

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF NOVEMBER, 2021

PRESENT

THE HON'BLE MR. RITU RAJ AWASTHI, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT APPEAL NO.1170 OF 2021 (GM-RES)

BETWEEN:

SMT. C. KAMALAMMA
AGED ABOUT 65 YEARS,
W/O LATE M.LINGAPPA,
R/AT ARALIMARADA PALYA,
SIRA GATE, TUMKUR - 572 112.

...APPELLANT

(BY SRI SHASHIDHARA H.N., ADVOCATE)

AND:

1. SRI P GOPAL
AGED ABOUT 51 YEARS,
S/O LATE PILLAPPA,
RESIDING AT VISHWANEEDAM POST,
MAGADI MAIN ROAD, SUNKADAKATTE,
BANGALORE-560 091.

2. THE STATE OF KARNATAKA
BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF REVENUE,

MS BUILDING, DR.B.R.AMBEDKAR ROAD,
BANGALORE-560001

3. THE DEPUTY COMMISSIONER
TUMKUR 572112.

4. THE ASSISTANT COMMISSIONER
TUMKUR SUB DIVISION,
TUMKUR-572112.

5. SMT. NAGALAKSHMI L
AGED ABOUT 47 YEARS,
W/O H.K. RANGASWAMY

6. SRI H K RANGASWAMY
AGED ABOUT 54 YEARS,
S/O KARIYAPPA

RESPONDENT NOS.5 AND 6 ARE
RESIDING AT MAHAMANE,
COLLEGE LINK ROAD,
3RD BLOCK, KUVEMPUNAGAR,
TUMKUR - 572 112.

...RESPONDENTS

(BY SRI S.S.MAHENDRA, AGA FOR R2 TO R4;
SRI M.SHIVAPRAKASH, ADVOCATE FOR C/R1)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO 1.SET ASIDE THE ORDER DATED 05.10.2021 PASSED IN W.P.NO.44175/2016 (GM-RES) AND CONSEQUENTLY DISMISS THE WRIT PETITION AND 2. GRANT CONSEQUENTIAL RELIEF/S AS DEEMED FIT AND APPROPRIATE BY THIS HONBLE COURT IN THE FACTS AND CIRCUMSTANCES OF THE CASE.

THIS APPEAL COMING ON FOR ORDERS THIS DAY, **SACHIN SHANKAR MAGADUM J.**, DELIVERED THE FOLLOWING:

JUDGMENT

The captioned appeal is filed by the respondent No.4 to the writ petition questioning the order dated 05.10.2021 passed in W.P.No.44175/2016.

2. The facts leading to the case are as under:

The appellant was the owner of the property bearing Sy.Nos.127/3A, 127/3B, 127/4, 128/1, 128/2 and 128/3. She transferred the property in question by way of registered gift deed dated 22.08.2005 in favour of respondent No.5 who is none other than her daughter. The respondent No.5 in turn sold the property in question vide registered sale deed dated 26.08.2014 in favour of respondent No.1/petitioner.

3. The appellant by invoking the provisions of Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act') filed a petition before the respondent No.4/Assistant Commissioner. The respondent

No.4/Assistant Commissioner set at naught the registered gift deed and also registered sale deed dated 26.08.2014.

4. Feeling aggrieved by the said order, the respondent No.1 preferred a writ petition before the learned Single Judge of this Court. The learned Single Judge having taken judicial note of the date of the registered gift deed was of the view that the transactions which are much prior to enactment of the Act are saved and therefore, the appellant having gifted the property much prior to the commencement of the Act, could not have invoked Section 23(1) of the Act. The learned Single Judge has also taken judicial note of the fact that the appellant herein has already approached the competent civil Court by filing a comprehensive suit questioning the gift deed and the registered sale deed in O.S.No.241/2013. On these set of grounds, the learned Single Judge has allowed the writ petition and has consequently set aside the order passed by the respondent No.4/Assistant Commissioner declaring the

registered gift deed in favour of the respondent No.5 as null and void.

5. Heard the learned counsel for the appellant and learned Additional Government Advocate for the respondents. Perused the order under challenge.

6. On perusal of the material on record, we are of the view that the contentions raised in the writ appeal would not detain us for long. It is not in dispute that the appellant has gifted the property in favour of her daughter i.e., respondent No.5 under registered gift deed dated 22.08.2005. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was brought into force in 2007. The wordings incorporated under Section 23 of the Act clearly indicates that the application under Section 23 is prospective in nature. Section 23(1) of the Act deals with only those transactions which are made by senior citizens after the commencement of the Act.

7. In the present case on hand, the appellant has gifted the property in question under registered gift deed dated 22.08.2005 much prior to the commencement of the Act and therefore, all transactions which are pre-enactment are saved and therefore, the respondent No.4/Assistant Commissioner had no authority to entertain the petition filed by the appellant herein. Even otherwise, we are of the view that the appellant cannot pursue two parallel remedies on the same cause of action. It is not in dispute that the appellant has already approached the competent civil court seeking relief of declaration and has challenged the registered gift deed and also consequent sale deed executed by the respondent No.5. All these significant details are examined by the learned Single Judge.

8. In the light of the discussion made supra, we are in total agreement with the findings recorded by the learned Single Judge. The respondent No.4/Assistant Commissioner lacked inherent jurisdiction to entertain a petition in respect of

a registered gift deed executed before the commencement of the Act. Therefore, we do not find any infirmities which would warrant interference at the hands of this Court.

9. Accordingly, the writ appeal is dismissed. However, this order would not come in the way of the appellant in seeking redressal of her grievance in the pending suit bearing O.S.No.241/2013.

The pending interlocutory applications, if any, stand disposed of.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE