



W.P(MD)No.26008 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 31.10.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.26008 of 2023

and

W.M.P.(MD)Nos.22387 and 22388 of 2023

N.Karthigai Selvi

... Petitioner

Vs.

1.The District Collector cum
District Magistrate,
Madurai District, Madurai.

2.The Revenue Divisional Officer,
Madurai.

3.Neelamegam

... 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 of the impugned order passed by the 2nd Respondent in Moo.Mu.No.5354/2021/J dated 19.04.2022 and the consequential impugned order passed by the 1st respondent in Moo.Mu.No.C6/32283/2022 dated 20.07.2023 and quash the same as illegal.



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For Petitioner : Mr.M.Kannan

For Respondents : Mr.M.Sidharthan,
Addl. Government Pleader for R1 & R2.
Mr.R.Sasikumar for R3.

ORDER

Heard both sides.

2.The writ petitioner is none other than the daughter of the third respondent. The third respondent executed the petition mentioned gift deed in favour of the writ petitioner. It does not contain any condition that the petitioner should maintain the third respondent. However, the third respondent invoking the provision of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 moved the Maintenance Tribunal for cancelling the document. The second respondent allowed the application vide order dated 19.04.2022 and set aside the settlement deed dated 02.08.2016 registered as Document No.3204/2016 on the file of Sub Registrar Office, Arasaradi. Questioning the same, the petitioner



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filed appeal before the first respondent. The first respondent vide order dated 20.07.2023 dismissed the appeal. Challenging the same, the present writ petition came to be filed.

3. When the matter was taken up for hearing, the third respondent entered appearance through his counsel. He has no objection for allowing the writ petition. Accordingly, the impugned orders are set aside.

4. I have to make a few remarks. Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 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 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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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 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.”*

5.The Hon'ble Supreme Court of India in the decision reported in ***2022 LiveLaw (SC) 10111 (Sudesh Chhikara Vs. Ramti Devi)*** held as follows:-

"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.



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.

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



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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.

17. Hence, for the reasons recorded above, the appeal is allowed. The impugned order dated 22nd May 2018 passed by the Maintenance Tribunal as well as the order dated 21st May 2019 passed by the High Court are hereby set aside and the petition filed by respondent no.1 under Section 23 of the 2007 Act stands dismissed. There shall be no order as to costs.”

6. In the settlement deed dated 02.08.2016, there is no condition as contemplated under Section 23(1) of the Act. Therefore, the Maintenance Tribunal could not have set aside the document in the first instance.

7. Section 16(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 reads as follows:-

“16. Appeals

1. Any senior citizen or a parent, as the case may be, aggrieved by an order of a Any senior citizen or a parent, as



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the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal:

Provided further that the Appellate Tribunal may, entertain the appeal alter the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.”

8.The Hon'ble First Bench of the Madras High Court in the decision reported in **(2021) 2 CTC 129 (K.Raju Vs. Union of India and Others)** held as follows:-

“5. The words used in the provision are lucid and, by no stretch of imagination, can such clear words of the statute be read or understood or interpreted to imply that any class of persons other than any senior citizen or a parent may be entitled to prefer an appeal under such provision. The terms “senior citizens” and “parent” are defined in Section 2 of the Act. The word “Tribunal” is also defined to mean the Maintenance Tribunal as constituted under Section 7 of the Act.



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9. *When the clear words of a statute do not permit any other meaning or interpretation, particularly when it pertains to a right of appeal, additional words cannot be read into the provision to discover a right in favour of a class of persons excluded by necessary implication in the appellate provision. When the words used in Section 16 of the Act are “Any senior citizen or a parent ... aggrieved by order of a Tribunal may ... prefer an appeal...” and the other words govern the time or describe the senior citizens or the parent in the alternative, there is no room to imagine that others aggrieved by an order of the tribunal may also prefer an appeal on the ground that the scales must be balanced between the two sides.”*

9. An appeal is maintainable under Section 16 of the Act only at the instance of any senior citizen or parent. The writ petitioner is neither. Therefore, the appeal could not have been entertained by the appellate authority. Thus, the original authority as well as the appellate authority have not all kept in view the statutory scheme set out in the Act.

10. I, therefore, suggest that Judicial Academy may conduct considering a workshop for the District Collectors as well as the Revenue Divisional Officers through virtual mode to educate them on the statutory



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scheme set in the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

11.With these observations and remarks, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

31.10.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The District Collector cum District Magistrate,
Madurai District, Madurai.
- 2.The Revenue Divisional Officer,
Madurai.



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G.R.SWAMINATHAN, J.

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