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W.P.No. 6093 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	06.09.2024
PRONOUNCED ON	.10.2024

CORAM:

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

W.P.No.6093 of 2023
and
W.M.P.No.6139 of 2023

M.Salia Bee

.... Petitioner

Vs

1. The District Collector cum
District Executive Magistrate/Appellate Tribunal,
Chennai Collector's Office,
Chennai – 600 001.

2. The Sub Divisional Magistrate
cum District Revenue Officer,
Chennai South/Maintenance Tribunal,
Chennai Collector's Office,
Chennai – 600 001.

3. The Sub Registrar,
Sub Registrar Office,
Mylapore, Chennai.

4. The Sub Registrar,
Sub Registrar Office,
Neelankarai, Chennai.

5. K.Mohamed Nafees
6. M.A.Khaja Mohideen

.... Respondents



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Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 07.11.2022 passed by the first respondent in his proceedings in Se.Mu.Na.Ka.No.1641/A1/2022 and quash the same and thereby consequently direct the third and fourth respondents to cancel the registered settlement deed dated 21.03.2017 registered as Document No.822 of 2017 before the Sub Registrar Office, Mylapore the third respondent herein in respect of Item I of the petition mentioned property and the registered sale deed dated 09.04.2019 registered as Document No.5794 of 2019 before the Sub Registrar Office, Neelankarai the fourth respondent herein in respect of the Item II of the petition mentioned property.

For Petitioner	: Mr.R.Abdul Mubeen
For R1 to R4	: Mr.M.S.Arasa Kumar Government Advocate
For R5	: Mr.V.M.Koteswaran
For R6	: Mrs.M.Latha

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent dated 07.11.2022, thereby rejected the complaint in so far as it sought for cancellation of settlement deed and the sale deed executed in favour of the fifth respondent herein and the order passed by the first respondent dated 07.11.2022, confirming the order passed by the second respondent and dismissed the appeal.



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2. The petitioner is the grandmother of the fifth respondent and the sixth respondent is the son-in-law of the petitioner herein. The petitioner owned the property and the same was settled in favour of the fifth respondent, who is the grandson, through her daughter registered vide Document No.822 of 2017, dated 21.03.2017. That apart, the petitioner had also executed a sale deed in respect of other property on 09.04.2019 registered vide Document No.5794 of 2019 in favour of the fifth respondent herein. The petitioner got married to one M.A.Naina Mohamed and gave birth to one son and two daughters. Her elder daughter died in the year 2016 and the fifth respondent is the son of the elder daughter. The petitioner had settled the subject property due to her love and affection towards the fifth respondent and the petitioner was taken care by the fifth respondent at the time of execution of settlement deed. However, after execution of the settlement deed in respect of one item of the property, the petitioner was compelled to execute a sale deed in respect of another property in favour of the fifth respondent. Thereafter, the petitioner was not maintained by the fifth respondent and she was constrained to lodge a complaint under Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007, (hereinafter referred to as “the Act”) before the second respondent.



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3. The allegation as against the fifth respondent is that the fifth and sixth respondents tortured the petitioner to the core and also had beaten her by hand and compelled her to withdraw the complaint lodged as against the fifth and sixth respondents herein. In fact, the petitioner called 100 for assistance of police personnels and the fifth respondent was warned by the police officials. Thereafter, the petitioner lodged a complaint as against the fifth respondent and sought for cancellation of the settlement deed as well as the sale deed in favour of the fifth respondent. However, the second respondent, though ordered to take appropriate action as against the fifth and sixth respondents, if any torture given by them, to the police officials. The request made by the petitioner for cancellation of the settlement deed and the sale deed were rejected on the ground that the provisions under Section 23(1) of the Act does not attract to cancel the same. There is no specific condition undertaken by the fifth respondent to maintain the petitioner/settlor in the settlement deed. That apart, the petitioner is receiving rent from the other properties to the tune of Rs.5 lakhs. Hence, the present writ petition.

4. Heard the learned counsel appearing on either side and perused the materials available on record.



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5. A perusal of the records reveals that there is no material to show that the petitioner is receiving rent to the tune of Rs.5 lakhs. Though the petitioner executed a settlement deed in favour of the fifth respondent without specific condition to maintain her, it does not preclude the petitioner to lodge a complaint under Section 23 of the Act as against the fifth respondent. The petitioner with a fond hope on the fifth respondent had executed a settlement deed that the fifth respondent will maintain her during her life time. The petitioner also made several allegations for execution of sale deed in favour of the fifth respondent.

6. However, so far as the sale deed is concerned, the Act does not provide any relief for the petitioner to cancel the sale deed for non-maintaining her. The petitioner ought to have approached the Civil Court for challenging the sale deed in the manner known to law. In so far as the settlement deed is concerned, it is relevant to extract the provision under section 23(1) of the Act, which 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 transferred by way of gift or



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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.”

7. In the interest of justice, this Court ordered for appearance of the petitioner and the fifth respondent before this Court. The petitioner deposed that the fifth respondent and his father used to beat her always and had also driven her out from her residence and also threatened her with dire consequence. Though the petitioner is living in a portion of the property, in which the fifth respondent resides, the fifth respondent does not provide any food or any amenities to her. She also apprehends all kind of threats at the hands of the fifth respondent. The fifth respondent deposed that he is always ready and willing to maintain the petitioner and in fact he was grown up under the custody of the petitioner.

8. On a perusal of the settlement deed, it reveals that being pleased with the care, love, affection, respect and good behaviour, the



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grandmother had executed settlement deed as a reward in favour of his grandson and in discharge of her responsibilities towards the grandson, she has also given future security to the grandson. Further, though no consideration was passed for execution of settlement deed, the consideration for executing the settlement deed is based on human conduct, caring and conscious. The transfer was made admittedly out of love and affection. The settlor in the settlement deed would expect in the natural course of human conduct that the settlee continues to behave in the same manner as behaved before execution of the settlement deed. Therefore, it would form part of condition of the transaction for future conduct as well.

9. Thus, in the absence of any other circumstances, it must be presumed that the settlor expects continuation of the care and love from the settlee even after the execution of the settlement deed in the same manner, the settlor was taken care prior to the execution of the settlement deed. Further, the intention of the Legislature and terms of the Act would declare certain transfer as void, taking note of the fact that by taking advantage of the emotionally dependent senior citizens, relatives grab the property on the pretext of providing emotional support. Therefore, the Legislature thought that such



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transaction could be declared as void, as the conduct leading to the transaction was based on malice or fraud. Therefore, the condition referred under Section 23 has to be understood based on the conduct of the settlor and not with reference to the specific stipulation in the deed of transfer. Therefore, it is sufficient if the settlee breached the promise given to the settlor at the time of execution of the settlement deed.

10. Further, sub-Section 2 of Section 23 of the Act envisages the situation where a senior citizen has a right to receive the maintenance out of an estate. Where such a right exists, the right of maintenance can be enforced, where the estate or a portion of it is transferred against a transferor, who has noticed the right or if the transfer is gracious. The right however cannot be enforced against a transferee for consideration without notice of right. It is also relevant to rely upon the judgement of this Court in the case of ***Mohamed Dayan Vs. District Collector.***, order dated **08.09.2023** made in ***W.P.No.28190 of 2022*** in which this Court, after discussing various judgements of the Hon'ble Supreme Court of India and various judgements of High Court including the cases referred by the learned Senior Counsel for the petitioner, held as follows:-

“33. Close reading of the principles considered by the various High Courts and the Supreme Court, there is no ambiguity



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with reference to the purpose and object sought to be achieved under the provisions of the Senior Citizen Act. Section 4(2) of the Act, unambiguously stipulates that the obligation of the children or the relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

34. In the context of the adoption of the phrase “lead a normal life” Rule 20(2)(i) of the Maintenance of Senior Citizen Rules, enumerates that “it shall be the duty of the District Collector to ensure that life and property of senior citizens of the District are protected and they are able to live with security and dignity”. Therefore, normal life includes security and dignity. Thus the normal life as indicated under Section 4(2) of the Act, is not mere life, but a life with security and dignity. In the context of Article 21 of the Constitution of India, life includes decent medical facility, food, shelter with dignity and security. All such combined necessities of human life is falling under the term “Normal Life” emboldened under Section 4(2) of the Senior Citizen Act. Therefore, simply providing food and shelter would be insufficient. But life includes providing of decent medical facilities, food, shelter and other requirements with dignity in commensuration with the status of the family and taking into consideration of the living style of the senior citizen throughout.

35. Therefore, the children defending their case merely on the ground that they are willing to provide food and shelter, cannot be taken as a ground for the purpose of sustaining the Settlement



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Deed executed by the senior citizen. The requirement of the provisions are to be complied in its real spirit and in the event of an iota of doubt, the Authority Competent is empowered to cancel the Settlement Deed or Gift Deed, as the case may be, in order to protect the normal life of senior citizen.

36. Section 4(3) denotes, the obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parents may lead a normal life. Therefore, it is an obligation on the part of the children to maintain his or her parents and ensure the parents to lead a normal life. In the event of complaint, the Authorities Competent are expected to ensure that the senior citizen and their life and dignity are protected. The above provision is to be read in conjunction with the Rules framed under the Act.

37. Rule 20 of the Maintenance of Senior Citizen Rules, provide duties and powers of the District Collector. The District Collector is casted upon the duty to ensure that the life and property of citizens of the District are protected and other people to live with security and dignity. Therefore, it is the statutory duty on the part of the District Collector to protect the safety and security of senior citizens in his District. Thus the complaint filed by the senior citizen, cannot be treated lightly. Such complaints are to be enquired into in a pragmatic manner, so as to understand the real grievances of the senior citizen and accordingly, all appropriate actions are to be initiated to provide safety, security and to protect the dignity of the senior citizen.



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38. *The Kerala High Court observed in the case of Radhamani and Others (cited supra), Section 23(1) of the Senior Citizen Act, cannot be interpreted to the disadvantage of the senior citizen. Section 23(1) of the Act contemplates that “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”. The phrase “ subject to the condition that the transferee shall provide the basic amenities” does not mean that the Gift or Settlement Deed should contain any such condition expressly. “Subject to the condition” as employed in Section 23(1), is to be holistically understood with reference to the subsequent phrase i.e., “deemed to have been made by fraud or coercion or undue influence”. Both the phrases would amplify that the deeming clause should be considered so as to form an opinion that the phrase “subject to condition” amounts to an implied condition to maintain the senior citizen and any violation would be sufficient for the purpose of invoking Section 23(1) of the Act, to cancel the Gift or Settlement Deed executed by the senior citizen.*

39. *To elaborate, the phrase “subject to condition” employed under Section 23(1) of the Act, is to be understood with reference to the love and affection by the senior citizen towards the*



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person in favour of whom such Gift or Settlement Deed has been executed.

40. “Love and Affection” is an implied condition in the context of Section 23(1) of the Act, and therefore, there need not be any express condition in the Settlement Deed for the purpose of maintaining the senior citizen. Refusal of maintenance after executing the Settlement Deed or Gift Deed, is the ground for invoking the deemed ground of fraud or coercion or undue influence. When the deeming clause has been incorporated under the provisions of Section 23(1) of the Act, 'Love and Affection' to be construed as the consideration for executing the Gift or Settlement Deed. Thus the condition need not be expressly made in the document and the love and affection, which resulted in execution of the Deed by the senior citizen is to be construed as a condition for the purpose of invoking the deeming clause for declaring the document as fraud or coercion or undue influence.

41. The entire purpose and object of the Senior Citizens Act, is to consider the human conduct towards them. When the human conduct is indifferent towards senior citizen and their security and dignity are not protected, then the provisions of the Act, is to be pressed into service to safeguard the security and dignity of senior citizen. Therefore, the purposive interpretation of the provisions are of paramount importance and Section 23 of the Act, cannot be mis-utilised for the purpose of rejecting the complaint filed by the senior citizen on the ground that there is no express condition for maintaining the senior citizen. Even in the absence of any express



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condition in the document, “Love and Affection” being the consideration for execution of Gift or Settlement Deed, such love and affection becomes a deeming consideration and any violation is a ground to invoke Section 23(1) of the Act. Thus there is no infirmity in respect of the order passed by the second respondent in the present case.

42. The human conduct in the context of the senior citizen Act, is to be understood considering the relationship between the senior citizen and the beneficiaries of the Gift or Settlement Deed. Mostly the parents are executing the document in favour of their children. Since they may not be in a position to maintain the property at their old-age and more-so, they are intending to visibly express their love and affection towards their children by settling their properties. In some cases, the parents during their old-age are settling their property in order to avoid conflict between their children and to ensure that all children get equal share. If at all the parents decide to settle the property in favour of a son or daughter, then they are doing so, only with love and affection and with a fond hope that they will be taken care of by the son or daughter during their old-age. Thus love and affection, being the consideration and implied condition, within the meaning of Section 23(1) of the Act. The subsequent non-maintenance of senior citizen would attract Section 23(1) of the Act and the Authorities in such circumstances are empowered to declare the document as null and void.

43. Therefore, Section 23 is referable as a conduct of the transferee prior to and after execution of the Deed of Gift or



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Settlement, as the case may be. For all purposes, Section 23 is to be understood taking note of the conduct of the transferee and not with reference to the specific stipulation of condition in the Deed of Gift or Settlement.”

11. The above case is squarely applicable to the case on hand. In respect of the judgment relied on by the third respondent in the case of ***Sudesh Chhikara vs. Ramti Devi and Another*** (cited supra), the Three Judges Bench of the Hon'ble Supreme Court of India in the case of ***S.Vanitha vs. Deputy Commissioner, Bengaluru Urban and District and Others*** (cited supra) is to be followed. There are several judgments to establish that the purpose and object of the Senior Citizens Act, is to be complied with in its letter and spirit in order to protect the life, security and dignity of senior citizens. Thus the judgment relied on by the third respondent is of no avail as far as the present facts and circumstances of the case on hand is concerned.

12. In view of the above, this Court finds infirmity in the order passed by the first respondent in so far as the rejection of cancellation of settlement deed alone. Accordingly, the impugned order of the first respondent to the extent of rejection of the settlement deed alone is set aside. Accordingly, the settlement deed executed by the petitioner in favour of the fifth respondent



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dated 21.03.2017 registered vide Document No.822 of 2017 is hereby declared as null and void. The fifth respondent is directed to vacate and hand over the possession of the subject property viz., the residential Flat, bearing No.F-2 having a super built up area admeasuring 1360 sq.ft consisting of 1202 sq.ft. including balcony and 158 sq.ft common area in First Floor along with single covered car parking space in the stilt floor together with 659 sq.ft. undivided share of land out of 3644 sq.ft. bearing Plot No.9, Old No.10, New No.4, Appu Street, First Lane, Mylapore, Chennai – 600 004, comprised in O.S.No.787, 797 and 798, R.S.No.2561/1 part (as per town survey land register extract R.S.No.2561/24) as per the layout No.104 of 1948, to the petitioner forthwith.

13. In the result, this writ petition is partly allowed.
Consequently, connected miscellaneous petition is closed. No costs.

.10.2024

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

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District Executive Magistrate/Appellate Tribunal,
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G.K.ILANTHIRAIYAN. J,

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Pre-delivery order in
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