



W.P(MD)No.26066 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.26066 of 2023

and

W.M.P.(MD)Nos.22419 & 22421 of 2023

Amalraj

... Petitioner

Vs.

1.The District Collector/
Appellate Authority under the
Maintenance of Parents & Agents Parents
Welfare Act 2007,
Dindigul District.

2.The Revenue Divisional Officer/
Tribunal Constituted under the
Maintenance of Parents & Agents Parents
Welfare Act, 2007, Kodaikanal,
Dindigul District.

3.Ignatius Anthoni Suresh

4.Jerald Raja

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to calling for the records relating to the impugned order of 2nd respondent in Moo.Mu. No. 2349/2022/A2 dated 28.10.2022 and confirmed by the impugned order of 1st respondent in Pa.Mu. No. E-473687/2022/C1 dated 11.07.2023 quash the same and consequently cancel the impugned Settlement Deed dated 22.04.2021 vide



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Doc. No.753/2021 and registered sale deed dated 22.04.2021 vide Doc. No. 754/2021.

For Petitioner : Mr.K.Appadurai
For Respondents : Mr.K.Balasubramani
Special Government Pleader for R1 & R2

ORDER

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for R1 & R2.

2. The petitioner executed the petition mentioned settlement deed in favour of his grand-daughter and grand-son. The petitioner subsequently moved the maintenance tribunal for cancelling the same. Since no condition was stipulated in the settlement deed as regards maintenance, the tribunal declined to cancel the deed. Instead, it ordered payment of maintenance. Aggrieved by the same, the petitioner filed an appeal before the District Collector, Dindigul District. The appellate authority also confirmed the order passed by the tribunal. Challenging the same, this writ petition came to be filed.

3. The learned counsel appearing for the petitioner relying on the decision of the Kerala High Court reported in **CDJ 2015 Ker HC 1019**



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(Radhamani & Others vs. The State of Kerala, represented by The Secretary, Revenue

Department & Others) in support of his contention stated that such a condition can also be implied and need not be expressed. I am not persuaded by the said submission. The issue has been settled by the Hon'ble Supreme Court in the decision reported in **2022 Live Law (SC) 1011 Sudesh Chhikara Vs. Ramti Devi and Another.** The Hon'ble Supreme Court 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.

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



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by respondent no.1 that the release deed was executed subject to such a condition.”

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5. In view of the subsequent decision of the Hon'ble Supreme Court, the decision pronounced by the Kerala High Court may not come to the petitioner's rescue. No case for interference has been made out.

6. The Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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

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