



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 1841/2019

Pokar Ram S/o Shri Janwtaram, Aged About 61 Years, By Caste Dewasi, Resident Of Village Pal, Tehsil And District Jodhpur (Raj.).

-----Petitioner

Versus

1. Maintenance Tribunal Cum Sub Divisional Magistrate, Jodhpur
2. Tehsildar, Jodhpur.
3. Smt. Soni Devi W/o Janwtaram,, By Caste Dewasi, Resident Of Village Pal, Tehsil And District Jodhpur (Raj.).
4. Khinya Ram S/o Shri Janwtaram,, Aged About 61 Years, By Caste Dewasi, Resident Of Village Pal, Tehsil And District Jodhpur (Raj.).

-----Respondents

For Petitioner	:	Mr. Moti Singh
For Respondents	:	Mr. C.S. Kotwani Mr. Bhupendra Singh

HON'BLE DR. JUSTICE NUPUR BHATI

Judgment

REPORTABLE

Reserved on 03/02/2023

Pronounced on 23/02/2023

1. This Civil Writ Petition has been preferred claiming for the following reliefs:-

"a) That by an order, writ or direction may kindly be issued and the order dated 31.10.2018 (Annexure-13) passed by learned Maintenance Tribunal, Jodhpur in Application No. 83/2017, may kindly be quashed and set aside extend to cancellation of gift deed dated 7.9.2010 (Annexure-03).

b) That by an order, writ or direction may kindly be issued and the order dated 01.02.2019 (Annexure-17) passed by learned Appellate Tribunal (Collector), Jodhpur in Appeal No. 4/2018 may kindly be quashed and set aside.

c) That by an order, writ or direction may kindly be issued and the application filed by the respondent no.3 extend to prayer of cancellation of gift deed filed before learned Maintenance Tribunal cum S.D.O., Jodhpur may kindly be dismissed.

(D.B. SAW/227/2023 has been filed in this matter. Please refer the same for further orders)

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d) That by an order, writ or direction may kindly be issued and the entry made by the patwari in Jamabandi (Annexure-14) in pursuance of order dated 31.10.2018 may kindly be quashed and set aside.

e) Any other order or direction relief which this Hon'ble Court deem just and proper may also be granted in favour of the petitioner."

2. The petitioner-Pokar Ram is the eldest son of the respondent no.3-Smt. Soni Devi, and the brother of the respondent no.4-Khinya Ram.

3. *Vide* the impugned order, dated 31.10.2018 (at Annex-13), passed by the learned Maintenance Tribunal, Jodhpur, the registered gift deed, dated 07.09.2010 (at Annex-3), executed by the respondent no.2 in favour of the petitioner, for a land admeasuring 2 *bigha* 4 *biswa* in Village-Pal, Tehsil-Jodhpur, was quashed and set aside while exercising the powers under Section 23 of the Maintenance and Welfare of Parents And Senior Citizens Act, 2007 (for short "Act of 2007") and directed the petitioner to provide the maintenance of amount of Rs. 5,000/- to the respondent no.3.

4. The petitioner assails the impugned order only to the extent that the gift deed in question was incorrectly quashed and set aside by the learned Maintenance Tribunal despite the fact that the said gift deed did not contain any explicit condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; an essential ingredient for invoking of Section 23 of the Act of 2007.

5. Learned counsel for the petitioner made the following submissions:-





5.1 That a family settlement was arrived at in September 2010, whereby three gift deeds, with respect to lands situated at Khasra No. 134 and 460 of Village-Pal, Tehsil-Jodhpur were executed by the respondent no.3 in favour of the petitioner, the respondent no.4 and their sisters, namely Durga and Ganga. And that, a release deed with respect to the land situated at Khasra no. 134 was executed by the respondent no. 3 in the names of the petitioner and respondent no. 4.

5.2 That after a lapse of a period of about 8 years, the respondent no.4 challenged the gift deed in question before the learned Tribunal, through the respondent no.3.

5.3 That a specific objection as to the jurisdiction of the learned Tribunal was raised by the petitioner and a clear submission was made to the effect that the gift deed in question is unconditional.

5.4 That the impugned order is a non speaking order inasmuch that it does not deal with the statutory provision of law contained in Section 23 of the Act of 2007, and, therefore, deserves to be quashed and set aside.

5.5 That the petitioner laid challenge to the impugned order before the District Collector, Jodhpur but the same was incorrectly dismissed, *vide* order dated 31.01.2019 (at Annex-17), with the finding that the learned Tribunal was competent to pass the impugned order.

5.6 That the order, dated 11.02.2019, passed by this Court modified the interim order upon the admission of the petitioner himself in favour of the respondent no.3 whereby the maintenance amount was increased from Rs. 5,000/- to Rs. 10,000/- which the petitioner has duly complied with.



5.7 And that in the given factual matrix, the aforementioned order dated 31.01.2017 deserves to be quashed and set aside, and the impugned order dated 31.10.2018 deserves to be quashed and set aside to the extent of cancellation of the gift deed in question.

6. Learned counsel for the petitioner placed reliance on the judgment rendered by this Court in the case of **Vinod Sharma v. Smt. Shanti Devi, S.B. Civil Writ Petition No. 1936/2022** decided on 21.02.2022.

Relevant portion of the said judgment, as relied upon by the learned counsel, is reproduced hereunder:-

"(28) More often than not, the authorities discharging the duties, under the Act of 2007, including the Tribunal are swayed by the misery of the aged and vagaries of lives of senior citizens. The situation is really grim. The moral standards of the society including the children are deteriorating each day. But the Courts are required to decide right of litigating parties on constitutional moralities and not on public or popular moralities.

(29) This Court proposes to examine as to whether the order of eviction or any other like order of such nature can be passed within the framework of the laws involved in the instant case.

(34) The Statement of Objects and Reasons reveals that the Act of 2007 was promulgated to give more attention to the care and protection of the older persons. They clearly spell out that though parents can claim maintenance under the Code of Criminal Procedure, 1973, but the same is time consuming and expensive, hence, in order to have a simple, inexpensive and speedy provisions to claim maintenance for parents and senior citizens, the Act has been enacted.

(35) Apart from maintenance, the Act has been brought to ensure welfare and well being of senior citizens while creating provisions for setting up old-age homes and for making the State Government, and District Magistrates and officers





subordinate to them responsible for protecting the life and property of the senior citizens.

(37) In the backdrop of the Statement of Objects and Reasons and the principles noted above, if the Scheme of the Act of 2007 is to be deciphered, this Court strongly feels that the provisions including the provisions under sections 4 and 5 of the Act of 2007 are meant to ensure that the senior citizens or parents be provided with sufficient means to live with dignity. The progenies or persons liable to maintain their parents, can be directed by the Tribunal constituted under the Act of 2007 to pay a sum not exceeding Rs.10,000/- per month to the parents.

(39) The stand-alone provision that deals with the immoveable property of the senior citizens is, section 23, which too is applicable in cases where any senior citizen has transferred by way of gift or otherwise a property subject to the condition that transferee shall provide basic amenities to meet their basic and physical needs to the transferor and in case such transferee neglects to provide such amenities, the transferred property shall be deemed to be fraudulent or under coercion and at the option of the transferee, it can be declared void by the Tribunal.

(41) Since none of the ingredients have been pleaded or are otherwise present in the case in hands, the applicability of the provisions of section 23 is out of question. That apart, in view of the specific stand taken by Mr. Chanda that the Tribunal has not exercised its power under section 23 of the Act of 2007, this Court is of the firm view that section 23 is not required to be gone into. Hence, the pendency of Larger Bench reference should not detain this Court from ferreting out an answer by itself.

(50) The duties which have been prescribed for District Magistrate under Chapter V of the Rules of 2010, framed in exercise of powers under section 32 of the Act of 2007, cannot be construed to be conveying a power, which the Parent Act, namely the Act of 2007 does not even envision much less permit.





(51) A bare look at Rule 20 of the Rules of 2010 lays bare that the duties and powers enshrined under Rule 20, are available with the "District Magistrate".

(52) Hence, even by over-stretching the scope of Rule 20, if power of eviction is read into the Rules of 2010, this Court is of the firm view that the power of passing an order of eviction (if any), can be exercised by the District Magistrate or its subordinate and in no case by the Tribunal. An S.D.O. may be administratively subordinate to the District Magistrate, but while discharging the duties as a persona designata – the Presiding Officer of the Tribunal, he does not act as a subordinate of the District Magistrate in any manner. (53) Though no reference to Rule 20 of the Rules of 2010 has been made by the Tribunal, if argument of Mr. Chanda were to be accepted, then also, the authority to pass such an order does not vest in the Tribunal, as Rule 20 categorically uses expression 'District Magistrate'. The Tribunal has thus usurped the purported powers under Rule 20, which are otherwise not meant for or available to it. The order of eviction is, therefore, fundamentally void and without jurisdiction.

(64) To conclude, while observing that the Act of 2007 does not envisage an order of eviction even by the District Magistrate, much less the Tribunal, this Court unhesitantly holds that order of ouster of the petitioner oppugned in the instant writ petition is dehors the provisions of the Act of 2007; beyond the scope of Rules of 2010 and also out of the powers of the Tribunal"

7. *Per contra*, learned counsel for the respondents opposed the submissions made on behalf of the petitioner and made the following submissions;

7.1 That the respondent no.3 is about 85 years old, a widow and an illiterate lady. That the gift deed in question was executed by the petitioner through fraud and deception to usurp the sole self acquired property of the respondent no.3.





7.2 That after the execution of the gift deed in question, the respondent no.3 was neglected by both her sons; the petitioner and respondent no.4.

7.3 That no family settlement was entered into between the parties before any competent authority.

7.4 That in the aforementioned factual backdrop, the respondent no.3 being aggrieved by the neglect of both her sons, approached the learned Tribunal; whereupon after looking into the given factual matrix of the present case, the learned Tribunal in exercise of the powers so vested in it under Section 23 of the Act of 2007, rightly cancelled and set aside the gift deed in question, and ordered for an amount of monthly maintenance of Rs. 5,000/- to be paid to her by the petitioner.

8. Learned counsel for the respondent placed reliance on the judgment rendered by this Court in the case of **Himmat Singh v. Sub Divisional Magistrate, Sriganganagar & Anr. (S.B. Civil Writ No. 36/2012)** decided on 07.08.2018, and drew the attention of this Court to the following paragraphs:-

"Section 23 of the Act of 2007 is a socio-beneficial legislation and has to be given a wider interpretation so as to benefit the recipients i.e. the neglected senior citizens and parents. Section 23(1) empowers the Tribunal to declare void, a transfer of property by a senior citizen under any of the circumstances enumerated therein. The transfer may be to the transferee by way of gift or otherwise. In the firm opinion of this Court, even permission to reside in the property to a relative out of love and affection would be covered within the purview of Section 23 of the Act of 2007. Thus, the Tribunal would be acting well within its jurisdiction while directing restoration of possession of property in which, the senior citizen or the parent has allowed a relative including a son or





daughter to reside out of love and affection. This view is fortified by the above referred judgment of the Delhi High Court. As the relative in the present case is none other than the petitioner being the major son of the respondent No.2 and since, he has failed to perform his social obligations viz. providing the basic amenities and physical needs to the senior citizen and his father, the respondent, the possession of the petitioner over the house in question was rightly declared void keeping in view the language of the statutory provision."

9. Learned counsel for the respondent also made the following submissions and sought to fortify them with case laws;

9.1 That the Act of 2007 was enacted with the object of maintaining and protecting the interests of aged parents/senior citizens. Reliance in this regard was placed upon; the judgments rendered by the Hon'ble Punjab and Haryana High Court in the cases of ***Justice Shanti Sarup Dewan, Chief Justice (retd.) & Anr. v. Union Territory, Chandigarh and Ors. (Letters Patent Appeal No. 1007/2013) (Division Bench)*** decided on 26.09.2013, and on ***Jagtar Singh v. State of Punjab (C.W.P. 5117/2018)*** decided on 01.03.2018, ***Parmeshwari Devi and Anr. v. Appellate Authority-cum-District Collector Gazilka and Ors. (C.W.P. No. 14740/2019)*** decided on 20.08.2019, and ***Gurdeep Singh v. Sub Divisional Magistrate-cum-Presiding Officer, Maintenance Tribunal, Samana (C.W.P. No. 13121/2016)*** decided on 29.11.2017. Reliance was also sought to be placed upon the judgment rendered by the Division Bench of the Hon'ble Delhi High Court ***Sunny Paul v. State of NCT of Delhi & Ors. (C.M. No. 116699/2017)*** decided on 03.10.2018.

9.2 That the gift deed may be cancelled under Section 23 of the Act of 2007 even in the absence of specific conditions in the





transfer deed. Reliance in this regard was placed upon the judgments; rendered by the Division Bench of the Hon'ble Kerala High Court in the case of **Shabeen Martin, W/o Williamsree Jayan v. Muriel, W/o Late Rejinold Beemello (W.A. No. 1851/2016)** decided on 03.10.2016 and by the Division Bench of the Hon'ble Punjab and Haryana High Court in the case of **Ramesh @ Pappi v. Ishwar Devi and Ors. (Letters Patent Appeal No. 483/2021)** decided on 08.07.2021.

10. Heard. Perused the record of the case as well as the judgments cited at the Bar.

11. This Court observes that the issue that arises for consideration in the present case is, whether a gift deed of transfer of property ought to contain explicit condition(s) with respect to the transferee providing basic amenities and basic physical needs to the transferor for it to come under the purview of Section 23 of the Act of 2007.

12. Before advertng to the facts and circumstances of the present case, this Court deems it appropriate to analyze the object and intent with which the Act of 2007 has been promulgated and the relevant provisions of law contained therein.

For the sake of brevity, the object and reasons of the Act of 2007 is reproduced hereunder:

"Statement of Objects and Reasons

Traditional norms and values of Indian Society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all





alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill further proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting-up oldage homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for:-

(a) appropriate mechanism to be set-up to provide need-based maintenance to the parents and senior citizens;

(b) providing better medical facilities to senior citizens;

(c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;

(d) setting-up of oldage homes in every district.

4. The Bill seeks to achieve the above objectives."

13. This Court further observes that Chapter II of the Act of 2007 deals with the maintenance of parents and senior citizens and Chapter V of the Act of 2007 deals with Protection of Life and Property of Senior Citizen. The relevant provisions of law contained therein are reproduced hereunder:-





Chapter II: Maintenance Of Parents And Senior Citizens

4. Maintenance of Parents and Senior Citizens

1. A senior citizen including parent who is unable to maintain himself from his own earning or property owned by him, shall be entitled to make an application under section 5 in case of -

- i. parent or grand-parent, against one or more of his children not being a minor
- ii. a childless senior citizen, against such of his relative referred to in clause (g) of section 2

2. The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

3. The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

4. Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

8. Summary procedure in case of inquiry

1. In holding any inquiry under section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.

2. The Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973

3. Subject to any rule that may be made in this behalf, the Tribunal may, for the, purpose of adjudicating and deciding upon





any claim for maintenance, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry

9. Order for maintenance

1. If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.

2. The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.

10. Alteration in allowance.-

(1) On proof of misrepresentation or mistake of fact or a change in the circumstances of any person receiving a monthly allowance under Section 5, for the maintenance, the Tribunal may make such alteration, as it thinks fit, in the allowance for the maintenance.

(2) Where it appears to the Tribunal that, in consequence of any decision of a competent Civil Court, any order made under Section 9 should be cancelled or varied, it shall cancel the order or, as the case may be, vary the same accordingly."

Chapter V: Protection Of Life And Property Of Senior Citizen

23. Transfer of property to be void in certain circumstances

1. Where any senior citizen who, after the commencement of this Act, has 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.

14. A bare perusal of the Section 23 reflects that any transfer of property can be declared as void in certain circumstances. In order to declare the transfer of the property by way of gift or otherwise as void, there are two necessary contingencies which need to be fulfilled; firstly, a condition in the transfer which is made by way of gift or otherwise that the transferee shall provide the basic amenities and basic physical needs to the transferor, and secondly, if the 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 undue influence and shall at the option of transferor be declared void by the tribunal. Thus, the onus is upon the transferor, who invokes Section 23 of the Act of 2007 to show that the transfer of the property in dispute either by way of gift or otherwise bore the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor.

15. This Court made a specific query to learned counsel appearing for respondent no.3 to show whether the gift deed, executed between the petitioner and the respondent no.3, bears a specific condition that the petitioner was under obligation to





provide basic amenities and physical needs to the respondent no.3. To such query made, the learned counsel for the respondent no.3 submitted that though there is no such explicit condition in the gift deed dated 07.09.2010 however, since the petitioner played fraud with the respondent no.3 in creating the gift deed dated 07.09.2010 therefore, in such circumstances the gift deed has rightly been declared null and void by the learned Tribunal.

16. This Court perused the complete documents submitted by the respondent no.3 and finds that nothing has been placed on record in order to show that there was a condition mentioned in the gift deed dated 07.09.2010 which mandated the petitioner to provide the basic amenities and physical needs to the respondent no.3.

17. This Court further observes that though a son is always duty bound to maintain his mother and provide her with the basic amenities and physical needs for a decent living, since the application before the learned Maintenance Tribunal has been preferred while invoking Section 23 of the Act of 2007 therefore, this Court has to dwell upon Section 23 of the Act of 2007 and examine whether the two conditions prescribed therein stands satisfied for the purpose of declaring the gift deed dated 07.09.2010 as null and void.

18. This Court also observes that the case-law of **Vinod Sharma (supra)**, cited on behalf of the petitioner pertains to controversy revolving around an order of eviction passed by the learned Tribunal whereas in the instant case, the controversy revolves around declaring the gift deed as null and void.



19. This Court is of the view that as Section 23 has been invoked for the purpose of declaration of the gift deed, dated 07.09.2010, as null and void, which was executed between the petitioner and the respondent no.3 then in such case, the presence of an explicit condition in the gift deed dated 07.09.2010, that the petitioner in lieu of such gift deed is under an obligation to provide the basic amenities and basic physical needs to the respondent no.3, ought to have been there. Moreover, the second condition of Section 23 also did not stand satisfied, for the reason that the second condition is related to the first condition and only if there is a violation of the explicit condition, if mentioned in the gift deed, only then could it be deemed that the gift deed has been made by fraud or coercion or under undue influence, and only, then upon both conditions being fulfilled at option of the respondent no.3 could the said gift deed have been declared void by the learned Maintenance Tribunal.

20. This Court further observes that the respondent no.3 has executed the gift deed way back on 07.09.2010, and after a period of almost seven years a challenge has been given to the gift deed by way of filing application under Section 5 read with Section 23 of the Act of 2007, before the learned Maintenance Tribunal. There is no satisfactory ground taken or justification given for such delay in filing the said application before the learned Maintenance Tribunal.

21. This Court finds that the Hon'ble Apex Court in the case of ***Sudesh Chhikara v. Ramti Devi and Anr. Civil Appeal No. 174/2021*** decided on 06.12.2022 adjudicated upon the issue





whether the release deed executed could be declared null and void by the learned Maintenance Tribunal and the relevant part of the judgment is reproduced hereunder:-



"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."

22. This Court further observes that in light of the judgment rendered by the Hon'ble Apex Court in the case of **Sudesh Chhikara (supra)**, the judgments cited on behalf of the respondents does not render any assistance to their case.

23. This Court therefore observes that for exercising jurisdiction under Section 23 of the Act of 2007, an explicit condition binding



the transferor to provide the basic amenities and basic physical needs to the transferee has to be incorporated in the deed of transfer of property, whereas the gift deed dated 07.09.2010 does not bear any such condition and in the absence of the same, the gift deed of transfer could not have been declared as null and void by the learned Maintenance Tribunal. Further there was no categorical submission made nor any pleading taken that there was an explicit condition in the gift deed in question that the petitioner shall provide the basic amenities and basic physical needs to the respondent no.3.

24. This Court upon looking into the registered gift deed in question, dated 07.09.2010, (at Annex-3) finds that it does not contain any explicit or express condition for the transference-petitioner to provide for the basic amenities or physical needs to the transferor-respondent no.3. And that, such gift deed was duly registered out of love and affection of the respondent no.3 towards the petitioner.

25. This Court further observes that the impugned order dated 31.10.2018 (at Annex-13), is not a reasoned order as it does not record the reason for invoking its jurisdiction under Section 23 of the Act of 2007 for declaring the gift deed in question as null and void in the absence of any specific condition in the gift deed.

26. This Court also observes that the impugned order dated 31.01.2019 (at Annex-17), passed by the District Collector, Jodhpur also is a non speaking order insofar that it does not assign a reason for exercising power under Section 23 of the Act





of 2007 by the learned Maintenance Tribunal for declaration of the gift deed in question as null and void.

27. As an upshot of the above discussion, the present writ petition is therefore allowed and the impugned order dated 31.10.2018 (Annex.-13) passed by the learned Maintenance Tribunal cum Sub Divisional Magistrate, Jodhpur is quashed and set aside to the extent of the registered gift deed dated 07.09.2010 being declared as null and void and if any entry is made by the concerned *Patwari* in the *Jamabandi* in pursuance of the order dated 31.10.2018 is also hereby quashed and set aside. The impugned order dated 31.01.2019 (Annex.17) passed by the learned Appellate Tribunal (District Magistrate) in Appeal No.4/2018 is also quashed and set aside.

28. While allowing the instant matter, the fact heavily weighs in the mind of this Court that the petitioner is regularly paying monthly maintenance of Rs. 10,000/- to the respondent no.3 in compliance of the order dated 06.12.2021 of this Court to the same bank account where he is already paying instalments till now. In case of default regarding the same, the respondent no.3 shall be at liberty to avail the appropriate remedy.

29. The present petition is thus allowed, with the aforesaid direction. Accordingly, the stay application is also disposed of.

30. No order as to costs.

(DR.NUPUR BHATI),J

36-Sanjay/-