



W.A(MD)No.809 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2023

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A(MD)No.809 of 2023
and
C.M.P(MD)Nos.6627 and 6628 of 2023**

R.Sekkappan ... Appellant/4th Respondent

-VS-

1.S.Kannappan ...1st Respondent/writ petitioner

2.The Revenenue Divisional Officer cum
Tribunal of Maintenance and Welfare of
Parents and Senior Citizens,
Madurai, Madurai.

3.The Sub-Registrar,
Madurai South,
Department of Registration,
Madurai, Madurai District.

4.The Registrar of Firms,
Madurai South,
171, Palace Road,
Madurai, Madurai District.

5.Mr.Sugi Premala,
The Revenue Divisional Officer cum
Tribunal of Maintenance and Welfare of
Parents and Senior Citizens,
Madurai, Madurai District.

... Respondents 2 to 5/
Respondents 1, 2,3 and 5



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PRAYER: Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 03.01.2023 in W.P(MD)No.15838 of 2022.

For Appellant : Mr.N.Vinitha for
Mr.S.Ramsundarvijayaraj

For R-1 : Mr.V.Raghavachari,
Senior Counsel for
Mr.T.Cibi Chakraborty

For R-2 : Mr.V.Nirmal Kumar,
Government Advocate

For R-3 : Mr.M.Prakash,
Additional Government Pleader

JUDGMENT

[Judgment of the Court was made by R.SUBRAMANIAN, J.]

Being aggrieved by the order of the Writ Court, dated 03.01.2023 in W.P(MD)No.15838 of 2022, the appellant has filed this writ appeal.

2. The appellant seeks to canvass the correctness of the order of the Writ Court in allowing the writ petition quashing the orders of the competent authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as “the Act”). In and by the said order, the authority had chosen to set aside the sale deed of



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the year 2005 and the reconstitution of the partnership deed dated 26.04.2021. The appellant sought for setting aside those documents under Section 23 of the Act on certain grounds. The authority had set aside the documents on the ground that the first respondent has not maintained his parents properly and that, he had obtained the documents without paying any money. The Writ Court had held that the exercise carried out by the authority is in excess of its jurisdiction.

3. Section 23 of the enactment reads as follows:

“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



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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.”

4. Considering the scope of the said Section, one of us (Justice R.SUBRAMANIAN) in W.P(MD)No.32650 of 2022, has held that Section 23 of the Act, can be invoked only in respect of the documents which are executed after coming into force of the Act and the document should be a gift or a transfer which contains a stipulation that the transferee or the settlee must maintain the senior citizen/s who executes the document.

5. On facts, we find that the the sale deed of the year 2005 is the document executed prior coming into force of the Act. As far as the deed of reconstitution of Partnership, which is of the year 2021 is concerned, it does not contain an undertaking by the first respondent to maintain the appellant and his wife. Therefore, the said judgment will squarely apply to the facts of the case. We are supported in our view by the



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judgment of the Hon'ble Supreme Court in **Sudesh Chhikara vs. Ramti Devi and Another** reported in **2022 SCC OnLine SC 1684**, wherein, after considering the language of Section 23 of the Act, 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 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 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



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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.

6. In view of the said pronouncement of the Hon'ble Supreme Court, we do not think that we can fault the Writ Court for having allowed the writ petition setting aside the orders of the authority. The writ appeal therefore fails and it is accordingly, dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

[R.S.M., J.] [L.V.G., J.]

12.06.2023

NCC :Yes/No

Index :Yes/No

PM

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