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Evolution of Jurisprudence regarding the Revocation of a Gift Deed in the Light of Section 23 (1) of The Senior Citizens Act

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ABSTRACT

This article attempts to explore the evolving jurisprudence of Courts as to the intersection of the provisions of the Transfer of Property Act and the Senior Citizens Act with respect to a gift deed. It starts by exploring the concept of a gift deed itself and what makes for a valid gift deed. The article then proceeds to understand a social welfare legislation i.e. the Maintenance and Welfare of Parents and Senior Citizens Act to show how it qualifies and impacts the Transfer of Property Act. A gift deed under the TPA is considered to be a provision which may put the transferor in a position of disadvantage due to the transfer of a benefit. Hence it is important to ensure that the transfer is made voluntarily, with free consent and in the absence of any force, coercion or undue influence. Senior citizens as a group in society are often considered to be a vulnerable segment, who are often dependent on others for their maintenance. They are more gullible and easy to influence. Further, their ailing health might also hinder them from making informed decisions. Considering this, the Senior Citizens Act attempts to make provisions regarding the validity of a gift deed made by a senior citizen and provides for situations where the same may be revoked under Section 23 (1) of the Senior Citizens Act. The application of this provision in various respects such as its nature etc. has been challenged in many cases over the years. This article looks at how the Indian Courts have through its judgments addressed the questions and issues that came up in the light of the above provisions. It explores the jurisprudence behind the provisions, the object with which they were introduced and how they have been used over the years.

Keywords: gift deed, senior citizen, revocation, transfer of property.

I. INTRODUCTION

Section 122 to Section 129, Chapter VII of the Transfer of Property Act lays down the provisions as to gifts. Among other things, they define what it is, how a transfer is made and the conditions under which a gift may be revoked or cancelled.

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A gift according to Section 122 of the TPA refers to a transfer of certain moveable or immovable property which is in existence. The transfer must be without consideration and must be made voluntarily by a donor to a donee. The donee must also accept their acceptance of the transfer. While according to the definition, a gift is made in the absence of consideration, there exists special legislation which provides for exceptions to the same. The article examines how the courts have harmoniously constructed the provisions of the TPA and the Senior Citizen Act. It also looks at the validity of a gift deed made by a senior citizen and the pedestal at which it stands to satisfy its voluntary nature.

The provisions as to the making of a gift deed are not limited to the TPA and are qualified by conditions mentioned in a special Act introduced for the welfare of senior citizens i.e. the Maintenance and Welfare of Senior Citizens Act. Introduced in 2007, the social welfare legislation provides for situations where a gift deed may be revoked or cancelled by a senior citizen.

II. ESSENTIALS OF A GIFT DEED

Before coming to the validity of a gift deed made by senior citizens, we must start by understanding the general essentials required to constitute a gift deed as per the provisions of the TPA. According to Section 122 of the Act, a gift deed can only be made for a property already in existence, moveable or immovable. It has to be made voluntarily and without any consideration. Further, it must be accepted by the donee during the lifetime of the donor. Section 123 of the Act prescribes the procedure for transferring a gift and states that the same must be made by a registered instrument and must be signed by at least two witnesses. In the case of moveable property, the transfer may be given effect by way of delivery. Section 126 of the Act provides for conditions under which a gift may be revoked or cancelled. Besides this, the conditions as to revocation have also been provided in the Senior Citizens Act where a gift deed has been made by a senior citizen.

III. VALIDITY OF A GIFT DEED MADE BY A SENIOR CITIZEN

Senior citizens are often seen as vulnerable people in society, easy to influence and to be put under force. The question of the burden of proof to prove the validity of a gift deed by senior citizens has been raised and addressed by the Court. In *Ajmer Singh v. Atma Singh*², the rule which applies to a pardanashin woman was invoked by the Punjab and Haryana High Court to the benefit of a very old man who had weak eyesight. It was alleged that the Defendant donee

²AIR 1985 P&H 315.

had misrepresented the character of the deed as a special power of attorney and had it signed by his father. In another case, the rule was applied to the case of a 77-year-old lady who had been ailing for the past few years.³

Section 23 (1) of the Maintenance and Welfare of Parents Senior Citizens Act which makes a gift void where the parties in whose favour a gift deed was made on such a condition as to maintenance fail to maintain the transferor has been provided with a clear prospective application by the legislature. The words used in the provision to imply the same is “after the commencement of the Act”. However, the same came under challenge during two instances. Firstly, in a case filed in the Kerala High Court⁴, where the Division Bench refused to interfere with the legislation, recognising the number of families the same might disturb due to the innumerable transfers that have been made before the commencement of the Act. Recently, in the case of Charanjit Singh Ahluwalia v. Union of India⁵, it was pleaded before the Delhi High Court to strike down the words “after the commencement of this Act” from the provision and thereby provide it with a retrospective application. The object with which it was pleaded arose from the increasing trend of senior citizens being abandoned by their families, it was pleaded that by entrusting them with the right to revoke their gift deeds, this societal menace can be tackled. The Delhi High Court, however, agreed with the decision of the Kerala High Court and dismissed the plea. It held while exercising its powers under Article 226, the High Court cannot make a provision the legislature did not intend to make. Further, it also held that this was not a case where a situation requiring the retrospective operation of the provision was omitted since the prospective application of the provision has been clearly mentioned. The Court also expressed its intention to not disturb the rights of the donee which have been already created and vested in him.⁶

IV. REVOCATION OF A GIFT DEED AS PER SECTION 23(1) OF SENIOR CITIZENS ACT

The question of cancellation of a gift deed by a senior citizen on grounds of refusal to maintain or non-maintenance by children has been dealt with by various High Courts over the years. The Courts invoked the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 for the same and have at various times upheld the cancellation of the gift deeds by the Maintenance

³ Kunji Kuttiamma v. Kunji Kuttiamma, (2001) 1 KLT 797.

⁴ Human Rights and Social Welfare Forum Represented through its Chairman Dr. Vijeesh C Thilak v. Union of India, 2021 SCC OnLine Ker 12268.

⁵ 2023 SCC OnLine Del 2730.

⁶ Nupur Thapliyal, Delhi High Court Dismisses Plea For Retrospective Effect Of S.23 Senior Citizens Act Which Renders Property Transfer By Elderly Void In Certain Situations, Live Law (May 13, 2023), available at <https://www.livelaw.in/high-court/delhi-high-court/delhi-high-court-senior-citizens-act-section-23-property-transfer-void-not-retrospective-228640> (last visited June 10, 2023).

Tribunal. According to Section 23 (1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, where any senior citizen subject to the condition of being provided basic amenities and physical needs transfers by way of gift or otherwise their property and the transferee refuses to do so, the deed would be said to have made under undue influence or by fraud or coercion.

The question came up before the Supreme Court in the case of *Sudesh Chhikara v. Ramti Devi*⁷ where an old woman had approached the Maintenance Tribunal to seek cancellation of a release deed executed by her in favour of her children. She pleaded the same as her children had refused to maintain her in return for the deed executed. The Maintenance Tribunal accepted her claim and ordered the release deed to be null and void. On appeal, the Punjab and Haryana High Court confirmed the decision. However, the Supreme Court took a different view and set aside the above orders. It held that the following twin conditions must be satisfied for the Court to set aside a gift or release deed under Section 23 (1) of the mentioned Act:

1. Firstly, the initial transfer made by the transferor should have been subject to the condition that the transferee will maintain the transferor and take care of their physical needs. The condition must be explicit.
2. Secondly, consequent to the deed, the transferee must refuse to maintain the transferor and take care of their physical needs.

The Court held that since the transferor in the present case failed to prove the existence of the above conditions, the deed cannot be set aside.⁸

A similar question again came up before the Karnataka High Court in *Nanjappa v. State of Karnataka & Ors.*⁹ where it was contended that Section 23(1) does not require that the condition as to maintenance be made in writing and hence in the lack thereof, the Court must not interpret an absence of such a condition. The Court, however, relying on the Supreme Court judgment above refused to set aside the deed in the absence of an express condition as to maintenance.¹⁰

⁷ 2022 SCC OnLine SC 1684.

⁸"Maintenance for Senior Citizens: Gift, Release Deed, Property Cancellation Impermissible if Condition for Maintenance Not Specified," SCC Online Blog (December 8, 2022), available at <https://www.sconline.com/blog/post/2022/12/08/maintenance-senior-citizens-gift-release-dee-property-cancellation-impermissible-if-condition-for-maintenance-not-specified/> (last visited June 08, 2023).

⁹ WRIT APPEAL No.573/2022

¹⁰"Karnataka High Court: Gift Deed by Senior Citizen Null and Void without Stipulation for Maintenance to Transferee," Live Law (last visited June 09, 2023), available at <https://www.livelaw.in/news--updates/karnataka-high-court-gift-deed-senior-citizen-null-and-void-stipulation-maintenance-transferee-225476>.

V. EFFECT OF A SUBSEQUENT UNDERTAKING ON A GIFT DEED

The stipulation as to maintenance by the transferee has to be explicitly mentioned in the gift deed formulated by the transferor to be able to revoke it later according to the provisions of Section 23 (1) of the Senior Citizens Act. However, a new issue arose before the Calcutta High Court in *Amar Nath Dutta v. State of West Bengal & Ors.*¹¹ A gift deed was executed by the octogenarian in favour of the transferee. On a subsequent date, a week later, the transferee signed a declaration to ensure the maintenance and upkeep of the transferor in return for the gift deed. The transferee filed for revocation of the gift deed on the grounds of harassment at the hands of the transferee and in violation of the said declaration of maintenance. It was alleged that the declaration made subsequently should not be considered a part of the gift deed. The Court, however, held that the declaration was in the form of an undertaking, was signed by both parties and was legally binding. It was held that since the declaration was made shortly after the gift deed and also mentioned the original gift deed, it must be considered a part of the same transaction. The Court allowed the transferer to revoke the gift deed.¹²

VI. CONCLUSION

The above discussion makes it clear that most High Courts concur on the issue and have a uniform understanding of the interpretation of the provisions. It can be concluded from the above that the condition as to maintenance must be made expressly in the gift deed or through a subsequent declaration forming part of the same transaction. Hence, every refusal for the maintenance of the senior citizen- transferor by the transferee would not accrue on the transferor a right to cancel or revoke the gift deed and the same is only possible where the transfer has been made subject to the condition of maintenance by the transferee. It is also noted that much of the jurisprudence on the issue comes from the High Courts and not many appeals have been filed in the Supreme Court. Further, it is recommended that the interpretations must be made keeping in mind the welfare of the senior citizens. The Kerala and Delhi High Court as discussed above refused the retrospective application of Section 23 (1) of the Senior Citizens Act in order to avoid any disturbance of already executed deeds, however, it is recommended that the Court should in future consider the same in the light of the issue of increasing abandonment of senior citizens all over.

¹¹ W.P.A 1013 of 2023

¹²"Calcutta High Court: Revocation/Cancellation of Gift Deed under Section 23 of Senior Citizens Act for Basic Amenities," Live Law (last visited June 10, 2023), available at <https://www.livelaw.in/news-updates/calcutta-high-court-revocation-cancellation-of-gift-deed-section-23-senior-citizens-act-basic-amenities-224840>.