

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25th DAY OF OCTOBER, 2024

BEFORE

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

WRIT PETITION No.52158 OF 2017 (GM-RES)

BETWEEN:

AXIS BANK LTD.,
(FORMERLY UTI BANK LTD)
MIG-12, IST FLOOR
BLOCK-9, VISWAMAANAVA DOUBLE ROAD
SARASWATHIPURAM
MYSORE-570 009.

REPRESENTED BY ITS LAW OFFICER
& SENIOR MANAGER
MR. BALVEER KAPOOR SINGH.

(BY SRI.UNNIKRISHNAN M., ADVOCATE)

...PETITIONER

AND:

- 1 . THE ASSISTANT COMMISSIONER
HASSAN SUB DIVISION
HASSAN - 573 201.
- 2 . MR MIR JOHAR ALI
SINCE DEAD BY LR'S
3. MR MIR ANSAR ALI
S/MIR JOHAR ALI
AGED ABOUT 40 YEARS
R/A NO.22/1, IST FLOOR
SAI BABA ROAD
BEHIND NGO CLUB KOTE
CHANNARAYAPATNA
HASSAN - 573 201.

4. MS. ANJUM BEGUM
D/O MIR JOHAR ALI
AGED ABOUT 38 YEARS
R/A NO.22/1, 1ST FLOOR
SAI BABA ROAD
BEHIND NGO CLUB KOTE
CHANNARAYAPATNA
HASSAN-573 201.

(RESPONDENT NO.3 AND 4 ARE
TREATED AS LEGAL REPRESENTATIVES
OF DECEASED RESPONDENT NO.2)

...RESPONDENTS

(BY SRI. SPOORTHY HEGDE N., HCGP FOR R1;
R3 AND R4 ARE TREATED AS LRS OF DECEASED R2 V/O
DATED:03.06.2024, R3 IS SERVED, R-4- NOTICE HELD
SUFFICIENT VIDE ORDER DATED 04.07.2023)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER
DATED.11.08.2017 IN CASE NO.M.A.G.(Hi.Na.Ri) 31/17-18, PASSED
BY THE ASSISTANT COMMISSIONER, HASSAN SUB DIVISION,
HASSAN I.E., ANNEXURE-A AND ETC.

THIS WRIT PETITION HAVING BEEN RESERVED FOR ORDERS,
COMING ON FOR PRONOUNCEMENT THIS DAY, **M.G.S. KAMAL J.**,
MADE THE FOLLOWING:

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

CAV ORDER

Petitioner-bank is before this court being aggrieved by the order dated 11.08.2017 passed by the Respondent No.1-Assistant Commissioner, Hassan Sub-Division, Hassan, under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as "the Act 2007") in case bearing No.M.A.G (Hi.Na.Ri) 31/17-18 produced at Annexure A to the writ petition, giving rise to the questions as to;

- a) Whether under the scheme of the Act, 2007 Petitioner-Bank which is not a party to said proceedings can assail the validity of the impugned order by this writ petition?, and;
- b) Whether in the facts and circumstances of the case Respondent No.1-Assistant Commissioner was justified in passing the impugned order?

2. Brief facts of the case are that;

- a) Respondent No.2 is the father of the respondent Nos.3 and 4. On 16.05.2015 respondent Nos. 3 and 4 had approached the petitioner-bank seeking financial assistance against security of an immovable property bearing TMC Khata No.11, SAS No.353, together with a residensial house existing thereon, situated at

Sai Baba Road, Kote extension, Ward No.4 under the revenue jurisdiction of the Channarayapattana Town Municipal Council, Chennarayapattana Town, Kasaba Hobli, Channarayapattana Taluk, Hassan District, (herein after referred to as `Subject Property'). Petitioner-bank accordingly sanctioned a loan known as "ASSET POWER LOAN" in a sum of Rs.18,00,000/- in terms of its letter of sanction dated 19.05.2015, against the security of Subject Property.

b) That the respondent No.2 had earlier executed and registered a Deed of Gift dated 05.06.2014 conveying the subject property in favour of his son, the respondent No.3. That said Deed of Gift was absolute without any conditions attached to the conveyance.

c) That in furtherance to the sanctioning of the aforesaid loan by the petitioner-bank, the respondent Nos.3 and 4 entered into an agreement dated 25.05.2015 and also executed a Deed of Mortgage date 25.05.2015 mortgaging the Subject property in favour of the petitioner-bank. That after availing the loan as above respondent Nos.3 and 4 defaulted in repayment of the same violating the terms of the loan agreement. Consequently

petitioner-bank had caused issue of a notice calling up on the respondent Nos.3 and 4 to repay the aforesaid loan amount. However respondent Nos.3 and 4 did not repay the same.

d) When things stood thus the Petitioner-bank learnt from the third parties that the respondent Nos.2 and 3 in collusion with each other with an intention of defeating and defrauding the rights of the petitioner-bank had surreptitiously got the said Deed of Gift dated 05.06.2014 cancelled. The petitioner-bank on an inquiry from the records of Sub-Registrar of Channarayapattana however did not find any document cancelling the Deed of Gift. The Petitioner-bank was informed that the respondent No.2 had filed an application under Section 5 of the Act, 2007 before the respondent No.1- Assistant Commissioner, Hassan Sub-Division Hassan, who by his order impugned in this Writ Petition cancelled the said Deed of Gift.

e) Since the subject property which was gifted by respondent No.2 in favour of respondent No.3, which in turn had been offered by the respondent No.3 as a security against the loan availed and in view of the respondent No.1- Assistant Commissioner cancelling the said Deed of gift under Section 23

of the Act 2007, the Petitioner- bank, being aggrieved by the impugned order, is before this court in this writ petition.

3. Learned counsel for the petitioner- bank reiterating the grounds urged in the memorandum of writ petition submitted that;

a) The respondent No.1-Assistant Commissioner grossly erred in passing the impugned order in purported exercise of his powers under Section 23 of the Act 2007. That provisions of Section 23 of the Act 2007 can be invoked only when there is a specific condition in the Deed of Gift that the transferee shall provide the basic amenities and physical needs to the transferor and if such transferee refuses to maintain or provide amenities and physical needs of the transferor the transfer of property in favour of the beneficiary shall be deemed to have been made by fraud or coercion or undue influence and at the option of transferor be declared void.

b) That in the instant case on perusal of Deed of Gift dated 05.06.2014 by respondent No.2 in favour of respondent No.3 there is no such condition of transferee being liable to provide for basic amenities to respondent No.2. The Deed of Gift is

absolute one which clearly intended to transfer the subject property absolutely in favour of the respondent No.3 without any conditions. As such respondent No.1- Assistant Commissioner could not have passed the impugned Order.

c) That the petitioner-bank has sanctioned and disbursed a sum of Rs.18,00,000/- to the respondent No.3 against the security of the subject property. That in view of erroneous order passed the respondent No.1 cancelling the deed of gift the interest of the petitioner-bank has been adversely affected in that it has taken away the right of the petitioner-bank as a mortgagee to recover the amount advanced to the respondent Nos.3 and 4.

d) That the respondent No.1-Assistant Commissioner had no jurisdiction to cancel the deed of gift of this nature. The only option that was available to the respondent No.2 was to initiate the proceedings before the Civil Court and could not have invoked the jurisdiction of the Respondent No.1- Assistant Commissioner under the Act, 2007 seeking cancellation of the deed of gift dated 05.06.2014.

e) That the entire process is vitiated by fraud and collusion between the respondent No.2 and respondent No.3, adversely

affecting the recovery prospects of the petitioner-bank. The petitioner-bank being an interested person in whose favour the respondent Nos.3 and 4 had created the mortgage ought to have been made a party to the proceedings before the respondent No.1. That there is total lack of application of mind by the respondent No.1- Assistant Commissioner in passing the impugned order without assigning any reason justifying cancellation of deed of gift.

f) On the question of maintainability of writ petition learned counsel for the petitioner-bank submits that since there is no specific provision provided under the Act, 2007 for petitioner-bank to file an appeal the petitioner -bank has no other option but to approach this Court by filing the present writ petition.

g) Learned Counsel for the petitioner-bank relied upon the following judgments:

(i) Whirlpool Corporation Vs Registrar of Trade Marks Mumbai and others reported in AIR 1999 SC 22

(ii) Adi Pherozshah Gandhi Vs H.M.Seervai reported in AIR 1971 SC 385

(iii) Sudesh Chhikara Vs Ramti Devi and another reported in 2022 SCC online SC 1684

(iv) Sri Vivek Jain Vs The Deputy Commissioner and others in W.P.No.14704/2021 decided on 04.06.2024

(v) Nanjappa Vs State of Karnataka and others in W.A.No.573/2022 decided on 17.03.2023

(vi) Jayashankar Vs The Assistant Commissioner, North Taluk and others in W.P.339/2023 decided on 24.04.2024

(vii) Godrej Sara Lee Ltd., Vs The Excise and Taxation Officer-cum-Assessing Authority and others reported in AIR 2023 SC 781

Hence seeks for allowing of the writ petition.

4. Notice of this petition has been served on respondent 3 and 4. Respondent No. 2 is stated to have passed away during the pendency of writ petition. Respondent Nos.3 and 4 have been treated as legal representatives of deceased respondent No.2 vide order dated 03.06.2024. There has been no representation on behalf of respondent Nos.3 and 4.

5. Heard. Perused records.

6. There is no dispute of the fact that the impugned order has been passed by the respondent No.1-Assistant Commissioner in exercise of his powers under Section 23 of Act 2007. Challenge to the impugned order is by the petitioner-bank who is no party

to the same. Therefore at the outset in the facts and circumstances of the case, and in the context of the scope and object of the Act 2007, it has to be ascertained *whether the petitioner-bank can be considered as an "aggrieved person" or "aggrieved party"?*, before proceeding further.

7. Necessary to note primary object and purpose of the Act 2007, which is essentially to provide speedy and inexpensive remedy to the elderly persons who are not being looked after by their families. The preamble of the said Act, 2007 reads as under;

"an act to provide for more effective provision for the maintenance and welfare of the parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto"

8. Also apposite to refer to few provisions of the Act 2007. Section 4 of the Act, 2007 provides for entitlement for maintenance of a senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him against one or more of his children not being minor. Section 5 of the Act, 2007, lists out the procedure for making application seeking maintenance under Section 4 of the

Act. Section 6 of the Act provides jurisdiction and the procedure to be followed by the authority in determining the application. Sections 7 and 8 provides for constitution of Maintenance Tribunal and the nature of enquiry to be conducted. Section 9 provides authority to the Tribunal to direct the children to pay the maintenance to the senior citizens. Section 10 provides for alteration of the order. Section 13 provides for deposit of maintenance amount while Section 14 provides for awarding of interest on the maintenance amount. Section 15 provides for constitution of appellate tribunal. Section 16 provides for filing of the appeals. Relevant at this juncture to extract sections 15 and 16 of the Act, 2007 for the purpose of the present case which are as under:

"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 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 (3) shall be sent to both the parties free of cost."

9. Perusal of Section 15 as above indicate the State Government's obligation to constitute an Appellate Tribunal to be presided over by an officer not below the rank of district magistrate. Section 16 providing for appeals would indicate the

appeals to be filed by senior citizen or a parent as the case may be who is aggrieved by an order of a Tribunal within 60 days from the date of the order.

10. Thus the aforesaid provisions do not provide for filing an appeal by a person/body like petitioner-bank whose cause in the matter is completely different and distinct. Act 2007 does not define the term "Aggrieved Person". Thus, in the circumstances there is no possibility of petitioner-bank having any recourse for any remedy under the Act, 2007. Therefore, the only option available to the petitioner-bank is to approach this Court invoking its extraordinary jurisdiction under Article 226 of the Constitution of India.

11. It is settled law that generally the term "aggrieved person" or "aggrieved party" refers to any party whose personal, property or financial interests or rights are negatively impacted by another's action or by a statute, a judgment or an order. Such aggrieved party is entitled to challenge the decision or action legally in the court of law. In the case of **Jasbhai Motibhai Desai V. Roshan Kumar, Haji Basheer Ahmed**

and others reported in **AIR 1976 SC 578** at paragraph 12

Apex Court has held under:

"According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person" and in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character, and is a "stranger", the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances. This takes us to the further question: Who is an "aggrieved person" and what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or 'standing' to invoke certiorari jurisdiction.

From perusal of the proposition laid down in this case it is evident that the meaning of aggrieved party depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him.

12. In the case of **MAHARAJ SINGH VS STATE OF U.P.** reported in **AIR 1976 SC 2602/ AIR 1977 (1) SCC 155** the Apex Court at paragraphs 18, 19 and 20 has held that:

19. Aside from this stand, it is easy to take the view that the 1st plaintiff is 'a person aggrieved' and has the competence to carry an appeal against the dismissal of the suit. Of course, he who has a proprietary right, which has been or is threatened to be violated, is surely an 'aggrieved person'. A legal injury creates a remedial right in the injured person. But the right to a remedy apart, a larger circle of persons can move the court for the protection of defence or enforcement of a civil right or to ward off or claim compensation for a civil wrong, even if they are not proprietarily or personally linked with the cause of action. The nexus between the lis and the plaintiff need not necessarily be personal, although it has to be more than a wayfarer's allergy to an unpalatable episode. 'A person aggrieved' is an expression which has expanded with the larger urgencies and felt necessities of our times. Processual jurisprudence is not too jejune to respond to societal changes and challenges:

Law necessarily has to carry within it the impression of the past traditions, the capacity to respond to the needs of the present and enough resilience to cope with the demands of the future. A code of law, especially in the social fields, is not a document for fastidious dialectics; properly drafted and rightly implemented it can be the means of the ordering of the life of a people.

20. The classical concept of a 'person aggrieved' is delineated in Re : Sidebotham ex p. Sidebotham. But the amplitude of 'legal grievance' has broadened with social compulsions. The State undertakes today activities whose beneficiaries may be the general community even though the legal right to the undertaking may not vest in the community. The State starts welfare projects whose effective implementation may call for collective action from the protected group or any member of them. New movements like consumerism, new people's organs like harijan or mahila samajams or labour unions, new protective institutions like legal aid societies operate on

the socio-legal plane, not to beat 'their golden wings in the void' but to intervene on behalf of the weaker classes. Such burgeoning of collective social action has, in turn, generated gradual processual adaptations. Test suits, class actions and representative litigation are the beginning and the horizon is expanding, with persons and organisations not personally injured but vicariously concerned being entitled to invoke the jurisdiction of the court for redressal of actual or imminent wrongs.

13. In the case of **ADI PHERORSHAH GANDHI VS H.M.SEERVAI** reported in **AIR 1971 Supreme Court 385** the Apex Court at paragraph 12 dealing with the expression "any person aggrieved" used in Section 37 of the Advocates Act, 1961 has held as under:

"From these cases it is apparent that any person who feels disappointed with the result of the case is not a person aggrieved. He must be disappointed of a benefit which he would have received if the other had gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something. It is no doubt a legal grievance and not a grievance about material but his legal grievance must be tendency to injure him"

14. In the case of **WHIRLPOOL CORPORATION VS REGISTRAR OF TRADE MARKS MUMBAI AND OTHERS** reported in **AIR 1999 SC 22** the Apex Court at paragraphs 14, 15, 16, 17, 18, 19 and 20 has held as under;

14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ Petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in atleast three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point put to cut down this circle of forensic Whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. Rashid Ahmad vs. Municipal Board, Kairana, AIR 1960 SC 163, laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting Writs. This was followed by another Rashid case, namely, K.S.Rashid & Son Vs. The Income Tax Investigation Commissioner, AIR 1954 SC 207 which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated

that alternative remedy would not operate as an absolute bar and that Writ Petition under Article 226 could still be entertained in exceptional circumstances.

17. Specific and clear rule was laid down in State of U.P. vs. Mohd. Nooh 1958 SCR 595 = AIR 1958 SC 86, as under (at p.93 of AIR):

"But this rule requiring the exhaustion of statutory remedies before the Writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

18. This proposition was considered by a Constitution Bench of this Court in A.V.Venkateswaran, Collector of Customs, Bombay vs Ramchand Sobhraj Wadhwani & Anr. AIR 1961 SC 1506 and was affirmed and followed in the following words (para 10)

"The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court".

19. Another Constitution Bench decision in *Calcutta Discount Co. Ltd. vs Income Tax Officer Companies Distt.* I AIR 1961 SC 372 laid down :

"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment. The High Court will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against Income Tax Officer acting without jurisdiction under s.34 I.T.Act".

20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, inspite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

The above being the legal position, now it is to be seen if the impugned order is one without jurisdiction.

15. Section 23 of the Act, 2007 provides that if a senior citizen transfers property by a gift otherwise with a condition that the transferee shall provide basic amenities and basic physical needs and if such transferee refuses or neglects to provide such amenities and physical needs the transfer of

property shall be deemed to have been made by fraud or coercion or under undue influence and the transfer be declared void by Tribunal at the option of senior citizen. Section 23 reads as under;

"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."*

16. The Apex Court in the case of **Sudesh Chhikara Vs Ramti Devi and anr** reported in [2022 Livelaw (SC) 1011] **2022 SCC online SC 1684** while dealing with the provisions of

section 23 of the Act 2007 at paragraphs 12 13 and 14 has held as under:

12. 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.

13. 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.

14. Careful perusal of the petition under Section 23 filed by respondent no.1 shows that it is not even pleaded that the release deed was executed subject to a condition that the transferees (the daughters of respondent no.1) would provide the basic amenities and basic physical needs to respondent no.1. Even in the impugned order dated 22nd May 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 no.1 that the release deed was executed subject to such a condition."

17. It is now well settled that the Tribunal constituted under the Act, 2007 would get jurisdiction to declare transaction contemplated under Section 23 as void only if the conditions specified thereunder are satisfied. Respondent No.2 being the father of respondent No.3 had executed Deed of Gift dated 05.06.2014 conveying subject property in favour of his son-respondent No.3. Relevant to extract the relevant recitals and terms of the said Deed of Gift which are as under:

ದಾನ ಪತ್ರ

ಸನ್ ಎರಡು ಸಾವಿರದ ಹದಿನಾಲ್ಕನೇ ಇಸವಿ ಜೂನ್ ಮಾಹೇ ತಾರೀಖು ಐದರಂದು [05/06/2014] ಇದೇ ಹಾಸನ ಜಿಲ್ಲೆ, ಚನ್ನರಾಯಪಟ್ಟಣ ತಾಲ್ಲೂಕು, ಕೋಟೆ ಬಡಾವಣೆ, ಎನ್.ಜಿ.ಓ. ಕ್ಲಬ್ ಹಿಂಭಾಗ, ಚನ್ನರಾಯಪಟ್ಟಣ ಟೌನ್‌ನಲ್ಲಿ ವಾಸವಾಗಿರುವ ಲೇಟ್ ಸಬ್ಬರ್ ಅಲಿ ರವರ ಮಗನಾದ ಸುಮಾರು 71 ವರ್ಷದ ಮೀರ್ ಜೋಹರ್ ಅಲಿ ಆದ ನಾನು [ದಾನ ನೀಡುವವರು] (Epic Card No: KT/19/132/474314)

ಇದೇ ಹಾಸನ ಜಿಲ್ಲೆ, ಚನ್ನರಾಯಪಟ್ಟಣ ತಾಲ್ಲೂಕು, ಕೋಟೆ ಬಡಾವಣೆ, ಎನ್.ಜಿ.ಓ. ಹಿಂಭಾಗ, ಚನ್ನರಾಯಪಟ್ಟಣ ಟೌನ್ ನಲ್ಲಿ ವಾಸವಾಗಿರುವ ಮೀರ್ ಜೋಹರ್ ಅಲಿ ರವರ ಮಗನಾದ ಸುಮಾರು 37 ವರ್ಷದ ಮೀರ್ ಅನ್ವರ್ ಅಲಿ [ದಾನ ಪಡೆದವರು] [Epic Card No: UFJ3355702] ಆದ ನಿನಗೆ ಬರೆಸಿಕೊಟ್ಟ ನನ್ನ ಬಾಬು ಈ ಕೆಳಕಂಡ ಅನುಸೂಚಿ ಸ್ವತ್ತಿನ ದಾನ ಪತ್ರದ ಕ್ರಮವೇನೆಂದರೆ.

ಅದಾಗಿ ಈ ದಾನ ಪತ್ರದ ಕ್ರಮವೇನೆಂದರೆ, ಮೇಲ್ಕಂಡ ಮೀರ್ ಅನ್ವರ್ ಅಲಿ ಆದ ನೀನು ನನ್ನ ಖಾಸಾ ಮಗನಾಗಿದ್ದು, ನೀನೇ ನನ್ನ ಪ್ರೀತಿಪಾತ್ರ ಮಗನಾಗಿದ್ದು. ನೀನೇ

ನನ್ನ ಎಲ್ಲಾ ಯೋಗಕ್ಷೇಮಗಳನ್ನು ನೋಡಿಕೊಳ್ಳುತ್ತಿರುವುದರಿಂದ ಹಾಗೂ ಇತ್ತೀಚೆಗೆ ನನ್ನ ದೈಹಿಕ ಆರೋಗ್ಯ ಸರಿ ಇಲ್ಲದ ಕಾರಣ ನನ್ನ ವ್ಯಾಪಾರ ವ್ಯವಹಾರಗಳನ್ನು ನೀನೇ ನೋಡಿಕೊಂಡು ಹೋಗುತ್ತಿದ್ದು, ಮುಂದೆ ನಿನ್ನ ವ್ಯವಹಾರಗಳಿಗೆ ಸಾಲ ವಗೈರೆಗಳನ್ನು ಸಂಬಂಧಪಟ್ಟ ಬ್ಯಾಂಕಿನಿಂದ ಪಡೆಯುವ ಉದ್ದೇಶವಾಗಿಯೂ ನಿನಗೆ ಅನುಕೂಲವಾಗಬೇಕೆಂಬ ಸದುದ್ದೇಶದಿಂದ ನಿನ್ನ ಮುಂದಿನ ಜೀವನಕ್ಕೆ ಯಾವುದೇ ತೊಂದರೆ ಉಂಟಾಗಬಾರದೆಂಬ ಉದ್ದೇಶದಿಂದಲೂ ಹಾಗೂ ಈ ಹಿಂದೆ ನಿನಗೆ ನಾನು ನೀಡಿದ ವಾಗ್ದಾನವನ್ನು ಈಡೇರಿಸುವ ಉದ್ದೇಶದಿಂದಲೂ ಅನುಸೂಚಿ ಸ್ವತ್ತಿನ ಖಾತೆಯನ್ನು ನಿನ್ನ ಹೆಸರಿಗೆ ಬದಲಾಯಿಸಿಕೊಡಬೇಕೆಂಬ ಉದ್ದೇಶದಿಂದ ಈ ಕೆಳಕಂಡ ನನ್ನ ಬಾಬು ಅನುಸೂಚಿ ಸ್ವತ್ತನ್ನು ನಾನು ಈ ದಿವಸ ಈ ಪತ್ರಕ್ಕೆ ಸಾಕ್ಷಿ ಹಾಕಿರುವವರ ಸಮಕ್ಷಮ ನನ್ನ ಮನಃಪೂರ್ವಕವಾಗಿ ನಿನಗೆ ದಾನವಾಗಿ ನೀಡಿರುತ್ತೇನೆ. ಸದರಿ ಸ್ವತ್ತು ಈ ಹಿಂದೆ ನನ್ನ ಪತ್ನಿ ಅಹಮದಿ ಬೇಗಂ ರವರು ದಿನಾಂಕ:16/01/1987 ರಂದು ಚನ್ನರಾಯಪಟ್ಟಣ ಟೌನ್‌ನ ಕೆ.ಎನ್. ವಾಸು ಬಿನ್ ಕೆ.ಎಂ. ನಂಜಪ್ಪ ರವರಿಂದ ಚನ್ನರಾಯಪಟ್ಟಣ ಉಪನೋಂದಣಾಧಿಕಾರಿಯವರ ಕಛೇರಿಯ 3ನೇ ಪುಸ್ತಕದ 2347ನೇ ಸಂಪುಟದ 228-229ನೇ ಪುಟದಲ್ಲಿ 86-87ನೇ ಇಸವಿಯ ಕ್ರಯ ಪತ್ರದ ರಿಜಿಸ್ಟರ್‌ ನಂಬರ್: 1312 ರಂತೆ ನೋಂದಾಯಿಸಿದ ಕ್ರಯಪತ್ರದ ಮೂಲಕ ಅವರಿಗೆ ಬಂದು ಅವರ ಹೆಸರಿಗೆ ಚನ್ನರಾಯಪಟ್ಟಣ ಪುರಸಭೆಯಲ್ಲಿ ಖಾತೆ ವಗೈರೆಯಾಗಿ ಅವರ ಹಕ್ಕು ಮತ್ತು ಅನುಭವದಲ್ಲಿ ಸ್ವತ್ತನ್ನು ಅವರ ಮರಣಾನಂತರ ಅವರ ಪತಿಯಾದ ಮೀರ್ ಜೋಹರ್ ಅಲಿ ಬಿನ್ ಸಬ್ಬರ್ ಅಲ್ಲಿ ಆದ ನನ್ನ ಹೆಸರಿಗೆ ಚನ್ನರಾಯಪಟ್ಟಣ ಪುರಸಭೆಯಲ್ಲಿ ಬಾಕಿಯಾಗಿ ನನ್ನ ಹಕ್ಕು ಮತ್ತು ಅನುಭವದಲ್ಲಿರುವ ಸ್ವತ್ತಾಗಿರುತ್ತದೆ. ಸದರಿ ಸ್ವತ್ತನ್ನು ನಾನು ನಿನ್ನ ವಿನಃ ಬೇರೆ ಯಾರಿಗೂ ಪರಭಾರೆ. ವಗೈರೆ ಮಾಡಿರುವುದಿಲ್ಲ ಮತ್ತು ಸದರಿ ಸ್ವತ್ತಿನ ಮೇಲೆ ಯಾವುದೋ ತಕರಾರು ಇರುವುದಿಲ್ಲ. ಮುಂದೆ ಏನಾದರೂ ತಂತೆ ತಕರಾರು ಬಂದರೆ ನಾನೇ ನನ್ನ ಸ್ವಂತ ಖರ್ಚಿನಿಂದ ಹಾಗೂ ಜವಬ್ದಾರಿಯಿಂದ ಪರಿಹರಿಸಿಕೊಡುತ್ತೇನೆ.

ಸದರಿ ಸ್ವತ್ತನ್ನು ನಾನು ಈ ದಿವಸದಿಂದಲೇ ನಿನ್ನ ಸ್ವಾಧೀನಕ್ಕೆ ಅದರ ಸಮಸ್ತ ಹಕ್ಕು ಬಾಧ್ಯತೆಗಳ ಸಮೇತ ವಹಿಸಿರುತ್ತೇನೆ. ಸದರಿ ದಾನದ ಸ್ವತ್ತನ್ನು ನೀನು ಇನ್ನು ಮುಂದೆ ಈ ದಾನಪತ್ರದಂತೆ ನಿನ್ನ ಹೆಸರಿಗೆ ಖಾತೆ ವಗೈರೆ ಮಾಡಿಸಿಕೊಂಡು ಸುಖದಿಂದ ಅನುಭವಿಸಿಕೊಂಡು ಹೋಗತಕ್ಕದ್ದು. ಸದರಿ ದಾನದ ಸ್ವತ್ತು ಇನ್ನು ಮುಂದೆ ನಿನಗೆ ಮಾತ್ರ ಸೇರತಕ್ಕದ್ದು, ಸದರಿ ಸ್ವತ್ತಿನ ಮೇಲೆ ಇನ್ನು ಮುಂದೆ ನಿನ್ನನ್ನು ಹೊರತುಪಡಿಸಿ, ನನಗಾಗಲೀ ಅಥವಾ ನನಗೆ ಸಂಬಂಧಪಟ್ಟ ಇತರೆ ಸದಸ್ಯರಿಗಾಗಲೀ ಯಾವುದೇ ರೀತಿಯ ಹಕ್ಕು ಬಾಧ್ಯತೆ ಇರುವುದಿಲ್ಲ. ಸದರಿ ದಾನದ ಸ್ವತ್ತನ್ನು ಇನ್ನು ಮುಂದೆ ಕ್ರಯ. ಭೋಗ್ಯ, ಆಧಾರ ಇನ್ನಿತರ ವ್ಯವಹಾರಗಳನ್ನು ನೀನೇ ಮಾಡುವ ಸಂಪೂರ್ಣ ಅಧಿಕಾರವನ್ನು ಹೊಂದಿರುತ್ತೀಯಾ ಎಂಬುದಾಗಿ ನಾನು ಬರೆದುಕೊಟ್ಟ ದಾನ ಪತ್ರ.

ದಾನವಾಗಿ ನೀಡಿರುವ ಸ್ವತ್ತಿನ ವಿವರ.

ಹಾಸನ ಜಿಲ್ಲೆ, ಚನ್ನರಾಯಪಟ್ಟಣ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಚನ್ನರಾಯಪಟ್ಟಣ ಟೌನ್, ಚನ್ನರಾಯಪಟ್ಟಣ ಪುರಸಭಾ ವ್ಯಾಪ್ತಿಯ ವಾರ್ಡ್ ನಂ.4 ಕೋಟೆ ಬಡಾವಣೆ, ಸಾಯಿಬಾಬಾ ರಸ್ತೆ, ರಲ್ಲಿರುವ ನಿವೇಶ ಮತ್ತು ಇದೇ ನಿವೇಶನದಲ್ಲಿ ನಿರ್ಮಿಸಿರುವ ನೆಲ ಹಂತಸ್ತು ಆರ್.ಸಿ.ಸಿ ಮಹಡಿ ಮನೆ. ಮತ್ತು ಮೊದಲನೇ ಹಂತಸ್ತು ಹಾಗೂ ಎರಡನೇ ಹಂತಸ್ತಿನ ಆರ್.ಸಿ.ಸಿ. ಮನೆಯ ಪುರಸಭಾ ಖಾತಾ ನಂ: 11 ಎಸ್.ಎ.ಎಸ್. ನಂ: 353, ರಲ್ಲಿರುವ ನಿವೇಶನದ ವಿಸ್ತೀರ್ಣ ಪೂರ್ವ-ಪಶ್ಚಿಮ 40 ಆಡಿ. ಉತ್ತರ-ದಕ್ಷಿಣ 30 ಅಡಿ ನಿವೇಶನದ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ 1200 ಚದರ ಅಡಿ ಉಳ್ಳ ನಿವೇಶನದಲ್ಲಿ ನಿರ್ಮಿಸಿರುವ ನೆಲ ಹಂತಸ್ತಿನ ಆರ್.ಸಿ.ಸಿ. ಮನೆಯ ವಿಸ್ತೀರ್ಣ ಪೂರ್ವ-ಪಶ್ಚಿಮ 40 ಅಡಿ, ಉತ್ತರ- ದಕ್ಷಿಣ 30 ಅಡಿ ನೆಲ ಹಂತಸ್ತಿನ ಆರ್.ಸಿ.ಸಿ. ಮನೆಯ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ 1200 ಚದರ ಅಡಿ ಹಾಗೂ ಮೊದಲನೇ ಹಂತಸ್ತಿನ ಆರ್.ಸಿ.ಸಿ. ಮನೆಯ ವಿಸ್ತೀರ್ಣ ಪೂರ್ವ-ಪಶ್ಚಿಮ 40 ಆಡಿ, ಉತ್ತರ-ದಕ್ಷಿಣ 30 ಅಡಿ ಮೊದಲನೇ ಹಂತಸ್ತಿನ ಆರ್.ಸಿ.ಸಿ. ಮನೆಯ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ 1200 ಚದರ ಅಡಿ ಹಾಗೂ ಎರಡನೇ ಹಂತಸ್ತಿನ ಆರ್.ಸಿ.ಸಿ. ಮನೆಯ ವಿಸ್ತೀರ್ಣ ಪೂರ್ವ-ಪಶ್ಚಿಮ 24 ಆಡಿ, ಉತ್ತರ-ದಕ್ಷಿಣ 30 ಅಡಿ ಎರಡನೇ ಹಂತಸ್ತಿನ ಆರ್.ಸಿ.ಸಿ. ಮನೆಯ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ 720 ಚದರ ಅಡಿ ಉಳ್ಳ ಸ್ವತ್ತಿಗೆ ಲಗತ್ತು ಒಂದೇ ಚೆಕ್ಕುಬಂದಿ.

ಪೂರ್ವಕ್ಕೆ * ರಸ್ತೆ	ಪಶ್ಚಿಮಕ್ಕೆ *ಎನ್.ಜಿ.ಓ. ಕ್ಲಬ್
ಉತ್ತರಕ್ಕೆ * ಹನೀಫ್ ಸಾಹೇಬರವರ ಮನೆ	ದಕ್ಷಿಣಕ್ಕೆ * ಪುರಸಭೆ ಮಳಿಗೆ

ಈ ಮಧ್ಯೆ ಇರುವ ಮೇಲ್ಕಂಡ ನಿವೇಶನ ಮತ್ತು ಇದೇ ನಿವೇಶನದಲ್ಲಿ ನಿರ್ಮಿಸಿರುವ ನೆಲ ಹಂತಸ್ತು, ಮೊದಲನೇ ಹಂತಸ್ತು ಹಾಗೂ ಎರಡನೇ ಹಂತಸ್ತಿನ ಆರ್.ಸಿ.ಸಿ. ಮನೆಯನ್ನು ಈ ದಿನ ನಾನು ನಿನಗೆ ದಾನವಾಗಿ ನೀಡಿರುತ್ತೇನೆ. ಸದರಿ ಸ್ವತ್ತು ಈಗಿನ ಮಾರುಕಟ್ಟೆ ಬೆಲೆಯಂತೆ ಸುಮಾರು 30,00,000/- [ಮೂವತ್ತು ಲಕ್ಷ] ರೂಪಾಯಿ ಬೆಲೆಬಾಳತಕ್ಕದ್ದಾಗಿರುತ್ತದೆ.

ದಾನ ಕೊಟ್ಟವರು
ಸಹಿ/-

ದಾನ ಪಡೆದವರು
ಸಹಿ/-

18. From the reading of the aforesaid document things that emanates are: *firstly*, there is no any specific condition_attached in the Deed of Gift that respondent No.3 being the son and the

transferee, shall provide the basic amenities and basic physical needs to the Respondent No.2, *Secondly*, the subject property originally belonged to wife of respondent No.2 namely, Smt. Ahmadi Begum who stated to have acquired the subject property in terms of Deed of Sale dated 16.01.1987 from one K.N.Vasu, son of K.M.Nanjappa and that upon her demise name of the Respondent No.2 has been mutated in the revenue records and that he was in possession and enjoyment of the subject property, *Thirdly*, respondent No.2 cannot claim to be the absolute owner of entire extent of subject property, inasmuch as upon the demise of Smt.Ahmadi Begum-owner, Respondent No.2 being her husband and Respondent Nos.3 and 4 being her son and daughter respectively, became entitled for a specific share in the subject property in terms of law of inheritance applicable to the parties.

19. Relevant at this juncture also to refer to averments and allegations made by respondent No.2 in his application filed before the respondent No.1-Assistant Commissioner on 20.06.2017 seeking relief under Act, 2007 which reads as under:

ರವರಿಗೆ,
ಉಪವಿಭಾಗಾಧಿಕಾರಿಗಳು
ಉಪವಿಭಾಗ, ಹಾಸನ ಜಿಲ್ಲೆ, ಹಾಸನ

ಇಂದ,
ಮೀರಾಜೋಹರ್ ಅಲಿ ಬಿನ್ ಲೇಟ್ ಸರ್ದಾರ್ ಅಲಿ
ಸುಮಾರು 75 ವರ್ಷ ವಯಸ್ಸು,
ಮನೆ ನಂ. 312. ನಾಗಸಮುದ್ರ ರಸ್ತೆ,
2ನೇ ಕ್ರಾಸ್, ಚನ್ನರಾಯಪಟ್ಟಣ ಟೌನ್, ಹಾಸನ ಜಿಲ್ಲೆ.

ಸ್ವಾಮಿ.

ವಿಷಯ:- ಹಿರಿಯ ನಾಗರೀಕರ ನಿರ್ವಹಣೆಯ ಕಾನೂನು ಆದೇಶದ ಅನ್ವಯ
ಜೀವನ ನಿರ್ವಹಣೆ ಕೋರಿ,

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ನಾನು ಮೇಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ
ವಾಸವಾಗಿರುತ್ತೇನೆ. ತಮ್ಮಲ್ಲಿ ಪ್ರಾರ್ಥಿಸಿಕೊಳ್ಳುವುದೇನೆಂದರೆ, ಇದೇ ಹಾಸನ
ಜಿಲ್ಲೆ. ಚನ್ನರಾಯಪಟ್ಟಣ ಟೌನ್, 4ನೇ ವಾರ್ಡ್, ಕೋಟೆ ಬಡಾವಣೆ,
ಸಾಯಿಬಾಬ್ ರಸ್ತೆಯಲ್ಲಿ ವಾಸವಾಗಿರುವ ನನ್ನ ಮಗನಾದ ಮೀರಾ ಅನ್ವರ್
ಅಲಿ, ಸುಮಾರು 40 ವರ್ಷ, ಇವನು ನನ್ನ ಹೆಸರಿನಲ್ಲಿ ಮನೆ
ಖಾತೆಯಲ್ಲಿರುವ ಮನೆಯನ್ನು 2014 ನೇ ಸಾಲಿನಲ್ಲಿ ನನಗೆ ಗೊತ್ತಾಗದ ರೀತಿ
ತಿಳಿಸದೆ ಮೋಸ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ದಿನಾಂಕ: 05/06/2014
ರಂದು ಸುಳ್ಳು ದಾನಪತ್ರವನ್ನು ಸೃಷ್ಟಿಸಿಕೊಂಡು ಮಾಡಿ ವಂಚಿಸುವುದು ಈಗ
ನನಗೆ ಗೊತ್ತಾಗಿದೆ. ಸದರಿ ಮನೆಯು ಚನ್ನರಾಯಪಟ್ಟಣ ಟೌನ್ ಪುರಸಭೆ
ವ್ಯಾಪ್ತಿಯಲ್ಲಿ ವಾರ್ಡ್ ನಂ. 4, ಕೋಟೆ ಬಡಾವಣೆ, ಸಾಯಿಬಾಬ ರಸ್ತೆಯಲ್ಲಿ
ನಿರ್ಮಿಸಿರುವ ಆರ್.ಸಿ.ಸಿ ಸೆಲ ಅಂತಸ್ತು ಮತ್ತು ಒಂದನೇ ಅಂತಸ್ತು, 2ನೇ
ಅಂತಸ್ತಿನ ಮನೆಯು ಸುಮಾರು 50,00,000/- ಬೆಲೆ ಬಾಳುವ ಮನೆಯು
ನನ್ನ ಹೆಸರಿನಲ್ಲಿದ್ದು, ವಂಚಿಸಿ ಮೋಸ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಮೇಲ್ಕಂಡ
ದಿನಾಂಕದಂದು ಚನ್ನರಾಯಪಟ್ಟಣ ಉಪನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿಯಲ್ಲಿ
ನನ್ನ ಮಗನ ಹೆಸರಿಗೆ ಅಂದರೆ ಮೀರಾ ಅನ್ವರ್ ಅಲಿ ರವರ ಹೆಸರಿಗೆ ದಾನ
ಪತ್ರ ಮಾಡಿಸಿ ನೋಂದಾವಣೆ ಮಾಡಿಸಿಕೊಂಡಿರುತ್ತಾರೆ. ವಿದ್ಯಮಾನಗಳು
ಹೀಗಿರುವಾಗ ನನ್ನ ಮಗನು ಸುಮಾರು 2 ವರ್ಷಗಳಿಂದ ನನಗೆ ಸರಿಯಾಗ
ಯೋಗಕ್ಷೇಮ ನೋಡಿಕೊಳ್ಳದೆ. ಒಂದು ಹೊತ್ತು ಅನ್ನ ಕೊಡದೆ ತುಂಬಾ
ತೊಂದರೆ ಕೊಡುತ್ತಾ ಬಂದಿರುತ್ತಾನೆ. ಅಷ್ಟೇ ಅಲ್ಲದೆ ನನ್ನ ಮೇಲೆ ದೈಹಿಕವಾಗಿ
ಹಲ್ಲೆ ಮಾಡಲು ಯತ್ನಿಸಿ ಅವಾಚ್ಯ ಅಭ್ಯಾಸಗಳಿಂದ ನಂದಿಸಿ, ಮಾನಸಿಕವಾಗಿ
ಹಿಂಸೆ ನೀಡಿ, ಎಷ್ಟೋ ಬಾರಿ ನನ್ನನ್ನು ಮನೆಯಿಂದ ಕತ್ತಿನ ಪಟ್ಟಿ ಹಿಡಿದು
ಹೊರದೂಕಲು ಯತ್ನಿಸಿರುತ್ತಾರೆ. ಈ ರೀತಿ ಮಾಡುತ್ತಿರುವುದು ಏಕೆ ಎಂದು

ಸಂಶಯ ಬಂದು ನನಗೆ ಗೊತ್ತಿರುವವರ ಹತ್ತಿರ ವಿಷಯ ತಿಳಿಸಿ ಉಪನೋಂದಣಾಧಿಕಾರಿ ಚನ್ನರಾಯಪಟ್ಟಣದಲ್ಲಿ ಸದರಿ ವಿಷಯದಲ್ಲಿ ನನ್ನ ಮನೆಯ ಖಾತೆ ಬಗ್ಗೆ ತಿಳಿಸಿದಾಗ ದಾನ ಪತ್ರ ಮಾಡಿಕೊಂಡಿರುವುದು ತಿಳಿದುಬಂದಿರುತ್ತದೆ. ನನಗೆ ಓದು ಬರಹ ಗೊತ್ತಿಲ್ಲ, ವೃದ್ಧಾಪ್ಯ ವೇತನವನ್ನು ಮಾಡಿಸಿಕೊಡುತ್ತೇನೆಂದು ನನ್ನನ್ನು ನಂಬಿಸಿ ನನಗೆ ವಂಚಿಸಿ, ನನ್ನಿಂದ * ದಾನಪತ್ರವನ್ನು ಮಾಡಿಸಿಕೊಂಡಿರುತ್ತಾನೆ. ಈಗ ನನಗೆ 75 ವರ್ಷ ವಯಸ್ಸಾಗಿರುತ್ತದೆ. ನನ್ನ . ಹೆಂಡತಿಯು ನಿಧನಹೊಂದಿ ಸುಮಾರು 22 ವರ್ಷ ವಯಸ್ಸಾಗಿದೆ ನನಗೆ ಆಗಾಗ್ಗೆ ಆರೋಗ್ಯದಿಂದ ನರಳುತ್ತಿರುತ್ತೇನೆ. ನನ್ನ ಮಗನು ಆರೋಗ್ಯ ನೋಡಿಕೊಳ್ಳಲು, ಆಸ್ಪತ್ರೆಯಲ್ಲಿ ಚಿಕಿತ್ಸೆ ಕೊಡಿಸಲು ತುಂಬಾ ಹಿಂದೇಟು ಹಾಕುತ್ತಾನೆ.

ತಾವಂದರಾದ ತಮ್ಮಲ್ಲಿ ವಿನಂತಿಸಿಕೊಳ್ಳುವುದೇನೆಂದರೆ, ನನ್ನಲ್ಲಿದ್ದ ಮನೆಯ ಖಾತೆಯಲ್ಲಿ ದಾನಪತ್ರ ಮಾಡಿಸಿಕೊಂಡು ಚನ್ನರಾಯಪಟ್ಟಣ ಪುರಸಭೆಯಲ್ಲಿ ಖಾತೆಯಾಗಿರುವುದನ್ನು ರದ್ದುಮಾಡಿ ನನ್ನ ಮಗನಿಂದ ನನಗೆ ಜೀವನ ನಿರ್ವಹಣೆ ಮಾಡಲು ಸೂಕ್ತ ಪರಿಹಾರ ಕೊಡಿಸಬೇಕೆಂದು ಹಾಗೂ ಸದರಿ ನನ್ನಮಗನ ಮೇಲೆ ಕ್ರಮ ಜರುಗಿಸಬೇಕಾಗಿ ನ್ಯಾಯಾಭಿವೃದ್ಧಿ ದೃಷ್ಟಿಯಿಂದ ಪ್ರಾರ್ಥಿಸುತ್ತೇನೆ. ಅರ್ಜಿದಯ ಜೊತೆಯಲ್ಲಿ ದಾನ ಪತ್ರವನ್ನು ಲಗತ್ತಿಸಿರುತ್ತೇನೆ. ನನಗೆ ಒಬ್ಬ ಮಗ ಮತ್ತು 4 ಜನ ಹೆಣ್ಣು ಮಕ್ಕಳು ಇರುತ್ತಾರೆ.

ವಂದನೆಗಳೊಂದಿಗೆ

20. Thus, there is no pleading with regard their being any conditions in the Deed of Gift or violation of same as required under Section 23 of the Act, 2007. Further respondent No.2 in the aforesaid application has not only denied the very execution of Deed of Gift by him but has also alleged that the same has been fabricated and created by respondent No.3 by defrauding him on the pretext of obtaining old age pension as he did not know to read or write.

21. Though a legal fiction of "fraud" "coercion" and "undue influence" is provided under section 23, same requires to be read only for the limited purpose of the provision of Section 23 of the Act, 2007 and not beyond. The Division Bench of this Court in the case of **JAYASHANKAR VS. ASSISTANT COMMISSIONER NORTH TALUK AND OTHERS** decided on 24.04.2024 in Writ Appeal 339 of 2023 had an occasion to deal with the species of "fraud" "coercion" and "undue influence" as contemplated under Section 23 of the Act, 2007 in comparison to the meaning of the said terms as understood under general law. Relevant paragraphs of the said judgment are as under:

"6. It is true that the Section treats the transfer of the property acted upon in particular manner to be deemed to have been made by fraud or coercion or under undue influence, but the concept of fraud or coercion incorporated in the Section to be the ground to declare the instrument void is limited to the breach of condition. Since the Section provides for the condition that the transferee shall provide basic amenities and physical needs to the senior citizen-transferor to be abided by and in the event such condition is not abided by, it would constitute a ground to declare the instrument of gift or transfer instrument to be void. the idea of fraud or coercion encapsulated in Section 23(1) of the Act is referable to the breach of such condition only.

6.1 The words 'fraud and coercion' mentioned in the Section could not be enlarged to the normal concept of 'fraud' or 'coercion' in civil law. In order to establish 'fraud' or 'coercion' a foundation of established facts is needed to conclude about 'fraud' as understood in common legal parlance, establishing a fraud or fraudulent

conduct by any person would indispensably require leading of evidence to prove the facts of fraud. For the purpose of Section 23(1), fraud is that the transfer is effected and the condition therein about providing basic amenities and physical needs to the transferor by the transferee, is not observed and abided by the transferee.

6.2 The group of words 'since the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence' creates a deeming fiction. The deeming fiction is referable to and is delimited to the breach of condition as above on the basis of which, the transfer has been made. It is in this limited sense that 'fraud' or 'coercion' or 'undue influence' mentioned in this Section has to be understood and applied.

6.3 The Tribunal exercising powers under Section 23(1) of the Act is not a civil court, nor the powers exercised by the Tribunal under the said provision are the powers of civil court. They are the powers in the context of the provisions of the Act which have their own purpose and object, which is to provide more effective recourse in law for maintenance and welfare of parents and senior citizens and to guarantee and recognize for them their rights.

6.4 In the above view, it will not be permissible in law for the Tribunal, while exercising powers under Section 23(1) of the Act, to pronounce upon generally that the transfer of the property by way of gift or otherwise was fraudulent or that the transferor was guilty of fraud or coercion in the general sense of the term. The rights and obligations arising for the parties in the context of commission of fraud as is to be applied in general law, are the civil disputes. It is not open for the Tribunal functioning under the Act to pronounce upon such fraud having committed in effecting the transfer.

6.5 In view of the above position obtaining, this Court is of the view that the Tribunal misdirected itself in law in making the observations in paragraph 13 of its order by suggesting that the gift deed was fraudulently obtained from the complainant. The aspects mentioned by the Tribunal in that regard are to be proved by leading of evidence. It was not permissible for the Tribunal to arrive at a different finding in that regard. Even otherwise,

recording of such finding was beyond the powers and jurisdiction of the Tribunal."

22. In the light of the aforesaid factual and legal aspects of the matter necessary at this juncture to advert to the impugned order dated 11.08.2017 passed by Respondent No.1-Assistant Commissioner which reads as under:

ಉಪವಿಭಾಗಾಧಿಕಾರಿಯವರ ನ್ಯಾಯಾಲಯ, ಹಾಸನ ಉಪವಿಭಾಗ, ಹಾಸನ

ಪ್ರಕರಣ

ಸಂಖ್ಯೆ:ಎಂ.ಎ.ಜಿ

(ಹ.ನಾ.ರಿ)31/17-18

ದಿನಾಂಕ: 11-08-2017

ವಾದಿಗಳು ಶ್ರೀ/ಶ್ರೀಮತಿ	ಪ್ರತಿವಾದಿಗಳು ಶ್ರೀ/ಶ್ರೀಮತಿ
ಮೀರಾಜೋಹರ್ ಆಲಿ ಬಿನ್ ಲೇ: ಸಬ್ಜ್ ಆಲಿ, ಮನೆ ನಂ.312. ನಾಗಸಮುದ್ರ ರಸ್ತೆ, 2ನೇ ಕ್ರಾಸ್, ಚನ್ನರಾಯಪಟ್ಟಣ ಟೌನ್, ಹಾಸನ	ಮೀರಾ ಅನ್ವರ್ ಆಲಿ. 4ನೇ ವಾರ್ಡ್. ಕೋಟೆ ಬಡಾವಣೆ" ಸಾಯಿಬಾಬ ರಸ್ತೆ, ಚನ್ನರಾಯಪಟ್ಟಣ ಟೌನ್,

ಪ್ರಸ್ತಾವನೆ: ಅರ್ಜಿದಾರರು ಹಿರಿಯ ನಾಗರಿಕ ಪಾಲನೆ, ಪೋಷಣೆ ಮತ್ತು ಕಲ್ಯಾಣ ಅಧಿನಿಯಮ 2007 ರ ಮೇರೆ ಪ್ರತಿವಾದಿ ವಿರುದ್ಧ ಹಾಸನ ಜಿಲ್ಲೆ, ಚನ್ನರಾಯಪಟ್ಟಣ ಟೌನ್, 4ನೇ ವಾರ್ಡ್, ಕೋಟೆ ಬಡಾವಣೆ, ಸಾಯಿಬಾಬ ರಸ್ತೆಯಲ್ಲಿ ನಿರ್ಮಿಸಿರುವ 3 ಅಂತಸ್ತಿನ ಮನೆಯು ಪುರಸಭಾ ಚನ್ನರಾಯಪಟ್ಟಣ ಖಾತಾ ನಂ.11/353 ರಲ್ಲಿನ 40 X 30 ಅಡಿ (ಆರ್.ಸಿ.ಸಿ. ಮಹಡಿ) ಸ್ವತ್ತು ವಾದಿ ಹೆಸರಿನಲ್ಲಿದ್ದು, ಸದರಿ ಖಾತೆಯನ್ನು ರದ್ದುಪಡಿಸಿ ಖಾತೆ ಪುನರ್ ಸ್ಥಾಪಿಸುವಂತೆ ಹಾಗೂ ಜೀವನ ನಿರ್ವಹಣೆಗೆ ಭತ್ಯೆಯನ್ನು ಕೊಡಿಸುವಂತೆ ವಾದಿಯವರು ಪ್ರಕರಣ ದಾಖಲಿಸಿರುತ್ತಾರೆ.

ಸದರಿ ಪ್ರಕರಣದ ವಿಚಾರಣೆಯನ್ನು ದಿನಾಂಕ: 15-07-2017 ರಿಂದ 11-08-2017 ರವರೆಗೆ ವಿವಿಧ ದಿನಾಂಕಗಳಂದು ಈ ನ್ಯಾಯಾಧೀಶರಣದಲ್ಲಿ ವಿಚಾರಣೆ ನಡೆಸಲಾಗಿರುತ್ತದೆ. ಅಂತಿಮವಾಗಿ ವಿಚಾರಣೆಯನ್ನು ದಿನಾಂಕ: 11-08-2017 ರ ಸದರಿ ಈ

ನ್ಯಾಯಾಧೀಕರಣದಲ್ಲಿ ನಡೆಸಿದ್ದು, ಅರ್ಜಿದಾರರ ಮನವಿ ಹಾಗೂ ವಿಚಾರಣಾ ಅಂಶಗಳನ್ನು ಪರಾಮರ್ಶಿಸಿ ಈ ಕೆಳಕಂಡಂತೆ ಆದೇಶಿಸಿದೆ.

ಆದೇಶ ಸಂಖ್ಯೆ: ಎಂ.ಎ.ಜಿ(ಹಿ.ನಾ.ರಿ)31/17-18, ದಿನಾಂಕ:11.08.2017

ಹಾಸನ ಜಿಲ್ಲೆ, ಚನ್ನರಾಯಪಟ್ಟಣ ತಾಲ್ಲೂಕು ಉಪವಿಭಾಗಾಧಿಕಾರಿಗಳ ಕಛೇರಿ ನೋಂದಣಿ ಪತ್ರದ ನಂ. ಸಿ.ಪಿ.ಎಸ-1-00876-20/14-15, ದಿನಾಂಕ: 05-06-2014 ಮೀರಾ ಅನ್ವರ್ ಆಲಿ ಬಿನ್ ಮೀರಾ ಜೋಹರ್ ಆಲಿ ರವರ ಹೆಸರಿಗೆ ನೋಂದಣಿ ಆಗಿರುವ ಹಾಸನ ಜಿಲ್ಲಾ ಚನ್ನರಾಯಪಟ್ಟಣ ಟೌನ್ ವಾರ್ಡ್ 4 ರಲ್ಲಿರುವ ಪುರಸಭಾ ಖಾತಾ ನಂ.11/353 ರಲ್ಲಿನ 40 X 30 ಅಡಿ (ಆರ್.ಸಿ.ಸಿ. ಮಹಡಿ) ರ ದಾನ ಪತ್ರವನ್ನು ರದ್ದುಪಡಿಸಿದೆ. ಮತ್ತು ಸದರಿ ಸ್ವತ್ತಿನ ದಾಖಲೆಗಳನ್ನು ಈ ಹಿಂದೆ ಖಾತೆದಾರರಾಗಿದ್ದ ಮೀರಾಜೋಹರ್ ಆಲಿ ಬಿನ್ ಸಬ್ದರ್ ಆಲಿ ರವರ ಹೆಸರಿಗೆ ಖಾತೆ ವರ್ಗಾಯಿಸಲು ಮರಸಭೆ ಮುಖ್ಯಾಧಿಕಾರಿ, ಚನ್ನರಾಯಪಟ್ಟಣ ರವರಿಗೆ ಆದೇಶಿಸಿದೆ.

ಈ ಆದೇಶವನ್ನು ಉತ್ತರೇಖನ ನೀಡಿ ಬೆರಳಚ್ಚು ಮಾಡಿಸಿ ದಿನಾಂಕ: 11-08-2017 ರಂದು ಆದೇಶಿಸಿದೆ.

(ಡಾ. ಎಚ್. ಎಲ್. ನಾಗರಾಜ್ ಕೆ.ಎ.ಎಸ್.,)
ಅಧ್ಯಕ್ಷರು ನಿರ್ವಹಣಾ ನ್ಯಾಯಮಂಡಳಿ
ಹಾಗೂ ಉಪವಿಭಾಗಾಧಿಕಾರಿ,
ಹಾಸನ ಉಪವಿಭಾಗ, ಹಾಸನ

23. The impugned order as seen above is as cryptic as it could be without there being any reason whatsoever. The respondent No.1-Assistant Commissioner has neither adverted to the facts of the matter nor has he adverted to the provisions of Section 23 of the Act, 2007 justifying him invoking his jurisdiction thereunder. There is also no whisper as to if the Respondent No.2 had made out case warranting interference at the hands of the respondent No.1. The impugned order *ex facie*

being one without jurisdiction is arbitrary and perverse, cannot be sustained.

24. Petitioner-bank claims to have sanctioned and disbursed a sum of Rs.18,00,000/- to respondent Nos.3 and 4 against the security of subject property. As already noted above, the subject property admittedly belonged to wife and mother respectively of respondent Nos.2, 3 and 4. Upon her demise the revenue records of the subject property has been mutated in the name of respondent No.2. That alone would not make him exclusive owner of the subject property. Respondent Nos.3 and 4 would also be entitled for a specific share in the schedule property even in the absence of the Deed of Gift. Now that respondent No.2 is also stated to have passed away leaving behind the Respondent Nos.3 and 4 as heirs, the subject property even otherwise would vest with the respondent Nos.3 and 4. As this Court has already held that the impugned order passed by the respondent No.1- Assistant Commissioner is unsustainable for the reasons as noted above and in the light of there being no specific provision under the Act, 2007 for the petitioner-bank to challenge, whose financial interest is

negatively impacted and adversely affected by the impugned order, this Court under the peculiar facts situation of the case, is of the considered view that the petitioner-bank is entitled to maintain the writ petition, more so when it is required to recover the loan amount advanced by it in the larger public interest.

25. Before parting necessary to emphasis that though the object of the Act, 2007 is lofty and laudable, same has been deliberately misused quite often. Since the procedure contemplated under the Act, 2007 is summary and simple in nature, even the disputes of substantial nature which ought to be otherwise dealt with under the general law by a civil court of competent jurisdiction are being taken up and are disposed of in a highly cavalier manner regardless of consequences as that of one in the instant case. Imminent need therefore is to sensitize the Tribunals regarding limits of their jurisdiction and also with regard to scope and extent of the disputes that could be entertained under the Act, 2007 by the concerned.

26. Points raised are answered thus. Accordingly, following:

ORDER

- (i) Writ petition is allowed.
- (ii) Order dated 11.08.2017 passed by the respondent No.1-Assistant Commissioner, Hassan Sub-Division, Hassan in case bearing No.M.A.G.(Hi.Na.Ri)31/17-18 is quashed.

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

SBN/RU