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CAN DONOR UNSETTLE SETTLEMENT

1. Settlement deed has not been defined under the Transfer of Property Act. The Specific Relief Act Section 2(b) defines "Settlement" means an instrument (other than a will or codicil as defined by the Indian Succession Act, 1925 (39 of 1925), whereby the destination or devolution of successive interests in movable or immovable property is disposed of or agreed to be disposed of".

2. To my understanding Settlement does not restrict to in presenti disposition. We always read Section 5 and 6 for transfer and what may be transferred along with Section 7 of the Transfer of Property Act to see who is competent to effect transfer. It is natural then to look at Section 122 which defines Gift and till 129 the various events relating to Gift is dealt with. Section 126 deals with suspension of revocation of Gift. Section 126 will speak that both donor and done has to agree on the happening of a specified event, the Gift shall be suspended or revoked and the same is revocable fully or partly on the agreement of both the parties. A Gift may also be revoked in any cases (Save want or failure of consideration) in which, if it were a contract, it might be rescinded. Gift otherwise cannot be revoked. The only event of cancellation is that if the Gift is not acted upon.

3. We come across several instances, when the donor simply executes a unilateral cancellation deed and unsettles the settlement. Whether that is permissible under law. This decision of the Supreme Court permitted cancellation of Settlement deed:

5. Section 122 of the transfer of Property Act (for short, the "TP Act") defines 'gift' to mean the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

6. Acceptance by or on behalf of the donee must be made during the life time of the donor and while he is still capable of giving.

7. It would thus be clear that the execution of a registered gift deed, acceptance of the gift and delivery of the property, together make the gift complete. Thereafter, the donor is divested of his title and the donee becomes the absolute owner of the property. The question is : whether the gift in question had become complete under Section 123 of the TP Act? It is seen from the recitals of the gift deed that that Motilal Gopalji gifted the property to the respondent. In other words, it was a conditional gift. There is no recital of acceptance nor is there any evidence in proof of acceptance. Similarly, he had specifically stated that the property would remain in his possession till he was alive. Thereafter, the gifted property would become his property and he was entitled to collect mesne profits in respect of the existing rooms throughout his life. The gift deed conferred only limited right upon the respondent-donee. The gift was to become operative after the death of the donor and he was to be entitled to have the right to transfer the property absolutely by way of gift or he would be entitled to collect the mesne profits. It would thus be seen that the donor had executed a conditional gift deed and retained the possession and enjoyment of the property during his life time. The recitals in the cancellation deed is consistent with the recitals in the gift deed. He had expressly stated that the respondent had cheated him and he had not fulfilled the conditions subject to which there was an oral understanding between them. Consequently, he mentioned that the conditional gift given to him was cancelled. He also mentioned that the possession and enjoyment remained with him during his life time. He stated, "I have to execute immediately this deed of cancelling the conditional gift deed between us. Therefore I hereby cancel the conditional gift deed dated 15.5.65 of Rs. 9000



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Amsterdam Ankara Asti Asti Astinción Astinción Athens Bangkol Bangkol Bangkon	in words rupees nine thousand presented at the Serial No. 2153 on 15.5.65 in the office of the Sub-Registrar Baroda for registration. Therefore, the said conditional gift deed dated 15.5.65 is hereby cancelled and meaningless. The property under the conditional gift has not been and is not to be transferred in your name." Thus he expressly made it clear that he did not hand over the possession to the respondent nor did the gift become complete						
Belgrade Berlin Birkrikara Bogota Boologna Buchastara Buchast Buchapest Buchapest	during the life time of the donor. Thus the gift had become ineffective and inoperative. It was duly cancelled. The question then is : whether the appellant would get the right to the property? It is not in dispute that after the cancellation deed dated June 9, 1965 came to be executed, duly putting an end to the conditional gift deed dated May 15, 1965, he						
Calic Call Casablanca Doha Douta Durbai Durbai Durbai Ferrara	executed his last Will on May 17, 1965 and died two days thereafter.						
	8. The appeal is accordingly allowed. The judgments and decrees of the trial Court and the appellate court stand set aside. Consequently, the suit stands dismissed. No costs.						
Fukuoka Geneve Gouadalajara Guatemala Hanoi Haisinki Hong Kong Istanbul	Naramadaben Maganlal Thakker vs. Pranjivandas Maganlal Thakker and Ors. (10.09.1996 - SC) : MANU/SC/1045/1997 = 1997(2) SCC 255						
Jakarta Jeddah Kampota Kaunos Kagentut Koblerz Koblerz Koblerz Koblerz Kolan	4 . This Judgement of the Supreme Court does not permit cancellation of the gift deed as it will state that registration itself is a voluntary act to constitute acting upon by the donor:						
	"19. In the case at hand as already noticed by us, the execution of registered gift deed and its attestation by two witnesses is not in dispute. It has also been concurrently held by all the three courts below that the donee had accepted the gift. The recitals in the gift deed also prove transfer of absolute title in the gifted property from the donor to the donee. What is retained is only the right to use the property during the lifetime of the donor which does not in any way affect the transfer of ownership in favour of the donee by the donor."						
Kuala Lumpur Kyiv Lagos Lisban Lima Lindan Loadon Loadon Loadon							
Luanda Lublin Luxemb Manlaga Mantov Meceilin Mexico (Miami	Renikuntla Rajamma vs. K. Sarwanamma (17.07.2014 - SC) : MANU/SC/0612/2014						
Luanda Lublin Luxembourg Marala Manila Manilova Mantova Mantova Mantova	5 . The Full Bench of the Madras High Court held that :						
Mlan Moalena Monterey Montreal Morelia Morelia Manteal Munich Naples	"The learned counsel for the petitioners submitted that such unilateral cancellation of the Settlement Deed is impermissible owing to the decisions of the Hon'ble Supreme Court in Thota Ganga Laxmi and Others Vs. Government of Andhra Pradesh & Others reported in MANU/SC/1267/2010 : 2010 (15) SCC 207 and Satya Pal Anand Vs. State of Madhya Pradesh and others reported in MANU/SC/1359/2016 : 2016 (10) SCC 767, as well as the						
New Delhi Osolka Oslo Ostawa Paris Paris Paris Paris Paria Pane	decision of the Hon'ble Full Bench of this Court in Sasikala and Others Vs. The Revenue Division Officer-cum-Sub Collector, Devakottai, Sivagangai District and another reported in MANU/TN/6694/2022 : 2022 (7) MLJ 1, wherein it has been held that unilateral cancellation of Settlement Deed, is not permissible.						
Prague Ruebla Rga Rio de Janeiro Rome Rome Rosmo Rossov Zassov Santiago de Chile	6 . In this case the Madras High Court will hold that unilateral cancellation of settlement deed is not permitted and also issued various guidelines:						
São Paulo Sarajevo Secul Shanghai Shenzhen Sichey Singapore Sicopie Sicopie	"4. The learned Special Government Pleader made an attempt to distinguish the facts involved in Satya Pal Anand and Thota Ganga Laxmi's cases (supra) and submitted that prior to 29.11.2018, there was no circular, prohibiting such unilateral cancellation of Settlement Deed and therefore, the registration of the cancellation of the Settlement Deed, cannot be found fault with.						
Strasbourg Taipei Tegucigalpa Tel Aviv The Hague Tokyo Toronto Toronto Toruni Tento	5. The issue pertaining to unilateral cancellation of a registered document is no more res integra. In Thota Ganga Laxmi, and Ors. Vs Government of Andhra Pradesh & Ors., reported in MANU/SC/1267/2010 : (2010) 15 SCC 207						
Ucline Valencia Venice Vienna Vientus Vintus Vintus Zagreb Zürich	Padmini Bai vs. The Inspector General of Registration and Ors. (28.04.2023 - MADHC) : MANU/TN/2419/2023						
	"44 From the discussions and conclusions we have reached above with reference to						

"44.From the discussions and conclusions we have reached above with reference to various provisions of Statutes and precedents, we reiterate the dictum of Hon'ble Supreme Court in Thota Ganga Laxmi and Ors. Vs Government of Andhra Pradesh & Ors., reported



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in MANU/SC/1267/2010 : (2010) 15 SCC 207 and the Full Bench of this Court in Latif Amsterdam Ankara Antwerpen Asti Asunción Athens Bangalore Bangkok Estate Line India Ltd., case, reported in MANU/TN/0310/2011 : AIR 2011(Mad) 66 and inclined to follow the judgment of three member Bench of Hon'ble Supreme Court in Veena Singh's case reported in MANU/SC/0615/2022 : (2022) 7 SCC 1 and the judgment of two member Bench of Hon'ble Supreme Court in Asset Reconstruction Company (India) Ltd., case, reported in MANU/SC/0579/2022 for the following propositions: Bologna Bratislava Bucharest Berlin Birkirkara Bogotà (a)A sale deed or a deed of conveyance other than testamentary dispositions which is executed and registered cannot be unilaterally cancelled. Casablanca Doha Douala Dubai Durban Erpe-Mere (b)Such unilateral cancellation of sale deed or a deed of conveyance is wholly void and non est and does not operate to execute, assign, limit or extinguish any right, title or interest in the property. (c)Such unilateral cancellation of sale deed or deed of conveyance cannot be accepted for Fukuoka Genewe Goridalajara Guatemala Harnoi Hetsinki Hong Kong Istanbul registration. (d)The transferee or any one claiming under him or her need not approach the civil Court and a Writ Petition is maintainable to challenge or nullify the registration. Jakarta Jeddah Kampala Kartsruhe Kaunas Klagenfui Koblenz Kolkata (e)However, an absolute deed of sale or deed of conveyance which is duly executed by the transferor may be cancelled by the Civil Court at the instance of transferor as contemplated under Section 31 of Specific Relief Act. Kuala Lumpur Kyiv Lagos Lisbon Lima Ljubljana Lodi (f)As regards gift or settlement deed, a deed of revocation or cancellation is permissible only in a case which fall under Section 126 of Transfer of Property Act, and the Registering Authority can accept the deed of cancellation of gift for registration subject to the conditions specified in para 42 of this judgment. Luanda Lublin Luxembourg Manila Mantova Mantova Mataliin Medeliin (g)The legal principles above stated by us cannot be applied to cancellation of Wills or power of Attorney deed which are revocable and not coupled with interest." 12. According to the learned counsel for the petitioner, it is not only based on the judgment of the Apex Court reported in MANU/SC/0612/2014 : 2015-1-L.W. 798 : 2014 (4) CTC 572 Milan Modena Monterre Montreal Montreal Morelia Moscow Mumbai (SC) (cited supra) that this Court has rendered a finding with regard to the cancellation of settlement deed, in W.P. No. 6230 and 6231 of 2011 (cited supra), but also referring to the judgment of the Full Bench of this Court reported in MANU/TN/0310/2011 : 2011 (2) CTC 1 (cited supra) to show that when once the property is settled, it cannot be over-ruled or New Vork Osaka Oslo Ottawa Paris ignored that a unilateral cancellation at the instance of the person who has settled the property, can be cancelled, unless and otherwise it establishes fraud or against the public policy. 13. Though it has been vociferously contended by the learned counsel for the third Rome Rosario Zeszow Prague Puebla Rabat Riga Riga Rio de Janeiro antiago de Chile respondent that the deed of cancellation can be done by the respondents 1 and 2 and in view of the judgment of the Full Bench of this Court reported in MANU/TN/0310/2011 : 2011 (2) CTC 1 (cited supra), as could be seen from paragraphs quoted therein above, it is no doubt true that the Writ Petition is maintainable, provided there are no disputed São Paulo Sarajevo Seoul Shanghai Shenzhen Sidhey Sidhey Singapore questions of fact. In this case, there is clear evidence to show that there are disputed questions of facts, namely that after the property has been settled in favour of the petitioner, under the guise of family dispute, the registration of the property was sought to be cancelled." Strasbourg Taipei Teguaigalpa Tel Awiv The Hague Tokyo Toronto Toronto P.A.G. Kumaran vs. Inspector General of Registration, Santhome and Ors. (31.07.2017 - MADHC) : MANU/TN/3095/2017 7. In Sasikala vs. The Revenue Divisional Officer, cum Sub Collector, Devakottai Udine Valenci Varna Venice Vienna Vilnius Vilnius Varsav Zagreb Zürich and Ors. (02.09.2022 - MADHC) : MANU/TN/6694/2022 it was held: "In the present context where the validity of registration of unilateral cancellation of a registered document and the authority of sub-registrar to register the document unilaterally

cancelling a deed of conveyance is examined, it is also relevant and useful to refer to a



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recent judgment of Hon'ble Supreme Court in the case of Asset Reconstruction Company (India) Limited vs. J.P. Velayutham and ors., reported in MANU/SC/0579/2022. It is a case where the validity of registration of a document of sale through power of attorney was examined. A writ petition was filed by the appellant before the Hon'ble Supreme Court seeking a declaration that the act of the sub-registrar in registering the sale deed executed by the power of attorney agent in favour of his son was null and void. Finding that the power of attorney deed shown before the Registering authority does not authorize the power agent to sell or encumber the property conveyed, the writ petition was allowed holding that there was utter failure on the part of the Registering Authority to follow the mandate of law as prescribed in Sections 32 to 35 of the Registration Act, 1908. Two intra-Court appeals filed by the power of attorney agent as well as his son in favour of whom the sale deed was registered were allowed. On appeal, the Hon'ble Supreme Court considered the issue whether invocation of the writ jurisdiction of the High Court by the appellant was right, especially when civil suits at the instance of third parties are pending and the Hon'ble Supreme Court had directed the parties earlier to move the civil Court in a different proceedings arising under Section 145 of Code of Criminal Procedure."

8. In S. Anitha vs. G. Geetha (05.04.2024 - MADHC) :MANU/TN/1653/2024

"Applying the ratio laid down by the Hon'ble Supreme Supreme Court in Daulat Singh's case, referred herein supra, the moment the settlement deed was executed and registered, the father lost all his rights and interest in *suit* property and therefore, the cancellation deed executed by him subsequently, was not valid in the eye of law, applies to the facts of the present case. The plaintiff has to necessarily succeed and I do not find any material irregularity, illegality or perversity in the findings rendered by the First Appellate Court, warranting interference under Section 100 of the Code of Civil Procedure, 1908."

9. Even today we see cases being decided in both ways, depending on the peculiar circumstances of that case.

10. Under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 . "Section 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. "

11. Suddenly, we were flooded with many cases where the Authorities under the Act started to cancel the documents with or without looking into Section 23 or the mandatory requirements of the Section. Few of the Judgements of our Court deprecated the practice of cancellation of Settlement except in Strict consonance with Section 23. Many of them took humanitarian view that the elders are cheated and when they are not maintained, there is justification to cancel the settlement.



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The Supreme Court held:

"11. We have given careful consideration to the submissions. Before dealing with the factual aspects, it is necessary to advert to the legal aspects. The Sub-Divisional Magistrate acting as the Maintenance Tribunal under the 2007 Act has invoked the power Under Section 23 to declare that the subject release deed was void. The 2007 Act has been enacted for the purposes of making effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution of India. The Maintenance Tribunal has been established Under Section 7 to exercise various powers under the 2007 Act. Section 8 provides that the Maintenance Tribunal, subject to any Rules which may be framed by the Government, has to adopt such summary procedure while holding inquiry, as it deems fit. Apart from the power to grant maintenance, the Tribunal exercises important jurisdiction Under Section 23 of the 2007 Act which reads thus:

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.

(emphasis added)

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.

14. Careful perusal of the petition Under Section 23 filed by Respondent No. 1 shows that it is not even pleaded that the release deed was executed subject to a condition that the transferees (the daughters of Respondent No. 1) would provide the basic amenities and basic physical needs to Respondent No. 1. Even in the impugned order dated 22nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems



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that oral evidence was not adduced by the parties. As can be seen from the impugned judgment of the Tribunal, immediately after a reply was filed by the Appellant that the petition was fixed for arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor - senior citizen is sine qua non for applicability of Sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by Respondent No. 1 that the release deed was executed subject to such a condition.

Sudesh Chhikara vs. Ramti Devi and Ors. (06.12.2022 - SC) : MANU/SC/1581/2022 - 2022 INSC 1257

12. Division Bench of our High Court after discussing the provisions of Senior Citizens Act held as follows:

"14. Under the Indian Contract Act, 1872 (the Contract Act), a contract executed without free consent is voidable and may be avoided at the option of and by the party whose consent was not free. Sections 15 to 18 of the Contract Act deal with the factors which vitiate consent and these factors are coercion, undue influence, fraud and misrepresentation. The burden of establishing that consent was vitiated by one or more of the above factors is imposed on the person who seeks to avoid the contract on the above grounds. Although a gift is a conveyance and not a mere contract, Section 126 of the Transfer of Property Act, 1882 (the Transfer of Property Act) prescribes that a gift may be revoked on the same grounds on which a contract may be rescinded. Consequently, Sections 15 to 19-A of the Contract Act become applicable to a gift, which is the legal term for a settlement.

15. Section 3 of the Senior Citizens Act incorporates a non obstante clause giving overriding effect to the Senior Citizens Act to the extent any other enactment is inconsistent therewith. On examining Section 23 of the Senior Citizens Act in the context of Sections 15 to 19-A of the Contract Act, it follows that absence of free consent need not be established by a senior citizen. Effectively, a legal fiction is incorporated in Section 23 whereby it is deemed that the transfer of property was made by fraud or coercion or under undue influence if the three conditions discussed in paragraph 12 above are satisfied in respect of the said transfer. Whether the transfer under the Settlement Deed satisfies the above conditions is discussed next.

16. The Settlement Deed was executed on 25.08.2009, which is after the Senior Citizens Act came into force on 29.12.2007. Therefore, the first condition with regard to the transfer being after the commencement of the statute is satisfied. The second requirement is that the transferor should be a senior citizen as on the date of the transfer. This requirement is evident from the expression "where any senior citizen...has transferred by way of gift or otherwise". The expression 'senior citizen' is defined in Section 2(h) of the Senior Citizens Act as under:

"(h) "senior citizen" means any person being a citizen of India, who has attained the age of sixty years or above"

The third respondent is a citizen of India. As per the PAN card of the third respondent, he was born on 19.12.1950. Therefore, on the date of execution of the Settlement Deed, he had completed only 58 years and was not a senior citizen. Thus, the second condition does not appear to be satisfied. Nonetheless, it could be contended with a fair measure of justification that the statute should be construed liberally because it is intended to benefit parents and senior citizens. There are two ways in which the provision could be interpreted widely: first, by construing the words "senior citizen" in Section 23 as including a parent; and secondly, by holding that Section 23 may be invoked if the person invoking it is a senior citizen on the date the provision is invoked even if not a senior citizen as on the date of transfer. In order to decide whether the expression "senior citizen" in Section 23 may be reasonably construed in either of the two ways indicated above, we propose to consider other provisions of the statute next.



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Udine Valenci Varna Venice Vienna Vilnius Vilnius Varsav Zagreb Zürich 17. We notice that the statute defines the terms "parent" and "senior citizens", separately. As with all definitions, we also notice that the definition is subject to the qualifier "unless the context otherwise requires". Parent is defined in Section 2(d) as under:

"(d) "parent" means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen;

If Section 2(h) is compared and contrasted with Section 2(d), it becomes evident that "senior citizens" are defined as any Indian citizens above the age of 60 and such definition is agnostic as to whether such "senior citizens" are parents; whereas, "parent" is defined as biological, adoptive or step father or mother, whether or not a senior citizen. Section 4(1) of the statute, which deals with maintenance of parents and senior citizens, uses the expression "a senior citizen including parent", thereby making it abundantly clear that the right to maintenance is available to a parent, whether or not such parent is a senior citizen, and to a senior citizen. Clause (ii) of sub-section (1) of Section 4 also makes it clear that a childless senior citizen may make a claim against a relative as defined in Section 2(g), i.e. a legal heir of the childless senior citizen who is not a minor and is in possession of or" would inherit his property after his death", thereby indicating clearly that a senior citizen, who is not a parent, may claim maintenance in specified circumstances. Section 23, in contrast to Section 4, uses the expression "senior citizen" but not "parent". From the above discussion, it follows that Parliament has consciously defined and used the terms "senior citizens" and "parent" separately and distinctively and that Section 23 has to be understood as defined, i.e. as conferring the benefit thereof only on any Indian citizen above the age of 60, whether or not a parent, subject to satisfaction of the other requirements thereof. As a corollary, neither text nor context support reading the expression "senior citizen" in Section 23 as including a parent below the age of 60 years.

18. Turning to the question whether Section 23 may be invoked by a person who had not completed the age of 60 on the date of transfer but did so prior to or on the date of resorting to such provision, the text of Section 23 uses the expression " where any senior citizen ... has transferred", thereby indicating that the person should be a senior citizen on the date of transfer. Even otherwise, it should be recognised that the absence of free consent on account of fraud, coercion or undue influence is a formation defect. Consequently, the existence of such formation defect is required to be tested as of the date of transfer. Besides, it should not be lost sight of that Section 23 incorporates by legal fiction a deemed lack of free consent and constitutes an exception to the general rule under the Contract Act that the absence of free consent should be established by the person making the said allegation. Therefore, we conclude that Parliament has provided the benefit of the legal fiction of deemed absence of free consent only to Indian citizens who were above the age of sixty years on the date of execution of the instrument of transfer, perhaps in recognition of the fact that older people are vulnerable and often susceptible to undue influence by their children or near relatives.

19. The third condition under Section 23 is that the transfer should be made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor. As discussed earlier, the Settlement Deed does not contain any indication that the transfer was made subject to such condition. In fact, there are clear indications to the contrary by expressly providing that the transferor does not have the right to cancel the settlement at any time and that any such cancellation would not be valid. On this issue, the Hon'ble Supreme Court held in Sudesh Chhikara, in paragraph 14 and, in relevant part in paragraph 15, as under:

"14. 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.



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15. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor-senior citizen is sine qua non for applicability of sub-section (1) of Section 23...."

20. The Writ Court, in paragraph 8 of the common order, recorded in relevant part, as under:

"8. It is not in dispute that the third respondent had executed a Settlement Deed dated 25.08.2009 in favour of his own daughter/the petitioner herein with a promise that she would maintain her father till his lifetime by providing all the facilities which he had enjoyed till the execution of said Settlement Deed...."

As discussed earlier, the above conclusion is not in consonance with the provisions of the Settlement Deed. It is, consequently, also not in conformity with the law laid down in Sudesh Chhikara. Another aspect should also be noticed: Section 23 enables a "senior citizen" to approach the Tribunal for a declaration that the instrument of transfer is void, but not to unilaterally cancel the transfer. In this case, the third respondent executed the Cancellation Deed to unilaterally cancel the Settlement Deed. In view of the foregoing discussion and for reasons set out above, the unilateral cancellation of the Settlement Deed by the Cancellation Deed is invalid.

26. In R.Sasikala v. The Inspector General of Registration, MANU/TN/0685/2021, one of us (SVNJ) emphasised the role of the Sub-Registrar/Registrar in ensuring that senior citizens avail of the statutory benefit of Section 23. Given the fact that Section 23 imposes pre-conditions to be fulfilled before a senior citizen can avail of the benefit of the provision, in line with and pursuant to the statutory mandate under Section 21 of the Senior Citizens Act, we direct the Inspector General of Registration to issue a circular to all registration offices functioning under his jurisdiction to ensure that senior citizens are provided information about their statutory rights, such as the right to retain life-interest in the property proposed to be settled in favour of their children or legal heirs and about the advisability of incorporating a condition in the settlement deed that the transferee should provide for their basic amenities and physical needs and that the settlement is liable to be revoked otherwise. An easy-to-use check list may be prepared to ensure that gift or settlement deeds are executed with the informed consent of senior citizens."

D. Devi vs. The Inspector General of Registration and Ors. (06.11.2023 - MADHC) : MANU/TN/6273/2023

13. Even after the Supreme Court Judgement, Full Bench Judgement and Division Bench Judgement, I see that many Single Judge holding that since the Settlement is out of "Love and Affection" the breach of it is sufficient to cancel the document under Section 23. However, I do not agree with such a view is because the judgements discussed in previous paragraphs clearly holds the unless the mandatory requirement of Section 23 is strictly available, the Settlement deed cannot be cancelled by the Authorities under the Act.

14. Though, my topic is only "can a donor unsettle settlement". I thought we had to also discuss the impact of Section 23 as today we come across so much of events happening in unsettling settlement by the Authority.

15. I conclude that except under Section 126 of the Transfer of Property Act, the donor cannot unsettle a settlement".

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