



W.P(MD)No.27135 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.27135 of 2023

and

W.M.P.(MD)Nos.23290 & 23292 of 2023

Sankarappan

... Petitioner

Vs.

1.The Appellate Authority under the Maintenance
and Welfare of Parents and Senior Citizens Act, 2007,
The District Collector,
Virudhunagar.

2.The Tribunal under the Maintenance
and Welfare of Parents and Senior Citizens Act, 2007,
The Revenue Divisional Officer,
Sattur/Aruppukottai,
Virudhunagar District.

3.The Sub-Registrar,
Panthalkudi,
Aruppukottai Taluk,
Virudhunagar District.

4.Prithviraj

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Mandamus, to call for the records of the
impugned order passed by the 1st respondent dated 10.10.2023 passed in
Na.Ka.C4/2/73/2023 and consequential order dated 27.09.2023 passed in
Na.Ka.C4/2/73/2023 and order dated 12.06.2023 passed in



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Moo.Mu.A2/3095/2023 of the 2nd respondent and quash the same and consequentially declare the settlement deeds dated 21.04.2023 vide Doc.Nos. 1168 and 1169 registered with the 3rd respondent as null and void as per the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

For Petitioner : Mr.I.Suthakaran

For Respondents : Mr.M.Siddharthan
Additional Government Pleader for R1 to R3

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the official respondents.

2.The petitioner is an ex-service man. The 4th respondent is one of his sons. The petitioner executed settlement deeds registered as Document Nos. 1168 & 1169 dated 21.04.2023 in favour of the fourth respondent. Claiming that he was tricked into executing the same, the petitioner filed a petition before the Maintenance Tribunal to have them declared as void. The second respondent took the view that the petitioner's case will not fall within the scope of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The petitioner's application was rejected vide order dated 12.06.2023. Aggrieved by the same, the petitioner moved the appellate



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authority. The appellate authority also confirmed the order passed by the Maintenance Tribunal vide order dated 27.09.2023. Challenging the same, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner reiterated the contentions set out in the affidavit filed in support of the writ petition. He relied on the order reported in **2023 SCC OnLine Mad 6079 (W.P.No.28190 of 2022 dated 08.09.2023, Mohamed Dayan v. The District Collector, Tiruppur District).**

4.I am not persuaded by the submissions of the learned counsel for the petitioner.

5.When a senior citizen seeks declaration of the transfer of property made by him as void by the Maintenance Tribunal, the only provision that he can invoke is Section 23(1) of the said Act. It 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



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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.”

This provision came to be considered by the Hon'ble Supreme Court in the decision reported in **2022 SCC OnLine SC 1684 (Sudesh Chhikara Vs. Ramti Devi)**. It was held as follows :

“**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



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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.”

Though this judgment was cited before His Lordship Mr.Justice S.M.Subramaniam, the Hon'ble Judge in **Mohamed Dayan** chose to observe that the decision of the three Judges bench of the Supreme Court of India in the case of *S.Vanitha v. the Deputy Commissioner (2021) 15 SCC 730* is to be followed. The Hon'ble Judge heavily relied on the decision of the Kerala High Court rendered in *Radhamani v. State of Kerala (2015 SCC OnLine Ker 33530)* in which it was held that Section 23 of the Senior Citizens Act, 2007 does not contemplate the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor should form part as a recital in the deed of transfer. This condition can be either express or implied. If there is no express recital in the deed, the Tribunal has to look around to find out the intention of the transferor.



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6. With utmost respect, I must hold that this judgment runs counter to the judgment of the Hon'ble Division Bench of the Madurai Bench of the Madras High Court rendered in WA(MD)No.809 of 2023 on 12.06.2023 (R.Sekkappan vs. S.Kannappan and ors). It was held therein that Section 23 of the Act can be invoked only in respect of the documents which contain a stipulation that the transferee or settlee must maintain the senior citizen/s who executes the document. The same view has been taken by the Hon'ble High Court of Calcutta in ***Himangshu Mondal v. Sachirani Mondal (2023 SCC OnLine Cal 695)***. After referring *Radhamani vs. State of Kerala* and *Sudesh Chhikara v. Ramti Devi*, it was held as follows :

“17.If the deed of gift in question revolve around allegations of misrepresentation and fraud, that can only be the subject matter of a civil suit. Section 23 of the Act of 2007, cannot confer jurisdiction on a Magistrate or Sub-divisional Officer to exercise the power of a regular civil court as envisaged in the [Code of Civil Procedure](#), particularly when the pre-condition of Section 23 are not met. The language of the deed of gift does not speak that the transfer contemplated in the deed of gift being conditional upon the transferee providing the basic amenities and/or basic physical needs of the transferor. Previous good conduct of the transferee could be a reason for the gift but could not be construed as a condition of basic amenities or physical needs being provided by the donees to the donor.....”



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The learned Judge also referred to the earlier decision of the Division Bench of the Calcutta High Court in *Debashish Mukherjee @ Zen Acharya v. Dr. Sanjib Mukherjee* reported in [\(2018\) 1 CHN 481](#) (Cal) in which it was held as follows :

“12.we have carefully gone through a copy of the deed of gift dated 29th April, 2015. It is clear that the flat in question was gifted absolutely and unconditionally to the appellant reserving no right at all to the donor being the mother of the appellant. No conditions were attached that the appellant would have to provide basic amenities and basic physical needs to the transferor. Accordingly in our opinion, section 23 of the Act can have no manner of application to the facts of the present case”.

7.In ***Pokar Ram v. Maintenance Tribunal cum Sub Divisional Magistrate, Jodhpur*** (S.B. Civil Writ Petition No.1841 of 2019 dated 23.02.2023), the Rajasthan High Court held that for exercising jurisdiction under Section 23 of the Act, an explicit condition binding the transferee to provide the basic amenities and basic physical needs to the transferor has to be incorporated in the deed of transfer of property.

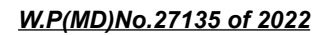
8.The next question that calls for consideration is whether in ***S.Vanitha v. the Deputy Commissioner (2021) 15 SCC 730***, it had been laid down that the deed of transfer need not contain any express recital as envisaged by Section 23



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of the Act and that it can be a matter for investigation and inference by the Maintenance Tribunal. I could not find any proposition in S.Vanitha that can sustain the ratio laid down in Mohamed Dayan. Vanitha is more on the interplay between the Domestic Violence Act and the Senior Citizens Act.

9.The issue can be approached from yet another perspective. Section 9 of the Transfer of Properties Act, 1882 is to the effect that a transfer of property may be made without writing in every case in which a writing is not expressly required by law. Section 54 of the T.P Act, 1882 contemplates that any sale of property above the value of one hundred rupees must be made only by a registered instrument. Section 123 of the Act also contemplates that gift of immovable property should be effected only by a registered instrument. A deed of settlement also has to be in writing. Section 92 of the Indian Evidence Act, 1872 would forbid adducing evidence of any oral agreement or statement for the purpose of contradicting, varying, adding to or subtracting from the terms of a document relating to disposition of property required by law to be reduced to the form of a document. If a document falling within the scope of Section 91 and 92 of the Indian Evidence Act is unconditional, then, its executant cannot subsequently claim that there was an implied condition. A deed of transfer envisaged by Section 23 of the Senior Citizens Act would definitely fall within the scope of Section 91 and 92 of the Indian Evidence Act.



12. I am conscious that if I do not agree with the opinion rendered by a coordinate bench, judicial discipline would require that the matter is placed before My Lord The Hon'ble Chief Justice to refer the matter to a larger bench. In this case, I have not done so for the following reasons :



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a) Mohamed Dayan rendered on 08.09.2023 fails to refer to the decision of the Hon'ble Division Bench rendered on 12.06.2023 in WA(MD)No.809 of 2023.

b) No satisfactory reason has been given for preferring S.Vanitha over Sudesh Chhikara, particularly when there is no proposition in Vanitha endorsing Radhamani.

13.The Maintenance Tribunal rightly held that the petitioner's case will not fall within the scope of the Senior Citizens Act, 2007. The approach of the authorities is correct. The writ petition is dismissed. If the petitioner files any civil suit, it shall be disposed of on merits and in accordance with law within a period of five months from the date of institution. No costs. Consequently, connected miscellaneous petitions are closed.

10.11.2023

Index : Yes / No
Internet : Yes/ No
rmi/skm

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G.R.SWAMINATHAN, J.

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