

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH  
**WWW.LIVELAW.IN**

DATED THIS THE 1<sup>ST</sup> DAY OF APRIL 2021

BEFORE

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P. NO 147066 OF 2020 (GM-RES)

BETWEEN

1. SMT. ANUPAMA  
W/O. SHRIHARSH HALEMANI @ TADAKOD,  
AGE:46 YEARS,  
OCC: MEDICAL PRACTITIONER,  
R/O: BACK QUARTER, I FLOOR,  
ARYA MULTI SPECIALITY HOSPITAL  
MAHISHI ROAD, NAGARKAR COLONY,  
DHARWAD



2 . SHRISHARSH A.S.  
AGE:50 YEARS,  
OCCU: MEDICAL PRACTITIONER,  
R/O: BACK QUARTER, I FLOOR,  
ARYA MULTI SPECIALITY HOSPITAL  
MAHISHI ROAD, NAGARKAR COLONY,  
DHARWAD

...PETITIONERS

(BY SRI.GURUDAS S KANNUR, SR. COUNSEL FOR  
SRI.MRUTYUNJAYA S HALLIKERI)

AND

1 . THE ASSISTANT COMMISSIONER  
AND THE PRESIDENT, MAINTENANCE AND  
WELFARE OF PARENTS

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AND SENIOR CITIZENS ACT 2007  
DHARWAD SUB-DIVISION, BELAGAVI

2 . SUMA  
W/O SHANKAR HALEMANI @ TADAKOD,  
AGE: 72 YEARS,  
OCC: HOUSEHOLD WORK,  
R/O: 1ST FLOOR,  
ARYA MULTI SPECIALITY HOSPITAL,  
MAHISHI ROAD,  
NAGARKAR COLONY,  
DHARWAD.

...RESPONDENTS

(BY SRI. VINAYAK S KULKARNI, AGA FOR R2;  
SRI. K.L.PATIL, ADV., FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OR ORDER OR DIRECTION IN THE NATURE OF WRIT OF CERTIORARI TO QUASH THE IMPUGNED ORDER BEARING NO.MWPSCA/CR/20/2019 PASSED BY THE RESPONDENT NO.1 DATED 26.06.2020 THEREBY CANCELLING THE RELEASE DEED BEARING REG NO.DWR-1-03253-2018-19 DATED 11.07.2018 CD NO.DWD401 IN RESPECT OF PROPERTY BEARING HYG 307/2 MUNICIPAL NO.HDMC 12776 SITUATED AT NAGARKAR COLONY, MAHISHI ROAD, DHARWAD AS PER ANNEXURE-A AND DISMISS THE CLAIM PETITION FILED BY THE RESPONDENT NO.2 UNDER SECTION 6 OF KARNATAKA MAINTENANCE AND SENIOR CITIZENS ACT 2007.

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

ORDER

This writ petition is filed challenging the order dated 26/6/2020 passed by the 1<sup>st</sup> respondent, whereby the release deed dated 11/7/2018 executed by the respondent No.2 in favour of the petitioners is cancelled by exercising power under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short the Act).

2. Admitted facts are as follows:

The respondent No.2, who was the owner of the property bearing No.HYG 307/2 Municipal No.HDMC 12776 situated at Nagarakar colony, Mahishi road, Dharwad executed a release deed, releasing the property in question in favour of the petitioners and the said release was subject to payment of Rs.8,30,000/- to the 2<sup>nd</sup> respondent and Rs.1,70,000/- to the sister of respondent No.2. Receipt of consideration amount of Rs.8,30,000/- by respondent No.2 is acknowledged and not disputed.



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3. After executing the release deed, the 2<sup>nd</sup> respondent filed a petition under Section 23 of the Act seeking for cancellation of the release deed, contending that the petitioners failed to maintain the respondent No.2. The 1<sup>st</sup> respondent exercising power under Section 23 passed the impugned order dated 26/6/2020 canceling the release deed executed in favour of the petitioners on the ground that the release deed was executed by coercion and misrepresentation. Hence, this writ petition.

4. Learned senior counsel Mr.Gurudas Kannur appearing for the learned counsel for petitioners would submit that provision of Section 23 of the Act is not applicable to the facts of the case, since there is no clause which provided for maintenance of the respondent No.2 by the petitioners and also the property in question was released in favour of the petitioners subject to payment of consideration amount of Rs.8,30,000/-. Hence, he submits that impugned order passed by the respondent No.1 is without authority of law. In support of his submission, reliance is placed on the decision of the co-ordinate Bench of this Court in WP No.52010/2015 (DD 26.2.2019) and



the decision of the Full Bench of Kerala High Court in the case of **SUBHASHINI V/S. DISTRICT COLLECTOR, KOZHIKODE** reported in **AIRONLINE 2020 KER 674**.

5. Learned counsel for the respondent No.2 would submit that even in the absence of condition, the transferee shall provide basic amenities and physical needs to the transferor and the Respondent No.1 in the absence of such condition can exercise the power under Section 23 to declare the release deed as void, when the transferee has failed to maintain the transferee. In support of his submission, he has placed reliance on the decision of the Division Bench of Punjab and Haryana High Court in the case of **Smt.Raksha Devi V/s. Deputy Commissioner-cum-District Magistrate, Hoshiarpur and others** in **CWP.No. 5086/2016**.

6. I have examined the submissions made by the learned counsel for the parties.

7. Admittedly respondent No.2 executed a release deed in favour of the petitioners releasing the property in question in



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favour of the petitioners subject to payment of Rs.8,30,000/- to the 2<sup>nd</sup> respondent. It is not in dispute that the respondent No.2 has received sum of Rs.8,30,000/- from the petitioners for releasing the property in question in favour of the petitioners.

8. Section 23 of the Act 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.*



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(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.

9. A plain reading of the Section 23 of the Act would indicate that any transfer made by the senior citizen by way of gift or otherwise, his property, subject to the condition that the transferee shall provide basic amenities and basic physical needs to the transferor, the transfer at the instance of transferor shall be declared as void, if the transferee fails to maintain the transferor.

10. The co-ordinate Bench of this Court in WP No.52010/2015 has held that the transactions can be declared as null and void provided the same contains a stipulation that the transferor shall maintain senior citizen.

11. The decision relied upon by the learned counsel for the respondent No.2 in the case of **Smt.Raksha Devi** supra was considered by the Full Bench of Kerala High Court in the case of **SUBHASHINI** supra, wherein at para 52 it is held that the condition as required under Section 23(1) for provision of basic



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amenities and basic physical needs to a senior citizen has to be expressly stated in the documents of transfer, which transfer can only be one by way of gift or which partakes the character of gift or a similar gratuitous transfer. In the instant case, there is no condition specifying that the transferee has to provide basic amenities and physical needs to the respondent No.2.

12. In the case of Smt.Raksha Devi (supra), it is held that condition referred in Section 23 has to be understood based on the conduct of the transferee and not with reference to the specific stipulation in the deed of transfer and condition mentioned in Section 23 is only referable as a conduct of the transferee, prior to and after execution of the deed of transfer, and as such challenge based on the ground that there is no reference to recital in the deed of transfer is of no consequence. Even assuming for a moment, in the absence of condition specified in Section 23, it is implied that the transferee is under an obligation to provide basic amenities and physical needs to the transferor in view of the objective and scheme of act, the decision in the case of Smt.Raksha Devi is not applicable to the





facts of the case, since the release of property in favour of the petitioners was not out of natural love and affection but for consideration and the Respondent No.2 having acknowledged the receipt of the said consideration cannot invoke the jurisdiction under Section 23 for declaring the release deed as void. Hence, the decision relied upon by the learned counsel for the respondent No.2 is not applicable to the facts and circumstances of the case. Accordingly, I pass the following:

ORDER

- i) The writ petition is allowed.
- ii) The impugned order dated 26/6/2020 passed by the respondent No.1 at Annexure-A is hereby quashed and the claim petition filed by the respondent No.2 under Section 6 of the Act is hereby dismissed as not maintainable.

It is needless to state that this order will not come in the way of respondent No.2 to agitate her right before the jurisdictional Civil Court.

Sd/-  
JUDGE



"TRUE COPY"

Shashikala B

Section Officer

Convoca Branch

7/6/21