



W.P(MD)No.15020 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15020 of 2022

and

W.M.P.(MD)No.10746 of 2022

Kumarpandi

... Petitioner

Vs.

1.The District Collector,
Office of the District Collector,
Madurai District.

2.The Sub Registrar,
Office of the Sub Registrar,
Thirumangalm,
Madurai District.

3.V.Pasupathy

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order issued by the 1st respondent in his proceedings in Na.Ka.(C5)/4611/2022 dated 24.06.2022 and quash the same.

For Petitioner : Mr.J.Vishnu

For Respondents : Mr.M.Siddharthan,
Addl. Government Pleader for R1 & R2.
Mr.R.Gowri Shankar for R3.



W.P(MD)No.15020 of 2022

ORDER

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Heard the learned counsel on either side.

2.By the impugned order, the District Collector has cancelled the settlement deed dated 21.03.2019 (Document No.2135 of 2019) executed by the third respondent and the petitioner's siblings in favour of the writ petitioner. I went through the contents of the said settlement deed. It does not contain any condition or stipulation that the petitioner must maintain the third respondent. Only when there is a stipulation, the District Collector will have jurisdiction to cancel the same under Section 23 of the Maintenance and Welfare of Parents and Senior Act. The Hon'ble Supreme Court in the decision reported in 2022 Live Law (SC) 1011 Sudesh Chhikara Vs. Ramti Devi and Another held as follows:-

“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.



W.P(MD)No.15020 of 2022

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 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.”

3.I, therefore, hold that the District Collector will not have any jurisdiction in the matter. In that view of the matter, the impugned order of the District Collect is set aside to that extent. In other respects, the impugned order District Collector is not interfered with.

4.The learned counsel for the third respondent points out that the settlement deed dated 21.03.2019 has been shown as executed not only by the third respondent but also Chinnayapandi and Rajapandi Ammal, the siblings of the petitioner. It is stated that they are mentally disabled. If that be so, it is



W.P(MD)No.15020 of 2022

open to the executant of the document to move the jurisdictional Civil Court or the jurisdictional Registering Authority for appropriate relief.

5. With this relief to the third respondent, the impugned order is interfered with to the extent mentioned above and the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.12.2022

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

1. The District Collector,
Office of the District Collector,
Madurai District.

2. The Sub Registrar,
Office of the Sub Registrar,
Thirumangalm,
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W.P(MD)No.15020 of 2022



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W.P(MD)No.15020 of 2022

G.R.SWAMINATHAN, J.

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W.P(MD)No.15020 of 2022

23.12.2022
(1/2)