



W.P.(MD)No.13790 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.10.2023

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THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.(MD)No.13790 of 2020

and

W.M.P.(MD)Nos.11440 and 11441 of 2020

A.Karunanithi

.. Petitioner

Versus

- 1.The District Collector,
Sivagangai District,
Sivagangai.
- 2.The District Revenue Officer,
Sivagangai District,
Sivagangai.
- 3.The Revenue Divisional Officer,
Devakottai Division,
Sivagangai District.
- 4.The Inspector General of Registration,
O/o.Inspector General of Registration,
No.100, Pattinapakkam,
Santhom High Road,
Chennai.
- 5.The District Registrar,
Karaikudi Registration District,
Sivangani District.
- 6.The Sub Registrar,
Thiruppathur,
Sivagangai District.

7.S. Thottichi

.. Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 to 3 herein to cancel the ex parte proceedings issued against the petitioner by the third respondent in Pa.Mu.A.8503-2019, dated 15.11.2019 and consequently, forbearing the respondents 4 and 5 herein from changing the petitioner's name in the Patta and other revenue records in respect of the petitioner's property bearing Survey No.294/IT3A and Survey No.294/IT3 B1, to an total extent of 12.5 cents 5450 sq.ft. situated in Thiruppathur Village, Sivagangai District.

For Petitioner : Mr.S.Bharathy Kannan
For R1 to R6 : Mr.A.K.Manikkam
Special Government Pleader
For R7 : Mr.N.Sathish Babu

ORDER

This Writ Petition has been filed challenging the ex parte proceedings of the third respondent, dated 15.11.2019 and consequently, forbear the respondents 4 and 5 from getting their names mutated in the revenue records with respect to the subject property.

2. Heard Mr.S.Bharathy Kannan, learned counsel for the petitioner, Mr.A.K.Manikkam, learned Special Government Pleader for the respondents 1 to 6 and Mr.N.Sathish Babu, learned counsel for the seventh respondent.



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3. The subject property originally belonged to the aunt of the petitioner, named 'Porkodi Ammal', W/o.Valliyappan. She executed a settlement deed in favour of the petitioner's father, which was registered as Document No.2675 of 2015, dated 23.09.2015, with respect to the subject property. The father of the petitioner named 'Anbu' executed a settlement deed in favour of the petitioner with respect to the subject property through Document No.2326 of 2017, dated 04.12.2017.

4. The mother of the petitioner/seventh respondent herein filed a Writ Petition in W.P.(MD)No.2898 of 2019 before this Court, seeking for a direction to the respondents 1 to 3 to cancel the gift deed that was executed in favour of the petitioner in Document No.2326 of 2017, based on her representation, dated 04.12.2018.

5. The above Writ Petition was disposed by this Court on 10.04.2019, directing the third respondent to consider the representation made by the petitioner therein and after hearing all the interested parties, pass final orders.

6. The grievance of the petitioner is that the third respondent even without putting the petitioner on notice, proceeded to cancel the settlement deed executed in favour of the petitioner. The petitioner came to know about



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this order only after seeing the entries that were made in the Encumbrance Certificate. Aggrieved by the same, the present Writ Petition has been filed before this Court.

7. The issue involved in the present Writ Petition is squarely covered by the judgment of the Hon'ble Apex Court in **Sudesh Chhikara vs. Ramti Devi and another** reported in **2022 SCC Online SC 1684**. For proper appreciation, the relevant portions in the said judgment are extracted hereunder:-

"12. Sub-section (1) of Section 23 covers 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.

13. 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.



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14. *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.*

15. *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.*

16. *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 were not satisfied. Unfortunately, the High Court has not adverted to the merits of the case at all.

17. There is an application for intervention on behalf of a developer. The intervenor claims that he is a bona fide buyer of a part of the land subject matter of the release deed from the appellant and that he has carried out substantial work of development. It is not necessary for us to deal with the rights claimed by the intervenor. All questions regarding the rights claimed by the intervenor are left open to be decided in appropriate proceedings."

8. It is clear from the above judgment that the cancellation of the settlement deed can be made only where there is a specific condition provided for payment of maintenance and the same is not complied with. In the absence of such a specific condition, there is no ground to cancel the document merely on the ground that the senior citizen has not been maintained.

9. In the instant case, the third respondent has proceeded to pass an order ex parte without putting the petitioner on notice and even without verifying as to whether there was a specific condition in the settlement deed that was executed in favour of the petitioner. That apart, it is also seen that



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the Executant of the settlement deed was the father of the petitioner and whereas, the mother of the petitioner has sought for cancellation of the settlement deed executed in favour of the petitioner. In view of the same, the power that has been exercised by the third respondent, by cancelling the settlement deed in favour of the petitioner, is patently illegal and it is unsustainable.

10. In the light of the above discussions, this Court holds that the ex parte proceedings of the third respondent, dated 15.11.2019, is illegal and unsustainable and therefore, the same is liable to be set aside. Accordingly, it is set aside.

11. The Writ Petition is allowed in the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes/No
Index : Yes/No
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To

04.10.2023

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