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W.P.No.9094 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No.9094 of 2020

and

W.M.P. Nos.11083 and 11085 of 2020

L. Deepak Antony S/o. Late Lourdsamy Raymond

... Petitioner

Vs.

1. The District Magistrate-cum-Appellate Tribunal-II.
For Maintenance and Welfare of Parents and Senior Citizens,
Karaikal – 609 602.

2. The Presiding Officer-cum-Deputy Collector (Revenue),
Tribunal-III,
For Maintenance and Welfare of Parents and Senior Citizens,
Karaikal – 609 602.

3. Marie Alphonsa Fathima W/o. Late Lourdsamy Raymond

4. Monicka Arokiyasamy D/o. Late Lourdsamy Raymond

5. The Sub-Registrar, Karaikal.

..... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorarified Mandamus calling for the records on the file
of the respondents relating to the order dated 16.06.2020 in Appeal No.2 of
2020 passed by the 1st respondent and the order dated 24.04.2020 in M.C.



No.278 of 2019 passed by the 2nd respondent and quash the same and consequently direct the 5th respondent to remove the entry in Doc. No.7436 of 2020.

For Petitioners : Mr. T. Saikrishnan

For Respondents : Mr. A. Tamilvanan,
Additional Government Pleader.
[for R1, R2 and R5]

Mr. P. Parthiban [for R3 and R4]

ORDER

The Appellate order passed by the District Magistrate, Appellate Tribunal for maintenance and welfare of parents and senior citizens at Karaikal dated 16.06.2020 in Appeal No.2 of 2020 confirming the order of the Original Authority dated 24.04.2020 in M.C. No.278 of 2019 are under challenge in the present Writ petition.

2. The petitioner is the son of the 3rd respondent and the 4th respondent is the sister of the Writ petitioner. The father of the Writ petitioner late A. Lourdsamy Raymond died intestate on 01.06.2015 leaving behind the petitioner and the respondents 3 and 4 as legal heirs. The father of the petitioner served as Clerk in the Commune Panchayath of TR-



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Pattinam. The subject property was purchased by the 3rd respondent along with her deceased husband. The 3rd respondent was also working as Government Staff in the cadre of Nursery Orderly. A release deed was executed by the 3rd respondent in favour of the petitioner in Doc. No.1689 of 2019 dated 29.01.2019. The property stood in the name of the 3rd respondent was released in favour of the petitioner to the extent of 1/3rd portion. The 3rd respondent filed a complaint stating that the Writ petitioner has fraudulently obtained signature from the 3rd respondent and obtained release deed from her. The complaint filed by the 3rd and 4th respondents dated 21.08.2019 and 09.09.2019 would reveal that without the knowledge of the 4th respondent, the daughter and the 3rd respondent, the mother, the Writ petitioner has obtained release deed from the 3rd respondent taking undue advantage of the old age of the 3rd respondent and she is suffering ill health. The complaint was taken up for adjudication in M.C. No.278 of 2019 on the file of the Presiding Officer-cum-Deputy Collector, Tribunal-II (For Maintenance and Welfare of Parents and Senior Citizens) and final order was passed in M.C. No.278 of 2019 on 24.04.2020. The findings of the Original Authority would reveal that the Writ petitioner has not performed his duties and responsibilities and failed to provide care to his



mother even in her days of ailment. It is made clear that the occupation of the Writ petitioner in the subject property is a source of mental agony for the 3rd respondent. The 3rd respondent is residing with fear in the subject property with the Writ petitioner and therefore, the 3rd respondent was deprived of her residence. By recording evidence based on the facts and the depositions given by the parties, the Original Authority passed the following orders:

3. The petitioner preferred an appeal before the Appellate Tribunal. The Appellate Tribunal also conducted an independent enquiry by affording opportunity to all the parties. The facts and allegations set out in the complaint by the 3rd and 4th respondents were also independently considered by the Appellate Authority. The Appellate Authority also made a finding that based on the records produced, the Writ petitioner has failed in every aspect of caring his ailing mother and shunned from his responsibility of protecting his mother. The Appellate Authority further found that the presence of the Writ petitioner in the house belongs to the 3rd respondent will be a source of mental agony to the 3rd respondent. Based on the findings, the Appellate Authority confirmed the order passed by the



Original Authority.

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4. The learned counsel for the petitioner would submit that the Writ petitioner is taking care of the 3rd respondent. He is not causing any harm to the 3rd respondent. The 3rd respondent executed the release deed voluntarily and there was no such fraud as alleged by the 3rd and 4th respondents.

5. The said argument was opposed by the learned counsel appearing on behalf of the 3rd and 4th respondents. The evidences produced by the parties before the Original Authority and the Appellate Authority would be sufficient to form an opinion that the petitioner had fraudulently obtained release deed from his own mother and taken away the property purchased by the deceased father and the mother/3rd respondent, since both of them were Government employees.

6. However, this Court is of the considered opinion that the petitioner has not produced any further evidence so as to defend the findings made by the Original Authority as well as the Appellate Authority. The concurrent findings of the Authorities would be sufficient enough to form an opinion



that the respondents 3 and 4 are entitled for the relief under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act.

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7. Section 23(1) of the Senior Citizens 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 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*”..

8. The Kerala High Court decided the scope of the provisions in the case of ***Radhamani and others vs. State of Kerala represented by its Secretary, Revenue Department and others reported in CDJ 2015 Kerala High Court 1019***. The relevant paragraphs read as follows:-

“10. Section 122 of Transfer of Property Act, 1882 (hereinafter referred for brevity, as 'the T.P. Act') defines “gift” as a transfer of certain existing movable or immovable property made voluntarily and without consideration. **Section 126 of T.P. Act** makes a provision to suspend or revoke the gift on happening of any specified event on which donor and donee may agree. The word 'consideration' in the context of **Section 122 of T.P. Act**, only refers to monetary consideration and does not include



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natural love and affection. However, it cannot be revoked on a mere Will of the donor. The gift or Settlement Deed on a promise to look after the donor at the old age is a transaction without any consideration. If such promise and expectation are treated to be a consideration, certainly transaction as a gift will be deemed to be void. Therefore, such conditions forming part of gift deed are also reiterated under Section 23 of the Senior Citizens Act, 2007.

11. Section 23 of the Senior Citizens Act, 2007 does not contemplate that the condition should form part as recital in the deed of transfer. It only refers that there should be a condition for such transfer. This condition can be either express or implied. If there is no express recital in the deed, the Tribunal has to look around circumstances to find out whether conduct otherwise dispel the intention of donor to revoke. The consideration for executing a gift deed or settlement deed is based on human conduct, caring and conscientious. Transfer admittedly is out of love and affection. Any donor in a gift deed would expect in a natural course of human conduct that donee continues to behave in same manner as behaved before execution of the deed. The love and affection influenced for execution of the deed certainly must be enduring and without any barrier. The human conduct in relation to a particular relation is presumed to exist in all set of circumstances for governing relationship of those individuals. Transferee cannot disown his own action of love and affection after the transfer comes into effect. The transfer itself being based on love and affection, that would form part as a condition of the transaction for future conduct as well. Thus, in the absence of any other circumstances to dispel, it must be presumed that transferor expects continuation of the care and love from the transferee even after execution of the deed in same manner, he was taken care prior to execution of the deed.

12. It is to be noted that the special scheme in terms of Senior Citizens Act, 2007 could declare certain transfer as void, taking note of the fact that by taking advantage of the emotionally



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dependent senior citizens, relatives grab the property on the pretext of providing emotional support. Therefore, legislature thought such transaction could be declared as void as the conduct leading to transaction was based on malice or fraud. Therefore, condition referred in Section 23 has to be understood based on the conduct of the transferee and not with reference to the specific stipulation in the deed of transfer. Thus, this Court is of the view that it is not necessary that there should be a specific recital or stipulation as a condition in the transfer of deed itself. This condition mentioned in Section 23 is only referable as a conduct of the transferee, prior to and after execution of the deed of transfer. Thus, challenge based on the ground that there is no reference in the recital of deed that transferee will provide basic amenities and physical needs to the transferor is of no consequence.

13. Under **Section 17 of the Indian Contract Act, 1872**, 'fraud' includes a promise made without any intention of performing it. Section 92 of the Evidence Act places a restriction on the admissibility of evidence in variance or in contradiction of the term of a registered document in writing. However, under second proviso to Section 92, the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. Under third proviso to Section 92, the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property may be proved. Thus, there is no requirement under law that condition as such should form part of written document. It can be implied from the circumstances of human conduct.”

9. The provisions of the Act are unambiguously clear that the protection of senior citizens are ensured. In the present case, both the



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Original Authority and the Appellate Authority concurrently held that the Writ petitioner failed to maintain his own mother / 3rd respondent and fraudulently obtained release deed in respect of the properties stood in the name of the 3rd respondent and the father of the Writ petitioner.

10. Therefore this Court do not find any infirmity in respect of the findings made by both the Original and the Appellate Authority which are inconsonance with the provisions of the Act.

11. That being so, the Writ petitioner is not entitled for the relief and consequently, this Writ petition stands dismissed. No order as to costs. Connected miscellaneous petitions are closed.

10.01.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
mjs

To

1. The District Magistrate-cum-Appellate Tribunal-II.
For Maintenance and Welfare of Parents and Senior Citizens,
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S.M.SUBRAMANIAM, J.

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