

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH



DATED THIS THE 20TH DAY OF JULY 2021

BEFORE

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

WRIT PETITION No.147056/2020 (GM-RES)

BETWEEN:

SMT.M.SUNITHA (VIDYASRI)

.. PETITIONER

(BY SRI. MANJUNATH G PATIL, ADV.)

AND:

1. SMT.M.SHASHIKALA MUGADURA

2. THE ASSISTANT COMMISSIONER
and THE PRESIDENT MAINTAINABLE and
WELFARE OF PARENTS and SENIOR CITIZENS
ACT 2007, Sub-division officer,
HOSAPETE BALLARI district 583201.

.. RESPONDENTS

(BY SRI. SHIVARAJ S. BALLOLLI, ADV FOR R1.
SRI. V.S. KALASURMATH, HCGPP FOR R2..)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT
OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT SETTING
ASIDE THE ORDERS PASSED BY THE EXECUTIVE MAGISTRATE AND

ASSISTANT COMMISSIONER HOSAPETE SUB DIVISION HOSAPETE IN SAM.KAM.HI. NAA.APPEAL.02/2019.20 DATED 2.3.2020/01.06.2020 AND DIRECTED CANCEL THE REGISTERED GIFT DEED OF HOUSE PROPERTY IN HOUSE NO.129/A/31 GIFT DEED BUNDLE NO.HDL-1-00206-207-18 DATED 19.4.2017 SITUATED AT GAVISIDDESWARA BADAVANE IN HUVINA HADAGALI IN BALLARI DISTRICT AND FURTHER DIRECTED TO SAME IS TO BE RE-REGISTERED JOINTLY IN THE NAMES OF THE PETITIONER AND RESPONDENT SAME IS MARKED AT ANNEXURE-F IN THE INTEREST OF JUSTICE AND EQUITY AND ALLOW THE WRIT PETITION WITH COSTS.

THIS WRIT PETITION COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In this writ petition the petitioner has assailed the order dated 02.03.2020 passed by the Assistant Commissioner, Hosapete, whereby he has set aside the gift deed dated 19.04.2017 executed in favour of the petitioner under Section 7(2) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2002 (hereinafter called as the 'said Act', for short).

2. The petitioner is a daughter-in-law of respondent No.1. Respondent No.1 has filed an application under Section 5 of the said Act before the Assistant Commissioner-2nd respondent for maintenance. The Assistant Commissioner by impugned order

Annexure-F on 2.3.2020 has allowed the petition and set aside gift deed dated 19.4.2017 made in favour of the petitioner under Section 7(2) of the said Act. Being aggrieved by that order, the petitioner is before this Court.

3. Sri. Shivaraj S. Ballolli, learned counsel appearing for the 1st respondent and Sri. Kalsurmah, learned Government Pleader appearing for the 2nd respondent have submitted that the petitioner has alternative efficacious remedy of appeal under Section 16 of the said Act. In support of their contention, they relied on the judgment of the Delhi High Court disposed of on 5.3.2021 in case of **Rakhi Sharma v. The State and others** wherein the High Court of Delhi has held that, Section 16 of the said Act confirm right of appeal on both side. Hence, they sought for dismissal of the writ petition.

4. Per contra, Sri. Manjunath G. Patil, learned counsel appearing for the petitioner has contended that

the Madras High Court in WP No.29988/2019 disposed of on 19.02.2021 between **K. Raju -and- Union of India and others** has held that under Section 15 of the Act, only parents or the senior citizen can maintain appeal. Hence, he contended that the petitioner has no other alternative efficacious remedy much less under Section 16 of the said Act.

5. Heard Sri. Manjunath G. Patil, counsel for the petitioner, Sri.Shivaraj S. Ballolli, counsel for respondent No.1 and Sri.Kalasurmatah, Government Pleader for respondent No.2.

6. The point for consideration in this case is that, whether under Section 16(1) of the said Act, right of appeal is conferred on both side or only on a senior citizen or a parent?

7. The petitioner has relied on he judgment of the Madras High Court and the respondent has relied on the judgment of the Delhi High Court. The Apex Court in case of **Valliamma Champaka Pillai v. Sivathanu Pillai**

and others reported in **1979 4 SCC 429** has held that decision of other High Court at best have a persuasive effect and not the force of binding precedents.

8. Under this circumstances, I will examine the provisions of law under the said Act. The said Act has been enacted by the Parliament with an object to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matter connected therewith or incidental thereto. In Chapter I Section 2 relates to Definition clause. 2(a) defines children includes son, daughter, grandson and granddaughter but does not include a minor. (b) maintenance includes provision for food, clothing, residence and medical attendance and treatment. (d) defines parents means father or a mother whether biologically or adoptive or step mother or step father, as the case may be whether or not the father or the mother is a senior citizen. Properties defined under (f) means

property of any kind whether moveable or immoveable, ancestral or self acquired tangible or intangible and includes rights or interest in such property. Sub-clause (h) defines senior any person being a senior citizen of Indian who has attained the age of 60 years or above. Sub-clause(j) defines tribunal means the maintenance tribunal constituted under Section 7. Chapter II relates to maintenance of parents and senior citizen. Section 4 relates for maintenance of parents and senior citizen. Section 5 relates to application for maintenance. The more relevant in this case is Sections 15 and 16 the same is extracted below:....

"15. Constitution of Appellate Tribunal -

(1) The State Government may, by notification in the Official Gazette, constitute one Appellate Tribunal for each district to hear the appeal against the order of the Tribunal.

(2) The Appellate Tribunal shall be presided over by an officer not below the rank of District Magistrate.

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 appeal 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 authorized 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."

9. By plain reading of section 16 of the Act, it provides right of appeal only to senior citizen or a parent against the order passed by the Tribunal. If combine reading of the provisions of Section 15 and 16, under Section 15 no where mentions appeal against the order of the Tribunal be confined to a senior citizen or a parent. The right to file an appeal is not excluded specifically by the provisions of section 16(1) of the said Act. Suppose if the right of appeal confined only to senior citizen or parents, if, the order passed by the Tribunal is aggrieved by both the parties, one preferring appeal and the other taking recourse to Article 227 of the Constitution of India.

10. Under this background, I will consider the Apex Court judgment in respect of interpretation of statutes. In case of **Board of Muslim Wakfs, Rajasthan v. Radha Kishan and others** reported in (1979) 2 SCC 468 wherein it is held that, "*while it is true that under the guise of judicial interpretation the Court cannot*

supply casus omissus but the courts must always try to give effect to the intention of the legislature. The Apex Court in the case of ***Binoy Viswam v. Union of India and others*** reported in **(2017) 7 SCC 59** has held that, to save a statute from being held ultra vires, the Court always has a power to read down a statutory provision. However, it is not permissible for the Court to add something to the statute or to subtract something from the statute while reading down the provision. In the above judgments, the Apex Court has discussed about the principles of constructions relating to casus omissus and reading down the statute as whole. The principles a casus omissus cannot be supplied by the Court except in the case of clear necessity and when the reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof. So that the construction to be put

on a particular provision make a consistent enactment of a whole statute.

11. The Division Bench of Punjab and Haryana High Court in the case of **Paramjit Kumar Saroya v. Union of India** has considered Sections 15 & 16 of the Act and has made the relevant observation which are set out below:

"An appeal is envisaged "against the order of the Tribunal". This is how Section 15 reads. It does not say an appeal only by a senior citizen or parent. However, sub section (1) of Section 16 refers to any senior citizen or a parent "aggrieved by an order of the Tribunal". This seeks to give an impression on a plain reading as if only a senior citizen or parent can prefer an appeal and, thus, restricting the appeal to only one set of party, while denying the right of appeal to the opposite side who are liable to maintain. However, this is not followed by the first proviso which deals with the operation of the impugned order during the pendency of the appeal and clarifies that the pendency of the appeal will not come in any manner in the way of the children or relative who is required to pay any amount in terms of any such order to continue to pay the amount. Now it can hardly be envisaged that in an appeal filed by the senior citizen or parent, there could be a question of absence of stay. Such absence of stay was only envisaged where the appeal is preferred by a children or relative. It is that eventuality the proviso deals with. The proviso is, thus, consistent with what has been set out in Section 15 of the said Act. ...

We may add at this stage that in order to have assistance to this Court in view of the complexity in the matter involved, we considered it appropriate not only for the counsels to assist us, but to appoint Amicus Curiae to have dispassionate view of the matter. We, thus, appointed Mr. Puneet Bali, Senior Advocate as the Amicus Curiae to be assisted by Ms. Divya Sharma, Advocate. They have done a comprehensive research on various aspects of the matter and this includes the Parliamentary debates when the Bill for enactment of the said Act was introduced. A perusal of these debates reflect that there has been no debate qua Section 16(1) of the said Act, nor has any intent been reflected to exclude the right of appeal to persons other than senior citizens or parents, unlike the debate on Section 17 of the said Act where the right of legal representation has been excluded.

...

Now coming to the conspectus of the discussion aforesaid, we have no doubt in our mind that we would be faced with the serious consequences of quashing such a provision which deprives the right of one party to the appeal remedy, while conferring it on the other especially in the context of the other provisions of the same Section as well as of the said Act. We have to avoid this. The only way to avoid it is to press into service both the principles of purposive interpretation and casus omissus. The Parliamentary discussions on the other provisions of the said Act do not convey any intent by which there is any intent of the Parliament to create such a differentiation. There is no point in repeating what we have said, but suffice to say that if nothing else, at least to give a meaning to the first proviso of Section 16(1) of the said Act, the only interpretation can be that the right of appeal is conferred on both the sides. It is a case of an accidental omission and not of conscious exclusion. Thus, in order to give a complete effective meaning to the statutory provision, we have to read the

words into it, the course of action even suggested in N. Kannadasan's case (supra) in para 55. How can otherwise the proviso to sub section (1) be reconciled with sub section itself. In fact, there would be no need of the proviso which would be made otiose and redundant. It is salutary role of construction of the statute that no provision should be made superfluous. There is no negative provision in the Act denying the right of appeal to the other parties. The other provisions of the Act and various sub sections discussed aforesaid would show that on the contrary an appeal from both sides is envisaged. Only exception to this course of action is the initial words of sub section (1) of Section 16 of the said Act which need to be supplanted to give a meaning to the intent of the Act, other provisions of the said Act as also other sub sections of the same Section of the said Act. In fact, in Board of Muslim Wakfs Rajasthan's case (supra), even while cautioning supply of casus omissus, it has been stressed in para 29 that the construction which tends to make any part of the statute meaningless or ineffective must always be avoided and the construction which advances the remedy intended by the statute should be accepted. This is the only way we can have a consistent enactment in the form of whole statute.

We are thus of the view that Section 16(1) of the said Act is valid, but must be read to provide for the right of appeal to any of the affected parties."

12. In view of the above discussion, the only interpretation can be the right of appeal under Section 16 (1) of the said Act is conferred on both side. It is case of an accidental omission and not of conscious exclusion. Therefore, the impugned order passed under Section 7 of

the Act is an appeal under Section 16 of the Act. Since the petitioner has an alternative remedy of appeal under Section 16 of the Act, the above writ petition is disposed of reserving liberty to the petitioner to file an appeal before the appellate authority under Section 16 of the Act. If such an appeal is filed within four weeks from today, the interim order granted by this Court will be continued till the disposal of the appeal before the appellate authority. The Appellate Authority is directed to dispose of the appeal not late than three months from the date of receipt of certified copy of this order. The Revenue Secretary, Government of Karnataka is directed to communicate this order to all the Maintenance Tribunals and Appellate Tribunals.

Accordingly, writ petition is disposed of.

**Sd/-
JUDGE**

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