



W.P(MD)No.9580 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9580 of 2022

and

W.M.P.(MD)No.6884 of 2022

Senthilkumar

... Petitioner

Vs.

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

2.Muniyasamy
(R2 is impleaded vide order dated
17.06.2022 in W.M.P.(MD)No.7299 of 2022)

... Respondents

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 pertaining to the impugned order issued by the respondent in his proceedings in Na Ka No.(C5)/49763/2021 dated 22.04.2022 and quash the same.

For Petitioner : Mr.G.Velumani

For Respondents : Mr.M.Siddharthan
Additional Government Pleader for R1

: Mr.M.Natarajan for R2



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ORDER

Heard the learned counsel on either side.

2. The petitioner is none other than the son of the second respondent.

The second respondent Muniyasamy was blessed with seven children (3 sons and 4 daughters). He executed the settlement deed dated 21.11.2007 (Document No.3584/2007 on the file of the SRO, Arasaradi) settling three houses in favour of each of the sons namely Veerasamy, Rajkumar and Senthilkumar. The other two brothers namely Veerasamy and Rajkumar subsequently sold the house settled on them in favour of the petitioner vide registered sale deeds. In the said sale deeds, the father Muniyasamy had signed as an attesting witness. Subsequently, the relationship between the petitioner and his father had come under strain. The petitioner's father filed a petition under Section 23 of the Senior Citizens Act before the maintenance tribunal. The maintenance tribunal vide order dated 24.09.2021 directed the three sons to pay a sum of Rs.5,000/-per month towards maintenance. Aggrieved by the same, the father Muniyasamy filed petition under Section 16 of the Act before the District Collector, Madurai. The appellate authority vide order dated 22.04.2022 allowed the appeal and cancelled the settlement deed executed by



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the father in favour of the sons. Questioning the said order dated 22.04.2022, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. The learned Additional Government Pleader as well as the learned counsel appearing for the second respondent submitted that the impugned order does not warrant interference. They pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. The petitioner as the son of the second respondent is obliged to maintain his father. From the materials available on record, I am able to note that the petitioner is fairly affluent. The petitioner is therefore directed to pay a sum of Rs.10,000/- towards maintenance to the father. The petitioner also has to pay the maintenance arrears from the date of application by the second respondent. The moot question that arises for consideration is whether the District Collector was justified in cancelling the settlement deed. Answer is in the negative. This is because as rightly pointed out by the learned



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counsel appearing for the petitioner, Senior Citizens Act came into force only subsequently. The settlement deed was executed by the second respondent on 21.11.2007. The execution of the settlement deed by the father in favour of the petitioner was prior to the implementation of the Act. A learned Judge of this Court in the decision reported in **(2018) 6 CTC 21 (K.Neelavathy Vs. The District Magistrate)** held that the power under Section 23 of the Senior Citizens Act cannot be exercised in respect of a document that was executed before the Act came into force. Therefore, the first respondent lacked jurisdiction to nullify the settlement deed dated 21.11.2007 by invoking Section 23 of the Senior Citizens Act.

6. The next ground urged by the learned counsel for the petitioner is that when the settlement deed has not contained any condition as envisaged under Section 23 of the Act, the settlement deed cannot be subsequently revoked or cancelled at the instance of the settlor. The Judgment of the Hon'ble Supreme Court of India reported in **2022 Live Law (SC) 1011 (Sudesh Chhikara Vs. Ramti Devi and Another)** will come into play. The Hon'ble Supreme Court had 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



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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 subsection (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 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.”

7. Both the grounds urged by the learned counsel for the petitioner are sustainable. The impugned order passed by the first respondent cancelling the settlement deed is set aside. The Writ Petition is allowed with the aforesaid direction to the petitioner to maintain the second respondent. No costs. Consequently, connected miscellaneous petition is closed.

15.12.2023

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Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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To

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Madurai District.

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