AGED ABOUT 43 YEARS,
R/AT No.28, SUBBANNA GARDEN,
1ST MAIN ROAD,
BANNERGHATTA ROAD,
ADUGODI POST,
BENGALURU-560030.

...APPELLANT

(BY SRI PUTTIGE R. RAMESH, SENOR ADVOCATE FOR
SRI A. SRIKANTH, ADVOCATE



AND:

- 1 . THE BANGALORE DISTRICT MAINTENANCE
AND WELFARE OF PARENTS AND SENIOR CITIZENS
APPELLATE TRIBUNAL AND SPECIAL
DEPUTY COMMISSIONER-1,
BENGALURU NORTH SUB DIVISION,
BENGALURU-560009.
- 2 . SRI AYYAPPA,
S/O LATE P. KRISHNA,
AGED ABOUT 45 YEARS,



R/AT No.28, SUBBANNA GARDEN,
HOSUR ROAD, ADUGODI,
BENGALURU-560030.

- 3 . THE ASSISTANT COMMISSIONER,
BENGALURU SOUTH SUB-DIVISION,
BENGALURU-560009.
- 4 . SRI P. KRISHNA,
SINCE DEAD BY HIS LRS
SMT. LATHA K.,
D/O LATE P. KRISHNA,
AGED ABOUT 42 YEARS,
R/A No.6/36, S. S. NILAYA,
1ST CROSS, AYYAPPA GARDEN,
ADUGODI POST,
BENGALURU-560030.

...RESPONDENTS

(BY SRI K.S. HARISH, GOVERNMENT ADVOCATE FOR R1 & R3;
SRI RANGANATH REDDY, ADVOCATE FOR C/R2;
V/O DATED 21.10.2024, R4 IS DELETED)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
IMPUGNED ORDER IN WP No.3165/2023, DATED 02/02/2024.

THIS WRIT APPEAL HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT, COMING ON FOR
PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED
AS UNDER:



CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE
N. V. ANJARIA
and
HON'BLE MR. JUSTICE K. V. ARAVIND

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE K. V. ARAVIND)

Heard learned Senior Advocate Mr. Puttige R. Ramesh assisted by learned advocate Mr. A. Srikanth for the appellant, learned Government Advocate Mr. K.S. Harish for respondent Nos.1 and 3 and learned advocate Mr. Ranganath Reddy for respondent No.2.

2. This intra-court appeal under Section 4 of the Karnataka High Court Act, 1961, impugning the order in Writ Petition No.3165 of 2024, dated 02.02.2024.

FACTS IN BRIEF

3. The brief facts leading to this appeal are that the appellant-writ petitioner is the son of late P. Krishna. Respondent No.2 is his sibling. Late P. Krishna executed Gift Deed dated 27.02.2019 in favour of respondent No.2. The property in question is a residential property bearing No.28/1 in Sy.No.17/3 situated at Subbanna Garden, Aduodi Corporation, Ward No.70,



Shanthinagar Ward, Bengaluru, measuring East to West 37'6" and North to South 40'. Late P. Krishna filed a petition under Sections 4, 5 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'Act') before respondent No.3- Assistant Commissioner, alleging fraudulent gift deed and denial of basic amenities by his son. The Assistant Commissioner by order dated 27.02.2023 allowed the petition by directing to cancel the Gift Deed dated 27.02.2019 and Rectification Deed dated 02.04.2019.

4. Late P. Krishna thereafter bequeathed the property in favour of his second son, K. Lokesh, the petitioner, through a registered Will dated 14.07.2023.

5. Respondent No.2 preferred appeal before the Deputy Commissioner under Section 16 of the Act. The Deputy Commissioner allowed the appeal by order dated 14.08.2023 by setting aside the order of the Assistant Commissioner dated 27.02.2023. As late P. Krishna died on 14.07.2023, i.e. during the pendency of the appeal, the appellant and his sister were impleaded as legal representatives.



6. The appellant preferred Writ Petition No.18763 of 2023 challenging the order of the Deputy Commissioner dated 14.08.2023. Learned Single Judge set aside the order and remitted the matter to the Deputy Commissioner/appellate authority for fresh consideration.

7. The Deputy Commissioner, on remand, reconsidered the matter and by order dated 24.01.2024 allowed the appeal by setting aside the order dated 27.02.2023 passed by the Assistant Commissioner. Further directions were issued to the Sub-Registrar to make necessary entries in the Registers, and concerned authorities were directed to restore the Katha and other documents in the name of respondent No.2.

8. The appellant aggrieved by the order dated 24.01.2024 passed by the Deputy Commissioner preferred Writ Petition No.3165 of 2024. Learned Single Judge by order dated 02.02.2024 set aside the orders of the Assistant Commissioner and Deputy Commissioner and permitted the appellant and respondent No.2 to agitate their rights before the competent Court of law.



SUBMISSIONS

9. Learned Senior Advocate Mr. Puttige R. Ramesh assisted by learned advocate Mr. A. Srikanth appearing for the appellant made the following submissions.

9.1 The appeal filed by respondent No.2 before the Deputy Commissioner under Section 16 of the Act is not maintainable. The appeal provision under Section 16 of the Act enables only senior citizen or a parent to prefer an appeal to the Appellate Tribunal. Respondent No.2 is not a senior citizen or a parent in the context of Section 16 of Act.

9.2 Any order passed in an appeal is not sustainable when such an appeal is not maintainable. Learned Single Judge while setting aside the order of the Deputy Commissioner committed an error in setting aside the order passed by the Assistant Commissioner.

9.3 The rights in the property conferred on respondent No.2 through gift deed are not available in view of the gift deed being set aside by the Assistant Commissioner and the rights in such property vested with the appellant through a subsequent registered Will dated 14.07.2023.



9.4 The Deputy Commissioner, in the exercise of jurisdiction under the Act, cannot annul the rights vested with the appellant under the registered Will unless the Will is set aside in the manner known to law.

9.5 Learned Single Judge, while setting aside the order of the Assistant Commissioner, has restored the gift deed set aside at the instance of late P. Krishna, as a result, annulled the rights vested with the appellant under the Will, which is not permissible under Article 226 of the Constitution of India.

9.6 Learned Senior Advocate for the appellant relied on the following judgments,

- (i) N. D. Vanamala Vs. The State of Karnataka and others, (ILR 2019 KAR 247)
- (ii) N. D. Vanamala Vs. State of Karnataka and others, (Writ Appeal No. 96/2019) - DB
- (iii) Sudesh Chhikara vs. Ramti Devi and another, [(2022 SCC OnLine SC 1684)]
- (iv) M. Venugoapl vs. The District Magistrate-cum-District Collector, Kanyakumari District and others, [(2014(5) CTC 162]
- (v) Rajeshkumar Bansraj Gandhi and Another Vs. State of Gujarat and Others, [(AIR 2016 Guj 129)]



- (vi) Nayana Sudhir Shah and others vs. Sudhir Premji Shah and others, [2020(5) Mh.L.J. 605]
- (v) Dinesh Bhanudas Chandanshive vs. State of Maharashtra and others, [(2024 SCC OnLine Bom 336)]

10. Learned advocate Mr. Ranganath Reddy appearing for the contesting private respondent No.2 made following submissions.

10.1 Section 23 of the Act is attracted when an express recital is made undertaking an obligation to provide basic amenities and basic physical needs. If such conditions are not expressly stated in the transfer deed, Section 23 of the Act cannot be invoked to declare such transfer as void.

10.2 The Gift Deed dated 27.02.2019 in favour of respondent No.2 is unconditional. There is no condition to provide basic amenities or basic physical needs. As such, there is no failure or refusal to provide such amenities and basic physical needs. However, respondent No.2 extended the best facilities by providing the amenities.

10.3 The father has invoked Section 23 of the Act under the misdirection of the siblings aiming at the property in question. The



proceedings initiated to cancel the gift deed and the execution of the Will would demonstrate the substance/motive behind the proceedings initiated under Section 23 of the Act.

10.4 Existence of two conditions are *sine qua non* to avail the remedy under Section 23 of the Act. The first condition is, to provide basic amenities and basic physical needs. The second condition is, failure or refusal to provide such amenities and basic physical needs. As both conditions are not available in the present case, the order of the Assistant Commissioner declaring the gift deed as void is not sustainable.

10.5 It is further submitted that the right to senior citizens under Section 23 of the Act is a personal right. The right to protection under the Act would exhaust itself with the death of the senior citizen. Such right cannot be extended/continued by the legal heirs. The proceedings would get abated on the death of the senior citizen.

10.6 Respondent No.2, having no other remedy provided to question the order of the Assistant Commissioner, has invoked remedy under Section 16 of the Act by filing an appeal before the



Deputy Commissioner. In view of the settled position as held by various High Courts, the appeal under Section 16 of the Act at the instance of donee/transferee is maintainable.

10.7 Learned advocate for respondent No.2 relied on the following judgments,

- (i) Paramjit Kumar Saroya vs. The Union of India and another, (AIR 2014 Punjab and Haryana 121)
- (ii) Rita Roy vs. Maintenance Tribunal and Sub Divisional Officer (Revenue) and Others, [(2023) 1 Cg LJ 322]
- (iii) Akhilesh Kumar and another vs. State of U P and others, [(2019)8 ADJ 731]
- (iv) K.G. Suresh vs. Union of India, [(2021) 2 KHC 687]
- (v) Balbir Kaur vs. Presiding Officer - cum- S.D.M. of the Maintenance and Welfare of Senior Citizen Tribunal and others, [(2016) AIR (Punjab) 4]
- (vi) Maya Devi and others vs. Vishweshwar Dayal and others, [(2023) 2 DNJ 868]
- (vii) Smt. Roopam @ Jyoti Sharma and another vs. District Magistrate Lucknow and others, [(2022) 4 ALLJ 138]
- (viii) Amit kumar vs. Kiran Sharma and another, [(2021) 3 CivCC 760]
- (ix) Balamurugan vs. Rukmani, [(C.R.P.(PD)(MD) No.437 of 2015 and M.P.(MD) Nos.1 and 2 of 2015]



- (x) Sudesh Chhikara vs. State(Govt. of NCT of Delhi)
[(2018) 10 AD (Delhi) 384]
- (xi) Smt. M. Sunitha (Vidyasri) vs. Smt. M.
Shashikala Mugadura, (W.P. No. 147056/2020)

11. Learned Government Advocate Mr. K.S. Harish appearing for respondent Nos.1 and 3 submits that as the donor late P.Krishna expired during the pendency of the appeal before the Deputy Commissioner, the legal representatives are permitted to defend the appeal. It is further submitted that the peculiar facts are involved and the order passed by the learned Single Judge is to balance the parties' interests and are justifiable.

POINTS FOR CONSIDERATION

12. Having heard learned advocates for the parties and on consideration of the submissions, the following two points arise for consideration of the Court.

- (i) Whether respondent No.2 has right of appeal under Section 16 of the Act?
- (ii) Whether the order of learned Single Judge in the facts is justifiable?.



ANALYSIS

Re. Point No.(i)

13. For convenience, relevant provisions are outlined below.

Sections 23 and 16 of the Act of 2007 read as,

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-section (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.

16. Appeals.—(1) Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal:



Provided further that the Appellate Tribunal may, entertain the appeals after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.

(3) The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal is preferred.

(4) The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.

(5) The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final:

Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a duly authorised representative.

(6) The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7) A copy of every order made under sub-section (5) shall be sent to both the parties free of cost.

14. Section 23 stipulates that if a senior citizen transfers property, whether as a gift or otherwise, with the condition that the transferee will provide basic amenities and physical needs and the transferee subsequently fails or refuses to fulfill these obligations, the senior citizen may request that the transfer be declared void.



15. Section 16 provides a senior citizen or parent the right to appeal against an order passed under Section 23. However, in this case, the Deputy Commissioner entertained the appeal at the request of the transferee. The appellant has argued that such an appeal is not maintainable and that any order passed in such an appeal would not withstand legal scrutiny.

16. The learned advocate for respondent No. 2 has cited judgments from various High Courts to argue that an appeal filed by children or transferees is maintainable under Section 16 of the Act. However, before examining the judgments relied upon, the Court deems it appropriate to first analyze the provisions based on their plain text and intended meaning.

17. When an order is issued under Section 23 of the Act, either the senior citizen or the transferee may be considered an aggrieved party. The statute provides a remedy of appeal against such an order, which is governed by Section 16 of the Act. While two parties may potentially be affected by an order under Section 23, the appeal remedy explicitly applies to the senior citizen or parent. The language of Section 16 is clear and leaves no room for



ambiguity or confusion in its interpretation. There is no difficulty in reading Section 16 of the Act in its plain text.

18. The language of Section 16 of the Act is plain, clear, and unambiguous. This provision specifically and unequivocally grants the right of appeal exclusively to senior citizens. Extending this right to any other person, including the transferee, is not permissible. Interpreting Section 23 of the Act to provide a right of appeal to the transferee or any other person would amount to rewriting the provision, a function that lies beyond the jurisdiction of the Court. Granting such a right to the transferee would contradict the legislative intent behind the Act.

19. There is no dispute with the legal principle that when a statutory provision is ambiguous, interpretative tools can be used to resolve the ambiguity. If, after such an exercise, the Court finds ambiguity, the interpretation should aim to fulfill the purpose of the provision. However, Section 16 of the Act is clear and unambiguous, leaving no necessity to resort to interpretation tools.

20. In **Rajeshkumar Bansraj Gandhi** (supra), the Gujarat High Court held as,



"10. A bare reading of the aforesaid provision suggests that though the appeal is available to the Appellate Tribunal, such appeal can be filed by any senior citizen or parent. By express provision therefore the Legislature appears to have limited right to appeal for the limited class of persons, namely senior citizens or parents. It is this class of persons which are treated as aggrieved for the purpose of preferring appeal. In circumstances, the contention of learned advocate for the petitioners in counter to the submission about availability of alternative remedy of appeal could be countenanced. In view of the provision and further in view of the totality of facts and circumstances including that the petitioners were ousted the possession of the house proceedings, in this proceeding under the Act for Maintenance and Welfare of Parents and Senior Citizens, exercise of writ jurisdiction in respect of the impugned order is only proper."

21. In **Nayana Sudhir Shah** (supra), the Bombay High Court held as under,

"26. It is the settled position of law by a catena of Judgments that, a statute is an edict of the Legislature and the conventional way of interpreting or construing a statute is to seek the '*intention*' of its maker. A statute is to be construed according to the intent of them, that make it and the duty of judicature is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation, the Court has to choose that interpretation which represents the true intention of the Legislature, in other words the '*legal meaning*' or '*true meaning*' of the statutory provision. The statute must be read as a whole in its context. It is now firmly established that, the intention of the legislature must be found by reading the statute as a whole. ..."

"27. The relevant provisions of this Act which have been quoted/reproduced hereinabove therefore will have to be construed harmoniously to promote the cause of the '*Senior Citizens*' under this Act. The Act is enacted for a particular class of citizens i.e. Senior Citizens and Parents, with an avowed object to provide them maintenance by adopting simple inexpensive and speedy remedy. It is the



settled position of law that, the provisions of a statute has to be interpreted in a manner which will give ultimate effect to the intention of legislature in enacting it and not to frustrate it."

22. In **Dinesh Banudas Chandanshive** (supra), the Bombay

High Court held as,

"25. Insofar as the contention of the petitioner is concerned that merely because a remedy of an appeal is not provided to the petitioner, Section 16 of the Act becomes arbitrary and illegal, is wholly untenable. A legislative provision cannot be struck down on such count in the absence of any substantive ground acceptable in law being made out by the petitioner, so as to assail the provisions to be unconstitutional. The provisions also cannot become bad only because the petitioner feels so. A right of an appeal is to be conferred by law. The legislature in its wisdom has refrained from providing a right of an appeal except to the senior citizens. In any event, it cannot be said that the petitioner has no legal remedy."

23. In the judgments cited by respondent No. 2, it has been held that an appeal filed by children or the transferee is maintainable under Section 16 of the Act. Before expressing the Court's view on this matter, it is pertinent to examine the object and reasons behind enacting the Act. The statement of object and reasons can be found from the judgment herein below.

24. In **Rajeshkumar Bansraj Gandhi** (supra),

"17. The statement of object and reasons of the Act reads as under,



"Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many order persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents."

25. As the title of the Act suggests, the provisions of the Act deal with maintenance and welfare of parents and senior citizens. The Act is enacted for the welfare of a class of citizens with an object to provide immediate relief towards their amenities and basic physical needs. The aim was not only to provide amenities and basic physical needs, however with another broader object of speedy and inexpensive remedy.

26. When the text of Section 16 of the Act is read and understood in light of the object and reasons behind the legislation, it becomes abundantly clear that Parliament intended to provide the remedy of appeal under Section 16 solely to senior citizens or



parents. Any alternative interpretation would lead to an absurd outcome, which is not permissible.

27. This view is further justifiable for another reason. If the children or transferee is aggrieved by an order under Section 23 of the Act, they are not without a remedy. They can always invoke Article 226 of the Constitution of India. While this may result in two separate proceedings before different forums, such a situation cannot be used as a basis to extend the right of appeal under Section 16 of the Act to a different class of persons, as this right was not provided by Parliament.

28. The proposition that a statute is to be read, understood and construed in its plain text without deeming or ignoring any words needs no reiteration. Further, while interpreting the provisions, it is for the Court to apply the law on its plain text. This proposition has an exception to invoke interpretation tools, when a statute leads to ambiguity. However, language of Section 16 of the Act is clear in its plain text without any ambiguity, which needs no further interpretation. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of



law. That explains why the right of appeal is prescribed as a creature of statute.

29. As observed earlier, there are two classes of persons involved in the adjudication process under Section 23 of the Act: the transferor and the transferee. In this context, the transferor refers to senior citizens and parents, while the transferee includes children or third parties. The legislature has granted the right of appeal only to senior citizens and parents, with no such right extended to children or third parties.

30. The Court must also consider the potential violation of Article 14 of the Constitution of India. In evaluating any claim of discrimination, the reasonableness of the classification is a critical factor. As established by various courts, Article 14 prohibits class legislation, but not classification. For a classification to be permissible, it must be based on an intelligible differentia that distinguishes the persons or things grouped together from others left out and the differentia must have a rational connection to the objective the statute seeks to achieve.



31. If equality and uniformity exist within each group, the law will not be deemed discriminatory, even if, due to specific circumstances, some individuals within the class receive an advantage over others, so long as they are not singled out for special treatment. Therefore, the provision granting the right of appeal solely to senior citizens or parents cannot be interpreted to include children or third parties as having the right of appeal.

32. The Hon'ble Supreme Court in **Illachi Devi (D) by LRs. and Others vs. Jain Society, Protection of Orphans India and others, [(2003) 8 SCC 413]**, has held as,

"40. It is a well-settled principle of law that a plain meaning must be attributed to a statute. Also, a statute must be construed according to the intention of the legislature. The golden rule of interpretation of a statute is that it has to be given its literal and natural meaning. The intention of the legislature must be found out from the language employed in the statute itself. The question is not what is supposed to have been intended but what has been said."

44. It is equally well settled that when the legislature has employed plain and unambiguous language, the court is not concerned with the consequences arising therefrom. Recourse to interpretation of statutes may be resorted to only when the meaning of the statute is obscure. The court is not concerned with the reason as to why the legislature thought it fit to lay emphasis on one category of suitors than the others. A statute must be read in its entirety for the purpose of finding out the purport and object thereof. The court, in the event of its coming to the conclusion that a literal meaning is possible to be rendered, would not embark upon the exercise of judicial interpretation thereof and nothing is to be added or taken from a statute unless it



is held that the same would lead to an absurdity or manifest injustice. It is well established that a disabling legislation must be characterized by clarity and precision. In the present instance, the prohibitions laid down by Sections 223 and 236 of the Act are categorical and comprehensive, and leave no scope for creative interpretation.

33. In Padma Sundara Rao (dead) and others vs. State of T.N. and others, [(2002) 3 SCC 533], it is held as,

"12. The rival pleas regarding rewriting of statute and casus omissus need careful consideration. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them".

34. In Harbhajan Singh vs. Press Council of India and others, [(2002) 3 SCC 722], it is held as,

"7. The legislature does not waste its words. Ordinary, grammatical and full meaning is to be assigned to the words used while interpreting a provision to honour the rule - the legislature chooses appropriate words to express what it intends, and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material - intrinsic or external - is available to permit a departure from the rule. ..."



35. In **M/s. Grasim Industries Ltd., vs. Collector of Customs**

Bombay, [(2002) 4 SCC 297], it is held as,

"10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or altering the statutory provisions."

36. In **Dr. Baliram Waman Hiray (Dr.) vs. Justice B.**

Lentin and others, [AIR 1988 SC 2267], it is held as,

"27. Law must be definite, and certain. If any of the features of the law can usefully be regarded as normative, it is such basic postulates as the requirement of consistency in judicial decision-making. It is this requirement of consistency that gives to the law much of its rigour. At the same time, there is need for flexibility. Professor H.L.A. Hart regarded as one of the leading thinkers of our time observes in his influential book '*The Concept of Law*', depicting the difficult task of a judge to strike a balance between certainty and flexibility:

'Where there is obscurity in the language of a statute, it results in confusion and disorder. No doubt the courts so frame their judgments as to give the impression that their decisions are the necessary consequence of predetermined rules. In very simple cases it may be so; but in the



vast majority of cases that trouble the courts, neither statute nor precedents in which the rules are legitimately contained allow of only one result. In most important cases there is always a choice. The judge has to choose between alternative meanings to be given to the words of a statute or between rival interpretations of what a precedent amounts to. It is only the tradition that judges “find” and do not “make” law that conceals this, and presents their decisions as if they were deductions smoothly made from clear pre-existing rules without intrusion of the judge's choice.’ ”

37. In **Competition Commission of India vs. Steel Authority of India Ltd. and others**, (2010) 10 SCC 744, it is held as,

"50. The principle of “appeal being a statutory right and no party having a right to file appeal except in accordance with the prescribed procedure” is now well settled. The right of appeal may be lost to a party in face of relevant provisions of law in appropriate cases. It being a creation of a statute, legislature has to decide whether the right to appeal should be unconditional or conditional. Such law does not violate Article 14 of the Constitution. An appeal to be maintainable must have its genesis in the authority of law. Reference may be made to *M. Ramnarain (P) Ltd. v. State Trading Corpn. of India Ltd.* [(1983) 3 SCC 75] and *Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad* [(1999) 4 SCC 468] .

51. Right of appeal is neither a natural nor an inherent right vested in a party. It is a substantive statutory right regulated by the statute creating it. *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar* [(1999) 3 SCC 722] and *Kashmir Singh v. Harnam Singh* [(2008) 12 SCC 796 : AIR 2008 SC 1749] may be referred to on this point. Thus, it is evident that the right to appeal is not a right which can be assumed by logical analysis much less by exercise of inherent jurisdiction. It essentially should be provided by the law in force. In absence of any specific provision



creating a right in a party to file an appeal, such right can neither be assumed nor inferred in favour of the party.

52. A statute is stated to be the edict of legislature. It expresses the will of legislature and the function of the court is to interpret the document according to the intent of those who made it. It is a settled rule of construction of statute that the provisions should be interpreted by applying plain rule of construction. The courts normally would not imply anything which is inconsistent with the words expressly used by the statute. In other words, the court would keep in mind that its function is *jus dicere*, not *jus dare*. The right of appeal being creation of the statute and being a statutory right does not invite unnecessarily liberal or strict construction. The best norm would be to give literal construction keeping the legislative intent in mind."

"56. Thus, the court can safely apply rule of plain construction and legislative intent in light of the object sought to be achieved by the enactment. While interpreting the provisions of the Act, it is not necessary for the court to implant, or to exclude the words, or overemphasise language of the provision where it is plain and simple. The provisions of the Act should be permitted to have their full operation rather than causing any impediment in their application by unnecessarily expanding the scope of the provisions by implication."

38. In light of the above analysis, the only reasonable interpretation of Section 16 of the Act is that the right of appeal is vested exclusively in senior citizens or parents, and not in any other individuals, including children or transferees.

39. Having held that Section 16 of the Act grants the right of appeal only to senior citizens or parents, the contention of



respondent No.2 is unsustainable. The appeal under Section 16 of the Act before the Deputy Commissioner by respondent No.2 is held to be not maintainable.

40. In light of the conclusion reached by this Court, the judgments of different High Courts with the contrary view providing right of appeal to the children/transferee, this Court respectfully disagree to endorse such view.

41. Learned advocate for respondent No.2 relied on various judgments of different High Courts to contend that appeal under Section 16 of the Act is maintainable by other than the senior citizen. The first judgment is of Punjab and Haryana High Court in ***Paramjit Kumar Saroya*** (supra). The other judgments relied on are rendered by following the judgment of Punjab and Haryana High Court. It is suffice to this judgment is dealt. It would be repetition if other relied judgments are separately dealt, which exercise is unnecessary with due respect.

42. The Punjab and Haryana High Court has held that Section 16(1) of the Act grants the right of appeal to any affected person. The reasoning behind this conclusion is that the omission of other



parties from the provision is an accidental oversight, rather than a deliberate exclusion. Additionally, the Court noted that there is no explicit provision in the Act that denies the right of appeal to other parties.

43. The Court finds difficult to concur with the above reasoning which provides right of appeal to any of the affected parties. As held by the Hon'ble Supreme Court, the golden rule of interpretation of a statute is that, it has to be given its literal and natural meaning. The first and primary rule of construction is that, the intention of the legislature must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. When the legislature has employed a plain and unambiguous language, the Court is not concerned with the consequences arising therefrom. The Court is not concerned with the reason as to why the legislature thought it fit to lay emphasis on one category of suitors than the others.

44. Further, the principle that appeal being a statutory right and no party have a right to file appeal except in accordance with the prescribed procedure is well-settled. The right of appeal may be



lost to a party in face of relevant provisions of law in appropriate cases. Thus, the right to appeal is not a right which can be assumed by logical analysis much less by exercise of inherent jurisdiction. It should essentially be provided by the law in force. In absence of any specific provision creating a right in a party to file an appeal, such right can neither be assumed nor inferred in favour of the party.

45. The reasoning of the Punjab and Harayana High Court that there is no negative provision in the Act denying the right of appeal to other party cannot be countenanced. As observed herein-above, it is held by the Hon'ble Supreme Court that when right to appeal is not created, such right cannot be assumed by logical analysis or in a situation where there is no provision restricting such right to appeal. When right to appeal is created/provided to class, it is only to be understood that other class is excluded or not provided with such right. The provision need not in specific debar other class from right of appeal.

Re. Point No.(ii)

46. Learned Single Judge while examining the order passed by the Deputy Commissioner has set aside both the orders of the



Assistant Commissioner and the Deputy Commissioner with a direction to both the parties to agitate their rights before the competent Court of law. The order of learned Single Judge is without any justifiable reasoning. However, in view of the finding herein-above on the maintainability of appeal under Section 16 of the Act, the order of learned Single Judge can be justified to the extent, setting aside the order of the Deputy Commissioner. However, it is difficult to find any reason or justification in the order of learned Single Judge in setting aside the order of the Assistant Commissioner. To this extent the order of learned Single Judge suffers from excessive, is not sustainable and is to be set aside.

47. Learned advocate for respondent No.2 has raised a contention that Section 23 of the Act is not available to be invoked by late P. Krishna (father) for non-compliance of its conditions. It is the submission that the gift deed is unconditional and the issue of violation/refusal/failure to provide basic amenities and basic physical needs would not arise. The Court finds substance in this submission.

48. In **Sudesh Chikara** (supra), **2022 SCC Online SC 1684**, it is held as under,



" 14. 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."

49. The contention raised cannot be examined by this Court in the present appeal. Respondent No. 2 has invoked the remedy of appeal under Section 16, seeking to set aside the order declaring the gift deed void. The order in the appeal under Section 16 of the Act was overturned by the learned Single Judge. However, Respondent No. 2 has not challenged the order under Section 23 of the Act that declared the gift deed void. Another reason to supplement for this conclusion is this Court's view that children or transferees do not have the right of appeal under Section 16 of the Act. As a result, the appeal filed by Respondent No. 2 under Section 16 is not maintainable. Any further actions would be purely consequential.

50. The appellant claims right, title, and interest under a registered Will dated 14.07.2023, while Respondent No. 2 asserts



right, title, and interest under a Gift Deed dated 27.02.2019. Respondent No. 2 has filed an appeal under Section 16 of the Act, which has been held to be not maintainable. Consequently, the order in the appeal under Section 16 is set aside. Given that the appeal is not maintainable, Respondent No. 2 may pursue any other legal remedy available against the order passed by the Assistant Commissioner. The primary issue will once again be the effect of the registered Will. Which is left to the parties to invoke appropriate remedy.

51. In the given circumstances, as the Court is not called upon to examine the validity of the order passed by the Assistant Commissioner or the registered Will, it refrains from making any observations on these issues. Addressing these matters at this stage could potentially affect the parties' rights in any future legal proceedings. Nevertheless, the parties are free to pursue their grievances before the relevant forum, in accordance with the law.

52. Conclusion

- (i) It is held that Section 16 of the Act can be invoked only by senior citizen or a parent.



- (ii) Right of appeal under Section 16 of the Act is not available to any other party.

In light of the above reasons, the appeal is allowed-in-part. The order of the learned Single Judge is set aside to the extent mentioned. Accordingly, writ appeal is disposed of.

**Sd/-
(N. V. ANJARIA)
CHIEF JUSTICE**

**Sd/-
(K. V. ARAVIND)
JUDGE**

MV
List No.: 2 SI No.: 3