



W.P(MD)No.1410 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 02.08.2022

Pronounced on : 09.12.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.1410 of 2020

and

W.M.P.(MD)Nos.1134 and 1135 of 2020

K.Balakrishnan

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Dindigul Revenue Division,
Dindigul.

2.K.Susetha

3.R.Jaya

4.Senthil Murugan

... Respondents

*(R4 is suo motu impleaded vide order dated
01.07.2022 in W.P.(MD)No.1410 of 2020 by GRSJ)*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order vide Na.Ka.No.3149/2019/A1 dated 29/10/2019 on the file of the 1st respondent and quash the same as illegal.



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For Petitioner : Mr.P.Muthuvijayapandian

For Respondents : Mr.K.Balasubramani,
Spl. Government Pleader for R1.
Mr.N.Dilipkumar for R2 to R4.

ORDER

Heard the learned counsel for the writ petitioner, the learned Special Government Pleader for the first respondent and the learned counsel for the respondents 2 to 4.

2.The petitioner challenges the order dated 20.10.2019 passed by the Maintenance Tribunal, Dindigul. The second respondent is none other than the mother of the writ petitioner. She had executed a settlement deed dated 11.10.2012 in favour of the petitioner. Contending that the same is liable to be cancelled under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, she moved the Tribunal. The contention advanced by the second respondent was accepted and the impugned order came to be passed.

3.The learned counsel for the writ petitioner relies on the recent decision of the Hon'ble Supreme Court render in Civil Appeal No.174 of 2021, dated



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06.12.2022 (Sudesh Chhikara vs Ramti Devi). The Hon'ble Supreme Court in

the said decision held as follows:-

“12. Sub-section (1) of Section 23 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 attached to a transfer, existence of such conditions must be established before the Tribunal.



14. Careful perusal of the petition under Section 23 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 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.

15. We have perused the counter affidavit filed by respondent no. 1. Even in the counter, it is not pleaded that the release was subject to such a condition. It is merely pleaded that the appellant had no intention to take care of her mother. Thus, the order of the Maintenance Tribunal cannot be sustained as the twin conditions incorporated in sub-Section (1) of Section 23 not satisfied. Unfortunately, the High Court has not adverted to the merits of the case at all.”

4.The document in question does not contain any condition. Hence, the order passed by the Maintenance Tribunal cancelling the settlement deed is liable to be set aside.



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5. But the matter cannot rest there. Though the learned counsel for the second respondent submitted that this Court can consider granting the relief of maintenance. Even though in the application filed by the second respondent, the relief is confined only to cancel the document in question, nothing stops this Court from considering the prayer of the second respondent for awarding maintenance. The second respondent is none other than the mother of the writ petitioner. The second respondent is a widow. She has to take care of a physically challenged son also.

6. Taking note of the special facts and circumstances of the case, the petitioner is directed to pay a sum of Rs.7,000/- per month. It will commence from 01.01.2023. This amount shall be payable in the name of the second respondent as well as the brother of the writ petitioner namely, Senthil Murugan. In other words, the amount of Rs.7,000/- that has to be paid as maintenance by the petitioner is meant for joint maintenance of the mother/Susetha as well as the brother/Senthil Murugan. This figure shall be constant. Even if the second respondent/Susetha passes away, the physically challenged brother will be entitled to receive the said amount from the writ petitioner. The amount shall be paid every month on or before fifth of every month.



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7.The writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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To:

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Dindigul Revenue Division,
Dindigul.



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