



W.P.Nos.3658 and 4708 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.3658 and 4708 of 2023
and
W.M.P.Nos.3748 and 4724 of 2023

W.P.No.3658 of 2023:-

M.Devarajan

... Petitioner

Vs

1. The District Collector / Appellate Authority,
Krishnagiri, Krishnagiri District.
2. The Revenue Divisional Officer/
Sub Divisional Magistrate,
Hosur, Krishnagiri District.
3. The Sub Registrar,
O/o. Sub Registrar,
Hosur 635 109,
Krishnagiri District.
4. D.Sukumar

5. D.Ponnurangam

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders made in Na.Ka.No.



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35967/2022/C2 dated 12.12.2022 passed by the first respondent confirming the order made in Mu.Mu.No.2764/2019/A1 dated 24.11.2020 passed by the second respondent, quash the same and consequently direct the respondents to cancel the settlement deeds dated 01.02.2017 (Doc.No.660/2017) and dated 19.08.2019 (Doc.No.14286/2019) on the file of the third respondent in respect of the house site measuring 2100 sq.ft comprised in S.No.90/4, Punugandoddi Village, Hosur Taluk, Krishnagiri District.

For Petitioner	: Mr.N.Manokaran
For R1 to R3	: Mr.M.S.Arasa Kumar Government Advocate
For R4	: Mr.N.Sivaprakash

W.P.No.4708 of 2023:-

D.Sukumar

... Petitioner

Vs

1. The District Collector,
Krishnagiri / Officer, Appellate Tribunal Parents,
Senior Citizen Maintenance and Welfare Act.

2. Revenue Divisional Officer,
Hosur.

3. S.Devarajan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the entire records of the first respondent vide Na.Ka.No.35967/2022/C2, dated 12.12.2022 and quash the same.



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For Petitioner : Mr.N.Sivaprakash
For R1 to R2 : Mr.M.S.Arasa Kumar
Government Advocate

COMMON ORDER

W.P.No.3658 of 2023 has been filed challenging the order passed by the respondents 1 and 2, thereby partly allowed the complaint filed by the petitioner under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

2. W.P.No.4708 of 2023 has been filed challenging the order passed by the first respondent dated 12.12.2022, thereby dismissed the appeal filed by the third respondent, confirming the order passed by the second respondent, thereby ordered maintenance of Rs.10,000/- payable by the petitioner and another brother.

3. Both the writ petitions have been filed challenging the very same order and as such, this Court is inclined to pass common order.



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4. Heard and perused the materials available on record.

5. The petitioner in W.P.No.3658 of 2023 and the third respondent in W.P.No.4708 of 2023 is the father of the respondents 4 and 5 in W.P.No.3658 of 2023 and the petitioner in W.P.No.4708 of 2023 (herein after called as 'father'). The respondents 4 and 5 in W.P.No.3658 of 2023 are (hereinafter called 'sons').

6. The petitioner in W.P.No.3658 of 2023 had purchased a house site ad-measuring 2100 sq.ft comprised in S.No.90/4, Punugandoddi Village, Hosur Taluk, Krishnagiri District by the registered sale deed dated 15.05.2012 vide Document No.7207 of 2021. He got married and gave birth to two sons through first wife. Thereafter, the first wife eloped with other person and living separately. Therefore, the petitioner got another marriage and his second wife gave birth to a son and a daughter. In fact, the second wife of the father only maintained all the sons and daughter and parted with education. While being so, the father suffered with his ailments and also underwent heart surgery in the year 2015.



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Thereafter, his physical condition was not good and as such, the fourth respondent in W.P.No.3658 of 2023 compelled the father to settle the said property in his favour and also undertakes to maintain father and mother. Therefore, the father had no other option than to settle the property and the said property was settled in favour of the fourth respondent in W.P.No.3658 of 2023 by the registered sale deed dated 01.02.2017 vide Document No.660 of 2017. After settling the property, the attitude of the fourth respondent in W.P.No.3658 of 2023 and his wife have changed and the parents were not maintained by the son.

7. Therefore, the father was constrained to file a complaint under Section 23 Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the second respondent in W.P.No.3658 of 2023. After due enquiry, the second respondent in W.P.No.3658 of 2023 partly allowed the complaint, thereby directed the sons to maintain the parents by ordering monthly maintenance of Rs.10,000/- each and rejected the request for cancellation of settlement deed executed in favour of the son. Aggrieved by the same, the father preferred an appeal before the first



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respondent and the same was dismissed, confirming the order passed by the second respondent. Aggrieved by both the orders, the father filed W.P.No.3658 of 2023. Simultaneously, one of the sons challenged the order passed the first respondent in W.P.No.4708 of 2023.

8. The learned counsel for the sons submitted that father is only an auto driver and he has no source of income and he is earning only meager income. The petitioner in W.P.No.4708 of 2023 is an Operator and employed at Pune Airport. Only from his income, the subject property was purchased in the name of the father. Subsequently, the said property was settled in favour of the fourth respondent in W.P.No.3658 of 2023. That apart, he had produced the documents to show that the father owned some other property and he has means to maintain himself and his wife. He also suppressed the first wife and filed a petition. Hence, the respondents ought not to have awarded any maintenance payable by the sons.



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9. He further submitted that there is no recital in the settlement deed to attract the provisions under Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2022 SCC OnLine SC 1684** in the case of **Sudesh Chikara Vs Ramti Devi and Another**, wherein it was 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.*

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.

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)



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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



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the rights claimed by the intervenor are left open to be decided in appropriate proceedings.”

Thus, it is clear from the above judgment that there are two essential pre-conditions in order to invoke the provisions of Section 23 of the Act and that the documents should have been executed after coming into force of the Act and it should contain a clause imposing an obligation on the settlor or transferee to maintain settlor or transferee.

10. In view of the above, the order passed by the first and second respondents in W.P.No.3658 of 2024 cannot be sustained and are liable to be quashed. Accordingly, the impugned orders made in Na.Ka.No. 35967/2022/C2 dated 12.12.2022 passed by the first respondent and the in Mu.Mu.No.2764/2019/A1 dated 24.11.2020 passed by the second respondent are hereby quashed, insofar as rejecting the request made by the petitioner in W.P.No.3658 of 2024 to cancel the settlement deed executed in favour of the fourth respondent in W.P.No.3658 of 2024.

11. Accordingly, W.P.No.3658 of 2024 stands allowed. Consequently, connected Miscellaneous petition is closed. No costs. The



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settlement deeds dated 01.02.2017 vide Doc.No.660/2017 and 19.08.2019 vide Doc.No.14286/ 2019 on the file of the third respondent executed by the petitioner in W.P.No.3658 of 2024 in favour of the fourth respondent in W.P.No.3658 of 2024 are hereby declared as null and void as sham and nominal. The fourth respondent in W.P.No.3658 of 2024 is directed to hand over vacant possession of the subject property in favour of the petitioner, forthwith.

12. In view of the order passed in W.P.No.3658 of 2023, W.P.No.4708 of 2023 stands dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

19.09.2024

Internet: Yes
Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order
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To

1. The District Collector / Appellate Authority,
Krishnagiri, Krishnagiri District.
2. The Revenue Divisional Officer/
Sub Divisional Magistrate,
Hosur, Krishnagiri District.
3. The Sub Registrar,
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G.K.ILANTHIRAIYAN. J.

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