

De Jure

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Mandatory for Citizen to Revoke Gifts



INTRODUCTION

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ("Welfare Act") was enacted to provide for institutionalization of a suitable mechanism for the protection of life and property of senior citizens.¹ Despite having such an object, the Hon'ble Supreme Court of India, in the case of *Sudesh Chhikara vs Ramti Devi & Anr*, has interpreted Section 23(1) of the Welfare Act in a strict manner.

SECTION 23(1)

*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.***

BACKGROUND AND SUMMARY OF THE CASE

A petition was filed by a senior citizen woman under Section 23 of the Welfare Act alleging that her children were not maintaining her and therefore the release deed executed by her in favour of her two (2) daughters be declared null and void. The Maintenance Tribunal allowed the petition and declared the release deed null and void. The Punjab and Haryana High Court upheld the decision of the Maintenance Tribunal.

¹ *Pachamma v. State of Karnataka*, 2016 SCC OnLine Kar 8418

The matter was further Appealed and placed before Hon'ble Supreme Court of India. The Divisional Bench of the Hon'ble Apex Court held as follows -

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.

Therefore, the Hon'ble Supreme Court of India overturned the decision of the Punjab and Haryana High Court and the Maintenance Tribunal by strictly interpreting Section 23(1) and stating that the instrument of transfer cannot be revoked *unless* the condition to maintain the transferor (senior citizen) is not expressly mentioned in the deed of transfer.

OPINION

The strict interpretation of Section 23(1) by the Hon'ble Apex Court has set a precedent which may act to the detriment of the transferors of those gift deeds which have already been executed and does not entail such condition/s.

In fact, this Judgement may open a pandoras box that the children/ relatives may try to avoid these conditions as they are in a dominating position and the parents/ senior citizens are already under the influence of their loved ones.

It may be taken differently as well, on account of these conditions included in the gift the transferee will feel he is entitled to the property rather than being grateful to the transferor and just provide the bare minimum to the senior citizen.

CONCLUSION

Instead of interpreting Section 23(1) strictly in terms of the parameters as laid therein, it should be interpreted according to its spirit so that in a genuine situation it may warrant an action from displacing a senior citizen of its own property/s.

Contributed By:

Aradhana Bhansali, Partner: aradhana@rajaniassociates.net

Shivam Punjani, Article Clerk: spunjani@rajaniassociates.net

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Contact US



Rajani Associates

simple solutions

Address: Krishna Chambers
59 New Marine Lines
Churchgate
Mumbai 400020
Maharashtra, India
Telephone: (+91-22) 40961000
Facsimile: (+91-22) 40961010
Email: dejure@rajaniassociates.net
Website: www.rajaniassociates.net
