HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JUNE, 2026

BEFORE

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

WRIT PETITION NO. 2775 OF 2022 (GM-RES)

BETWEEN:

1. SRI B G SHANKAR GOWDA
S/O B G SANKAPPA
AGED 36 YEARS
AGRICUTURIST
BANNIKODU VILALGE AND POST
HONNALI TALUK
DAVANAGERE DISTRICT - 577 219.

2. SMT SHILPA K N
W/O B G SHANKAR GOWDA
AGED 30 YEARS
BANNIKODU VILLAGE AND POST
HONNALI TALUK
DAVANAGERE DISTRICT - 577 219.

...PETITIONERS

(BY SRI. CHANDRAKANTH R. PATEL.,ADVOCATE)

Digitally signed by SUMA B N
Location: HIGH COURT OF KARNATAKA

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF REVENUE
AMBEDKAR VEEDHI
VEDHANA SOUDHA
BANGALORE - 560 001
REP BY ITS PRINCIPAL SECRETARY.

2. THE DEPUTY COMMISSIONER
DAVANAGERE
DAVANAGERE DISTRICT - 577 001.

3. THE MAINTAINANCE AND WELFARE
OF PARENTS AND SENIOR CITIZENS
TRIBUNAL AND THE ASSISTANT
COMMISISONER, DAVANAGERE
DAVANAGER DISTRICT - 577 001.

4. TAHASILDAR
HONNALI
HONNALI TQ - 577 217.

5. SMT PREMAMMA
W/O LATE SANKAPPA B G
AGE MAJOR
BANNIKODU VILLAGE AND POST
HONNALI TQ
DAVANAGERE DISTRICT - 577 219.

6. SRI KARIBASAPPA
S/O LATE SANKAPPA B G
AGED MAJOR
BANNIKODU VILLAGE AND POST
HONNALI TQ
DAVANAGERE DISTRICT - 577 219.

…RESPONDENTS

(BY SRI. MANJUNATH RAYAPPA, AGA FOR R1 TO R4;
R6 SERVED BUT UNREPRESENTED;
R5 IS DIED AND P1 AND R6 ARE LEGAL HEIRS,
THEY ARE ALREADY ON RECORD V/O DATED 11.12.2025)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED 04.01.2022 VIDE ANNEXURE-J PASSED BY THE R-2; DIRECT THE R-5 TO RECEIVE THE MAINTENANCE AMOUNT FROM THE PETITIONERS AS PER ORDER DATED.11.12.2019 VIDE ANNEXURE-E PASSED BY THE R-3 ASSISTANT COMMISSIONER.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

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

ORAL ORDER

This petition is by the son and daughter-in-law respectively of respondent No.5, who is now stated to have passed away on 16.05.2023, being aggrieved by the order dated 04.01.2022 passed by respondent No.2-Deputy Commissioner in Case No.ಹಿ.ನಾ.ಕ.ಅ/ಸಿ.ಆರ್–02/2019–20 as per Annexure-J.

2. Brief facts of the case are that late respondent No.5 being the mother of petitioner No.1 and respondent No.6 had executed a deed of gift dated 27.10.2014 in favour of the petitioner No.1, conveying the property bearing Sy.No.25/4 of Bannikodu village, Honnalli Taluk, Davanagere District, which she had acquired in terms of family partition. Petitioner No.1 had subsequently executed another deed of gift in favour of petitioner No.2 on 20.07.2018, further conveying the said property in her favour. Based on the said conveyance, names of petitioner Nos.1 and 2 respectively was mutated in the revenue records.

3. Things stood thus respondent No.5 had filed a petition before the respondent No.3-Assistant Commissioner alleging she not having been provided with maintenance and being neglected by the petitioners and had sought for cancellation of deed of gift and the revenue entries. The said case was registered in Case No. ಹಿ.ನಾ.ಸಿ.ಆರ್–15/2018–19 before the respondent No.3 as per Annexure-E and in exercise of power conferred under Section 9 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Act for short) the respondent No.3- Assistant Commissioner had partly allowed the petition directing petitioner No.1 and respondent No.6 herein to pay a sum of ₹5,000/- each per month to respondent No.5 and it was made clear in the event of any default in making the payment into the bank account of the respondent No.5, property subject matter of the deed of gift would be forfeited. That respondent No.5 had thereafter moved to her maternal home. As such the petitioners, apparently could not make the payment of maintenance as directed by the respondent No.3.

4. An appeal came to the filed by respondent No.5 before respondent No.2- Deputy Commissioner under Section 16 of the Act, being aggrieved by the order of respondent No.3 refusing to cancel the deed of gift. Respondent No.2-Deputy Commissioner by the impugned order taking note of non-compliance of the order passed by the Assistant Commissioner, proceeded to allow the appeal by cancelling the registered deed of gift executed by the respondent No.5 in favour of the petitioner No.1. Being aggrieved, petitioners are before this Court.

5. Learned counsel for the petitioners taking this Court through the records submits that the order passed by respondent No.2 is without providing sufficient opportunity to the petitioners. In that though the petitioners had made all efforts to pay the monthly maintenance amount as directed by the respondent No.3-Assistant Commissioner, in view of respondent No.5 not being available, the amount could not be paid. He further submits in any event, the order passed by the respondent No.2-Deputy Commissioner runs contrary to the provisions of Section 23 of the Act, inasmuch as, there is no condition prescribed under the deed of gift for providing

maintenance to the respondent No.5. He submits in view of the subsequent change of circumstances, namely demise of respondent No.5, her personal right to receive the maintenance also would not survive. Under the circumstances seeks to allow the petition.

6. Heard. Perused the records.

7. Section 23 of the Act, 2007 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."

8. The Apex Court in the case of ***SUDESH CHHIKARA vs. RAMTI DEVI AND ANOTHER*** reported in ***(2024) 14 SCC 225*** at paragraphs 14 and 15 held as under:

> ***"14.*** *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.*
>
> ***15.*** *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."*

9. Perusal of deed of gift dated 27.10.2014 produced at Annexure-B do not even remotely contain any clause imposing any condition on the petitioner No.1 for providing any maintenance and amenities to respondent No.5. On this ground alone, the impugned order cannot be sustained. Even otherwise, respondent No.3-Assistant Commissioner, though has not adverted to the aforesaid aspect of the matter, had merely directed the petitioner No.1 and respondent No.6 herein to pay monthly maintenance of ₹5,000/- each into the bank account of the respondent No.5. As against which the reason assigned by the respondent No.2-Deputy Commissioner while passing the impugned order is non-compliance of the order passed by the respondent No.3-Assistant Commissioner. This under no circumstances can be a ground for cancellation of the deed of gift. As noted above, power under Section 23 of the Act can be invoked only if the conditions specified therein are satisfied.

10. As noted above, since the deed of gift do not contain such condition, the order impugned cannot be sustained. Accordingly, petition is ***allowed***. The impugned

order dated 04.01.2022 passed by the respondent No.2-Deputy Commissioner is quashed. In the light of demise of respondent No.5, the amount deposited by the petitioner No.1 and respondent No.6, if any, before this Court shall be released in their favour.

Sd/-
(M.G.S. KAMAL)
JUDGE

RU, List No.: 1 Sl No.: 5