



WEB COPY



W.P.No.5049 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5049 of 2023 &
WM.P.No.5073 of 2023

S.Boopalan

...Petitioner

Vs.

1.The District Collector cum
District Magistrate/
Appellate Authority,
Singaravelan Maaligai,
Chennai – 600 001.

2.The Sub Divisional Magistrate /
Revenue Divisional Officer,
Chennai South,
Guindy,
Chennai – 600 199.

3.B.Aadavan

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders made 29.12.2022 made in Se.Mu.Na.Ka.No.2224/A1/2022 passed by the first respondent confirming



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the order in Se.Mu.No.A3/2821/2022 dated 07.09.2022 passed by the second respondent, quash the same and consequently direct the respondents to cancel the Settlement Deed dated 24.06.2021 (Doc.No.5103/2021 – SRO, Neelangarai) in respect of the house property measuring 903 sq. ft. comprised in Old Patta No.814, S.F.No.63/1B15 and new patta No.746, New S.No.63/36, Sivan Koil Street, ECR, Neelangarai Village, Chennai District.

For Petitioner : Mr.N.Manokaran

For Respondents 1 & 2: Mr.D.Ravichander
Special Government Pleader

For Respondent 3 : No appearance

ORDER

The order passed by the Revenue Divisional Officer, South Chennai and the appellate order passed by the District Collector are under challenge in the present writ petition.

2. The petitioner is a senior citizen aged about 76 years. He retired as a charge man from Tank Factory at Avadi on 30.06.2006. Wife of the writ petitioner died on 29.05.1997 and he was blessed with four sons and two daughters. The petitioner had purchased an extent of 8 cents in



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S.F.No.63/1B15, Sivan Koil Street, ECR, Neelankarai Village by virtue of a sale deed dated 23.06.1978 (Document No.984/1978). The petitioner states that he had spent his entire savings and earnings to purchase the subject property with a hope that it will help his family in future. The petitioner states that he belongs to Fisherman Community and his wife died in a road accident. After the death of his wife, he had struggled to manage the family and to educate his children and to perform their marriages. He had constructed a house in a phased manner and put up four small shops to augment revenue to maintain his big family consisting of eight members. The petitioner had mortgaged the property for a sum of Rs.15,00,000/- on 04.07.2018, to meet out the family commitments such as education, marriage and other expenses. The mortgage was redeemed with the help and financial support given by his friends.

3. The third respondent is the youngest son of the petitioner, who completed his schooling in St. Bedes Anglo Indian Higher Secondary School and he was educated through National Institute of Port management to get an employment as a Captain in a ship. He has completed his studies and joined as a Captain in the ship in the year 2004. The third respondent is



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earning a sum of Rs.5,00,000/- per month as of now. He married one Saranya and living with his wife and daughter at ECR.

4. The third respondent approached the writ petitioner to transfer the ownership of the subject property in his name, on promise that he will take care of the entire needs of the petitioner, during his last stage of life. The third respondent also assured to repay the outstanding loan. The petitioner states that he was yielded to the promise made by the third respondent in view of his old age, ill health and fiduciary relationship.

5. Based on the promise given by the third respondent, the petitioner executed a settlement deed on 24.06.2021 vide Doc.No.5103/2021. The petitioner never realised the ill motive of the third respondent. After getting the settlement deed, the third respondent gave a power of Attorney to his wife Saranya and both started neglecting the petitioner. The third respondent and his wife stopped visiting the petitioner and they have not even contacted the petitioner. The other sons and one daughter got settlement deeds much before the settlement deed executed in favour of the third respondent. In view of the fact that the third respondent breached his



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promise, the petitioner approached the Revenue Divisional Officer under the Senior Citizens Act. The third respondent also appeared before the Revenue Divisional Officer.

6. The learned counsel appearing for the petitioner drew the attention of this Court with reference to the deposition given by the third respondent before the Revenue Divisional Officer which is as under:

“ I am ready to give back the property to him, in return. I want a legal written statement from him stating that I will not bear any of his debts from date (29.06.2022). As he is receiving government pension of Rs.22,000/- month which I would like to mention here. Kindly do the needful.”

7. Despite the fact that the third respondent has given a statement before the Revenue Divisional Officer that he is ready to give back the property to the petitioner, the Revenue Divisional Officer has not granted any relief to the petitioner. Contrarily, the Revenue Divisional Officer made a finding that the question of cancelling the settlement deed does not arise at all. Challenging the said order, the petitioner preferred an appeal before the District Collector, Chennai, who in turn also conducted an enquiry and



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passed final orders on 29.12.2022 confirming the order passed by the Revenue Divisional Officer mainly on the ground that the petitioner is having other sons and daughters and he has not initiated any action against other children. Based on the said ground, the appeal was dismissed. Thus, the petitioner is constrained to move the present writ petition.

8. Notice was served to the third respondent and he has not chosen to appear before this Court.

9. Section 23(1) of the Senior Citizen Act contemplates “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.”



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10. With reference to the above provision, the Kerala High Court also decided the issue in the case of ***Radhamani & Others vs. The State of Kerala, represented by The Secretary, Revenue Department & Others*** reported in ***CDJ 2015 Ker HC 1019*** and the relevant paragraphs are as under:

“10. Section 23 of the Senior Citizens Act, 2007 does not contemplate that the condition should form part as recital in the deed of transfer. It only refers that there should be a condition for such transfer. This condition can be either express or implied. If there is no express recital in the deed, the Tribunal has to look around circumstances to find out whether conduct otherwise dispel the intention of donor to revoke. The consideration for executing a gift deed or settlement deed is based on human conduct, caring and conscientious. Transfer admittedly is out of love and affection. Any donor in a gift deed would expect in a natural course of human conduct that donee continues to behave in same manner as behaved before execution of the deed. The love and affection influenced for execution of the deed certainly must be enduring and without any barrier. The human conduct in relation to a particular relation is presumed to exist in all set of circumstances for governing



relationship of those individuals. Transferee cannot disown his own action of love and affection after the transfer comes into effect. The transfer itself being based on love and affection, that would form part as a condition of the transaction for future conduct as well. Thus, in the absence of any other circumstances to dispel, it must be presumed that transferor expects continuation of the care and love from the transferee even after execution of the deed in same manner, he was taken care prior to execution of the deed.

11. It is to be noted that the special scheme in terms of Senior Citizens Act, 2007 could declare certain transfer as void, taking note of the fact that by taking advantage of the emotionally dependent senior citizens, relatives grab the property on the pretext of providing emotional support. Therefore, legislature thought such transaction could be declared as void as the conduct leading to transaction was based on malice or fraud. Therefore, 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. Thus, this Court is of the view that it is not necessary that there should be a specific recital or stipulation as a condition in the transfer of deed itself. This condition mentioned in Section 23 is only referable



as a conduct of the transferee, prior to and after execution of the deed of transfer. Thus, challenge based on the ground that there is no reference in the recital of deed that transferee will provide basic amenities and physical needs to the transferor is of no consequence.”

11. Considering the scope of section 23(1) of the Act, the Senior Citizen is entitled to seek the relief of declaration to declare a settlement deed as null and void on the ground of fraud or coercion or undue influence and section 23(1) of the Act is a deeming provision, which provides that in the event of breach of promise if any made, then the transfer of property shall be deemed to have been made by fraud or coercion. It is sufficient, if the son or daughter of the Senior Citizen breached the promise given to their parents at the time of execution of settlement or gift deed or otherwise.

12. Section 3 of the Maintenance And Welfare of Parents and Senior Citizens Act, 2007 enumerates that “The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.”



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13. Therefore, the Senior Citizen Act will prevail over the other statutes and in the present case, the petitioner has specifically raised an allegation against the third respondent, who is none other than his youngest son and he has executed the settlement deed in his favour, based on the promise that he will look after the petitioner till his lifetime.

14. When a specific promise has been given by the third respondent which is recorded before the Revenue Divisional Officer by way of a statement, the decision arrived by the respondents 1 and 2 are directly in violation of the spirit of section 23(1) of the Senior Citizen Act. The statement recorded by the Revenue Divisional Officer during the hearing of the petitioner, reveals that the third respondent himself agreed to give back the property to his father. When such a statement was recorded before the Original Authority, the authority ought to have cancelled the settlement deed enabling the petitioner to get back the property for the purpose of his maintenance.

15. Thus, the rejection of the petition filed by the petitioner is running counter to the statement given by the third respondent before the original



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authority. The first respondent appellate authority also failed to consider the statement given by the third respondent before the Revenue Divisional Officer. Not proceeding against the other children is unconnected with the promise given by the third respondent to the petitioner at the time of execution of settlement deed and on the ground, the very purpose and object of the Senior Citizen Act cannot be defeated. The Senior Citizen cannot be left with no remedy.

16. In such circumstances, section 4(3) of the Act stipulates about the obligation of the children to maintain his or her parents extends to the needs of such parents either father or mother or both, so that they can lead a normal life. Thus, the object of the act is to be protected and merely because the senior citizen has not proceeded against other children, the relief sought for by the senior citizen cannot be refused and more so, in the present case, the third respondent has given a promise to the petitioner for his maintenance at the time of execution of settlement deed.

17. That being the factum, the orders passed by the original authority and the appellate authority are running counter to the spirit of the Senior Citizen Act as well as the object sought to be achieved.



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18. Accordingly, the order impugned dated 29.12.2022 passed by the first respondent in Se.Mu.Na.Ka.No.2224/A1/2022, confirming the order dated 07.09.2022 passed by the second respondent in Se.Mu.No.A3/2821/2022 is quashed. Consequently, the settlement deed dated 24.06.2021 registered as Doc. No.5103 /2021 on the file of SRO, Neelangarai in respect of house property measuring 903 sq. ft., comprised in Old Patta No.814, S.f.No.63/1B15 and new patta No.746. New S.No.63/36, Sivan Koil Street, ECR, Neelangarai Village, Chennai District is cancelled.

19. Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes

Speaking order

Neutral Citation : Yes



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To

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S.M.SUBRAMANIAM, J.

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