



W.P(MD)No.18324 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.18324 of 2022

and

W.M.P.(MD)No.13347 of 2022

Sheik Abdullah

... Petitioner

Vs.

1.The Revenue Divisional Office cum Notified Tribunal,
(The Maintenance and Welfare of Parents, Senior Citizens Act
2007), Pudukottai,
Pudukkottai District.

2.M.S.Kalifullah

... 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 records relating to the impugned proceedings of the 1st respondent in her proceedings in P.Mu. 3846/2021/A6 dated 17.06.2022 and quash the same as illegal.

For Petitioner : Mr.M.Mahaboob Athiff

For Respondents : Mr.S.Ra.Ramachandran
Additional Government Pleader for R1

: Mr.S.C.Herold Singh for R2



W.P(MD)No.18324 of 2022

ORDER

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Heard both sides.

2. The petitioner is the son of the second respondent. The second respondent executed the settlement deed dated 22.12.2017 in favour of the petitioner. At his instance, the maintenance tribunal cancelled the settlement deed vide order dated 17.06.2022. Challenging the same, the present writ petition came to be filed.

3. I wanted to know if the settlement deed contains any condition as envisaged under Section 23 of the Senior Citizens Act. On going through the said settlement deed, I am not able to find any such condition. Hence, 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 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.



W.P(MD)No.18324 of 2022

WEB COPY

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.”

It is also stated that the second respondent has filed O.S.No.47 of 2020 on the file of the District Munsif Court, Pudukkottai for declaration that the settlement deed is null and void.

4. I am of the view that the second respondent has to necessarily pursue his remedy only in the pending suit. Invocation of the jurisdiction of the first respondent was clearly bad in law. Respectfully applying the ratio laid down by the Hon'ble Apex Court in ***Sudesh Chhikara***, the impugned order is set aside. The outcome of this writ petition will not have any bearing on the fate of the suit instituted by the second respondent. I also placed on record the undertaking of the petitioner that he is ready and willing to take care of his parents.



W.P(MD)No.18324 of 2022

G.R.SWAMINATHAN, J.

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5. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

15.12.2023

Index : Yes / No

Internet : Yes/ No

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