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CNR: KAHC010409272025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT APPEAL NO. 1008 OF 2025 (GM-RES)

BETWEEN:

1. NARASIMHAMURTHY N
   BIN NARASIMHAPPA @
   DODDANARASIMHAPPA
   AGED ABOUT 53 YEARS

2. ANJINAMMA @ ANASUYA
   D/O NARASIMHAPPA
   @ DODDANARASIMHAPPA
   W/O ANJINAPPA
   AGED ABOUT 64 YEARS

3. GANGAMMA,
   D/O NARASIMHAPPA
   @ DODDANARASIMHAPPA
   W/O RANGAPPA
   AGED ABOUT 67 YEARS
   ALL ARE R/AT MANCHENAHALLI
   MANCHENAHALLI HOBLI
   GOWRIBIDANUR TALUK

...APPELLANTS

(BY SRI N.S. BHAT, ADVOCATE)

AND:

1. THE ASSISTANT COMMISSIONER
   CHIKKABALLAPUR SUB DIVISION
   CHIKKABALLAPUR – 562 101

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2. THE SUB REGISTRAR,
GOWRI BIDANUR (T)
GOWRIBIDANUR – 561 208

3. THE TAHSILDAR
GOWRIBIDANUR TALUK
NOW MANCHENAHALLI TALUK
MANCHENAHALLI – 561 208

4. SRI M.A. LOKESHA
S/O ASWATHAPPA
AGED ABOUT 41 YEARS

5. SRI M.A. HARISHA
S/O ASWATHAPPA
AGED ABOUT 40 YEARS

RESPONDENTS NO.4 & 5 ARE
R/AT THALAVARA PETE
MANCHENAHALLI VILLAGE
MANCHENAHALLI TALUK
CHIKKABALLAPUR – 561 211

…RESPONDENTS

(BY SMT. NILOUFER AKBAR, AGA FOR R-1 TO 3;
SRI THIMMANNA BHAT DEVATHE, ADVOCATE FOR R-4 & 5)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 17.02.2025 PASSED BY THE LEARNED SINGLE JUDGE IN W.P. No.4191/2025 (GM-RES) AND CONSEQUENTLY TO DISMISS THE WRIT PETITION AND TO GRANT SUCH OTHER SUITABLE RELIEFS AS THE HON'BLE HIGH COURT MAY DEEMS FIT TO GRANT SUCH OTHER SUITABLE RELIEFS AS THE HON'BLE HIGH COURT MAY DEEM FIT AND PROPER TO GRANT IN THE FACTS AND CIRCUMSTANCES OF THE CASE.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. For the reasons stated in the affidavit accompanying the application I.A.No.1/2025 filed for condonation of delay, the same is allowed and the delay of 96 days in filing the appeal is condoned.

2. We have heard the learned counsel for the parties.

3. The appellants have filed the present appeal impugning an order dated 17.02.2025 [**impugned order**] passed by the learned Single Judge in W.P.No.4191/2025 (GM-RES).

4. Respondent Nos.4 and 5 had filed the said petition challenging the order dated 03.03.2023 passed by the Assistant Commissioner, Chikkaballapura Sub-Division, Chikkaballapura under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [**the Act**] canceling the registered Gift Deed dated 13.03.2017 executed in their favour.

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5. The learned Single Judge had allowed the said prayer on two grounds. First, that a petition filed by Sri. Narasimhappa *alias* Dodda Narasimhappa [**Senior Citizen**] did not contain any such prayer and second, the gift deed did not contain any covenant or condition to the effect that the donee would provide basic amenities and basic physical needs to the Senior Citizen. According to the learned Single Judge, the gift deed necessarily required recording such a condition for the Senior Citizen to avail the benefit of Section 23 of the Act. The learned Single Judge also referred to the decision of the Supreme Court in **Sudesh Chhikara v. Ramti Devi**[1], in support of the said decision.

6. Briefly stated the relevant facts to address the present appeal are as under:

The appellants state that their grandfather, Sri Neeraganti Anjinappa was the owner and in possession of the property; the details of the subject property are described as under:

> "All that piece and parcel of Manchenahalli Village E-Property No. 152800402400120744, coming within the limits of Manchenahalli Village

[1] 2022 SCC OnLine SC 1684

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Panchayath, Manchenahalli Hobli, Gowribidanur Taluk, Chikkaballapura District bearing property no (as per Panchayat Documents) 870/A (Eight Hundred and Seventy bar A) measuring East to West: 5.33 (Five Point Three Three) mtrs, North to South: 13.10 (Thirteen Point One Zero) total site measuring 40.00 (Forty) sq.mtrs and 29.82 (Twenty Nine point Eight Two) square mtrs inclusive of building bounded on:

East by : Village Panchayath Road
West by: Gopalashetty's house
South by : Village Panchayath Road
North by: Nirmaladevi's house.

The property situated amidst measuring 69.82 (Sixty Nine Point Eight Two) square meters being vacant site and a residential house is subject to this Gift Deed. There has been no prohibitory order by any court restricting alienation of the said vacant site and house and accordingly executed this Gift Deed.
Witnesses:
1) Sd/-

Sd/-
Donor

2) Sd/-

Donees
Sd/-
Sd/-"

7. The subject property was inherited by the Senior Citizen, who was the son of Sri Neeraganti Anjinappa. The Senior Citizen expired on 21.04.2024 and was survived by four children and grandchildren. He had executed a gift deed dated 13.03.2017

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gifting the subject property to respondent Nos.4 and 5, who are the sons of one of his sons, Sri Ashwathappa.

8. After the aforementioned gift deed was executed, on 31.10.2022, the Senior Citizen filed a petition (MSC. Cr. No.13/2022-23) before the Assistant Commissioner under Section 23 of the Act. He stated that he was 83 years old and was not in a position to understand what was going on. He stated that he was unable to move from one place to another without assistance as he was living alone. He claimed that respondent Nos. 4 and 5 deceived him into believing they would obtain a Senior Citizenship Certificate, which would entitle him to certain government benefits. He claimed that, being misled by the said representation, he had put his signatures on some papers and had also accompanied respondent Nos.4 and 5 to the Registrar's Office, Bagepalli, where his signatures were obtained, and his photographs were also taken. He claimed that he was informed that the said signatures were necessary to get the facilities from the Government. He alleged that believing his grandsons (respondent Nos.4 and 5), he acted on their instructions.

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9. The Senior Citizen claimed that subsequently, respondent Nos.4 and 5 started acting detrimentally to his interest. Subsequently, he became aware that the said respondents had obtained the registered gift deed of the subject property and, on that basis, were attempting to alienate the subject property.

10. In the given facts, the Senior Citizen prayed that the Assistant Commissioner declare the registered gift deed dated 13.03.2017 to be null and void.

11. The said petition was allowed by an order dated 03.03.2023. The said order was impugned by respondent Nos.4 and 5 in the writ petition (W.P.No.4191/2025), which was filed after the Senior Citizen expired on 21.04.2024. Respondent Nos. 4 and 5 (writ petitioners) claimed that they had become aware of the Assistant Commissioner's order dated 03.03.2023 only recently.

12. As noted above, the impugned order is premised on the basis that the petition filed by the Senior Citizen did not contain the prayer for cancellation of the gift deed. However, we note that the said petition included a prayer to declare the gift deed null and

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void. Although the petition also mentioned that respondent Nos. 4 and 5 (donees) had misrepresented that they would look after the Senior Citizen, it was not premised on that basis. As noted above, the petition was premised on the basis that the Senior Citizen had executed the gift deed on a fraudulent representation that he was signing documents for availing Senior Citizen's benefit from the Government.

13. Section 23 of the Act is relevant and is set out below:

> "**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."

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14. A plain reading of Section 23(1) of the Act indicates that it contemplates a case where a gift deed is executed, subject to the condition that the transferee would provide basic amenities and basic physical needs.

15. As noted above, the condition specified under Section 23(1) of the Act is not satisfied. Thus, *stricto sensu,* Section 23(1) of the Act may not apply. Notwithstanding the same, the Assistant Commissioner may in a given set of circumstances have the power to pass orders for the protection of the Senior Citizen's properties. However, it is not necessary to examine the same in these proceedings.

16. The Senior Citizen's petition proceeded *ex parte*. Respondent Nos.4 and 5 did not participate in the said proceedings at that stage, and they were unaware of the same.

17. In view of the above, the order passed by the Assistant Commissioner cannot be sustained. The same is liable to be set aside.

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18. Before concluding, it would be apposite to refer to the decision of the Supreme Court in **Sudesh Chhikara v. Ramti Devi** (*supra*). The Supreme Court referred to Section 23 of the Act and 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.
>
> 16. Careful perusal of the petition under Section 23 filed by Respondent 1 shows that it is not even pleaded that the release deed was executed subject to a condition that

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> the transferees (the daughters of Respondent 1) would provide the basic amenities and basic physical needs to Respondent 1. Even in the impugned order dated 22-5-2018 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 1 that the release deed was executed subject to such a condition.
>
> 17. We have perused the counter-affidavit filed by Respondent 1. Even in the counter, it is not pleaded that the release was subject to such a condition. It is merely pleaded that the appellant had no intention to take care of her mother. Thus, the order of the Maintenance Tribunal cannot be sustained as the twin conditions incorporated in sub-section (1) of Section 23 were not satisfied. Unfortunately, the High Court has not adverted to the merits of the case at all."

19. It is clear from the above that the Senior Citizen seeking cancellation of a gift deed under Section 23(1) of the Act has to establish that the gift deed was executed on the condition that the transferee will take care of the basic needs of the Senior Citizen. However, it is not necessary that the same would be expressly recorded in the gift deed. The Senior Citizen would have to establish the same by providing sufficient evidence in that regard. In **Sudesh Chikkara** (*supra*), the Supreme Court found that the

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applicant had nether pleaded that the transfer of the property was on an understanding that the transferee shall provide the basic amenities and physical needs to the applicant nor had led any evidence to the said effect. It is important to note that the Supreme Court did not hold that the conveyance deed must contain such covenant.

20. In view of the above, although we are unable to concur with the two grounds on which the learned Single Judge had allowed the petition, the conclusion to set aside the gift deed cannot be faulted, as the Senior Citizen's claim does not fall squarely within Section 23(1) of the Act.

21. This Court has been informed that the appellants are family members and have filed a suit being (O.S.No.355/2022) on 22.08.2022 (which is prior to the order passed by the Assistant Commissioner) for partition of the subject property and the said suit is pending before the Principal Civil Judge and JMFC, Gowribidanur.

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22. In this regard, we clarify that all rights and contentions of the parties regarding the gift deed, including whether the same was executed fraudulently are reserved. Neither the order dated 03.03.2023 passed by the Assistant Commissioner, Chikkaballapura nor the orders passed by this Court would preclude the parties from agitating the said issue in the said civil proceedings.

23. The appeal is disposed of in the aforesaid terms.

24. In view of the disposal of the appeal, the pending interlocutory applications stand disposed of.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

KPS,
List No.: 1 Sl No.: 11