



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.12.2024

PRONOUNCED ON : 13.12.2024

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 9317 of 2023

And

W.M.P.Nos. 11536 & 11538 of 2024

Jayalakshmi

... Petitioner

..Vs..

1. The District Collector
No.62, Rajaji Salai
4th Floor, Beach Road,
George Town,
Chennai – 600001.

2. The Revenue Divisional Officer
South Chennai Range
Guindy,
Chennai – 32.

3. Meenakshi

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus to call for the records in Che.Mu.Na.Ka.No. 71/A1/2021 dated 08.08.2022 passed by the first respondent and quash the same and consequently direct the first respondent to cancel the settlement deed dated 06.10.2015 vide Doc.No. 3996/2015 on the file of SRO, Alandur.



For Petitioner :: Mr. K.Thenrajan
For RR 1 & 2 :: Mr. M.R.Gokul Krishnan
For 3rd Respondent :: Mr. T. Ramachandran

ORDER

The Writ Petition has been filed in the nature of a Certiorarified Mandamus calling for the records of the order dated 08.08.2022 passed by the first respondent, District Collector, Chennai and quash the same and direct the said respondent to cancel the settlement deed dated 06.10.2015 registered as Document No. 3996 of 2015 on the file of the Sub Registrar Office at Alandur.

2. In the affidavit filed in support of the Writ Petition, it had been stated that the petitioner is a Senior Citizen, aged about 85 years and mother of the third respondent. She had executed a settlement deed in favour of the third respondent on 06.10.2015 which was registered as Document No. 3996 of 2015 in the Office of the Sub Registrar, Alandur. It had been contended that after the execution of the settlement deed, the third respondent refused to take care of her and forced her away from the house property. She had therefore preferred a complaint before the second respondent,



Revenue Divisional Officer, South Chennai Range, Chennai. That complaint was rejected by order dated 27.08.2021. The petitioner then filed an Appeal before the first respondent. That was also dismissed by order dated 08.08.2022. This Writ petitioner had been filed questioning the said order. It had also been stated that the petitioner had fallen down in the year 2022 and had undergone a hip surgery and therefore was bedridden. Her second daughter alone was taking care of her. It had been stated that both the authorities had refused to cancel the settlement deed on the ground that the said document could not be termed as settlement deed.

3. A counter affidavit had been filed by the first respondent / District Collector, Chennai, wherein it had been stated that the Appeal against the order of the second respondent was examined on merits and after considering the document, it was found that the document did not satisfy the conditions contemplated under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007. There was no clause placing obligation on the settlee to maintain the settlor. There was also no clause to either revoke or cancel the said document. It had been stated that the petitioner was receiving a family pension of Rs.13,000/- per month. It had been contended that the order under challenge had been passed after due consideration of all factors.



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4. A perusal of the records show that on 19.04.2023, a learned Single Judge of this Court had passed an interim direction that the third respondent should pay a sum of Rs.10,000/- per month to the petitioner on or before 5th day of every succeeding month until further orders and must deposit the arrears amount at the rate Rs.10,000/- per month from the date of proceedings of the second respondent dated 27.08.2021 till the date of disposal of the present Writ Petition by way of demand draft to the petitioner. Thereafter, the matter had come up for hearing on 06.06.2023. A direction was given that the third respondent should comply with the said order on or before 12.06.2023.

5. It had been informed to this Court that questioning the said order, the third respondent had filed W.A.No. 1301 of 2023 which came up for consideration before the Division Bench on 07.08.2023. The Division Bench had disposed of the Writ Appeal by stating that the third respondent can appear before this Court and file an application to vacate the interim order. Accordingly, the third respondent had filed W.M.P.No. 11536 of 2024 to vacate the order dated 19.04.2013 and also W.M.P.No. 11538 of 2024 to implead as further respondents / the other daughters of the writ petitioner/sisters of the third respondent.



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6. In the affidavit filed in support of W.M.P.No. 11536 of 2024, which could be taken as the counter affidavit in the Writ Petition, the third respondent had stated that the order directing to pay Rs.10,000/- as maintenance and also the arrears at the same rate was an exparte order. It had been stated that the third respondent was seriously prejudiced by the said order and therefore, it will have to be vacated.

7. It had been further stated that the Writ Petitioner had also filed Cont.P.No. 894 of 2024 complaining that the third respondent had not paid the arrears or the maintenance amount. The third respondent had been sentenced to undergo three months simple imprisonment and also been inflicted with fine of Rs.25,000/-.

8. It is contended by the learned counsel for the third respondent that the writ petitioner and the father of the third respondent were possessed with two separate properties. An agreement had been entered into among all the four daughters. The property of the father was sold and the sale consideration was given to the third and fourth daughters. With respect to the property of the mother, it was put up for development and four flats were built. Two



flats were taken over by the developer. Out of the two remaining flats, one was allotted to the third respondent and the other was allotted to the second daughter of the writ petitioner. It had been contended that the writ petitioner is also receiving monthly pension of Rs.15,000/-, apart from the amount received towards the other benefits. It had been contended that it was the third respondent, who had been thrown out to the property and is out of possession. It had been contended that the other flat which had been allotted to the sister / second daughter of the writ petitioner had also been sold.

9. The learned counsel therefore contended that the Writ Petition should be dismissed. He also pointed out that the settlement deed did not contain any stipulation as required under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007. It was also contended that no application had been filed seeking maintenance and therefore, the Court should not have granted such maintenance.

10. I have carefully considered the arguments advanced and the materials available on records.

11. This is a family dispute between the writ petitioner and



the third respondent. The writ petitioner is the mother of the third respondent who is her elder daughter. The Writ Petitioner has three other daughters. To implead them, the third respondent had filed W.M.P.No. 11538 of 2024. But since this is a dispute only between the petitioner and the third respondent and the other daughters are not either directly or indirectly involved, I hold that the said Miscellaneous Petition seeking to implead will necessarily have to suffer an order of dismissal and accordingly, W.M.P.No. 11538 of 2024 is dismissed.

12. The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking to set aside the order of the first respondent/ District Collector, Chennai, dated 08.08.2022.

13. The writ petitioner had filed an application seeking to cancel a settlement deed executed by her in favour of the third respondent dated 06.10.2015 and registered as Document No. 3396 of 2015 in the office of the Sub Registrar, Alandur. However, the second respondent/ the Revenue Divisional Officer, had dismissed the petition and refused to cancel the settlement deed. That order was confirmed by the first respondent/District Collector. The Writ Petition has been filed challenging the said order.



14. In the order of the first respondent, it had been contended that the settlement deed did not confirm to the requirements of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007. It had been stated that there was no clause placing reciprocal benefits to be extended by the third respondent for the execution of the settlement deed by the writ petitioner.

15. Section 23(i) and (ii) of the Act are as follows:-

‘23. Transfer of property to be void in certain circumstances.

(i) Where any senior citizen who, after the commencement of this Act, has transferred 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.

(ii) 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. "

16. The said provision had come up for consideration before the Hon'ble Supreme Court in ***Sudesh Chhikara Vs. Ramti Devi and Another*** reported in ***2022 SCC OnLine SC 1684***. The Hon'ble Supreme Court had 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.



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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) 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*



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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. The settlement deed has been filed as a document along with Writ Petition. In the settlement deed, it had been stated as follows:-

“இதன் கீழ் “B” சொத்து விவரத்தில் கண்ட அடுக்குமாடி குடியிருப்பை உன்னுடைய பெயருக்கு என் ஜீவிய திசைக்குப்பின் அடைய வேண்டி.....”

[Emphasis Supplied]

18. The said words had been again reiterated as follows:-

““B” சொத்து விவரத்தில் கண்ட அடுக்குமாடி குடியிருப்பை என் ஜீவிய திசைக்குப்பிறகு நீ கைப்பற்றிக்கொண்டு சகல உரிமைகளுடன் செட்டில்மெண்ட் சரத்துப்படி உன்னுடைய விருப்பம் போல் ஆண்டு அனுபவித்துக் கொள்ள வேண்டியது.”

[Emphasis Supplied]

19. A plain reading of the above covenants shows that the settlee, namely, the third respondent would acquire any right over the



property only after the demise of the writ petitioner. Even though the document has been termed as a settlement deed, transfer of title will not take effect immediately on the execution of the document. The actual title would flow only after the death of the writ petitioner.

20. This document does not convey any right at all to the third respondent. The title still vests with the petitioner in respect of the said property. Since the document does not convey any title or right to the third respondent, it is immaterial whether it is cancelled or not cancelled.

21. In the impugned order, it had only been stated that there are no grounds to cancel the settlement deed. In the counter affidavit filed, the first respondent had however placed reliance on Section 23 of the Act and stated that the settlement deed did not have any clause as required under Section 23 of the Act to enable cancellation of the document, if the said obligation is not complied with by the settlee.

22. The words of the settlement deed extracted above make it clear that there has been no transfer of the title but that the title will have effect only on the demise of the writ petitioner. It is therefore clear that even though the document is termed as a settlement deed,



it is not a settlement deed and no right has flowed to the third respondent. Even if it is to be considered that the document was a gift transfer, has to take place immediately and the gift has to be accepted by the settlee.

23. In the instant case, there is no transfer of any right or title. That actually transfer will take effect only on the death of the writ petitioner. Therefore, even though I hold that the order of the first respondent does not suffer from any infirmity, I would also declare that no right or title had flowed to the third respondent by the execution of the settlement deed dated 06.10.2015 and registered as Document No. 3996 of 2015 on the file of the Sub Registrar Office at Alandur.

24. The third respondent had also filed W.M.P.No. 11356 of 2024 to vacate the order dated 19.04.2023 directing her to pay Rs.10,000/- as maintenance. However in her affidavit, she had stated that she has no permanent income and is dependent on her. The obligation of the third respondent to maintain the petitioner is paramount. The third respondent cannot abjure from such responsibility.

25. The direction to pay amount of maintenance is vacated in view of the observation made by this Court on the validity of the



settlement deed executed by the writ petitioner and the further observation that the document had not conveyed any right or title immediately on execution and transfer of title take effect only on the demise of the writ petitioner. The right and title of the writ petitioner over the property settlement under the said document has not been extinguished by the execution of the said document.

26. In the result,

(i) W.M.P.No. 11536 of 2024 is allowed.

(ii) W.M.P.No. 11538 of 2024 is dismissed.

(iii) W.P.No. 9317 of 2023 is disposed of accordingly. No order as to costs.

13.12.2024

vsg
Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking Order

C.V.KARTHIKEYAN, J.,

vsg



To

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No.62, Rajaji Salai
4th Floor, Beach Road,
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South Chennai Range
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Pre-Delivery Order made in

W.P.No. 9317 of 2023

And

W.M.P.Nos. 11536 & 11538 of 2024

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