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W.P.No.14417 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.14417 of 2021
and
W.M.P. No.15320 of 2021

R.Yasodha

... Petitioner

Vs

1. The District Magistrate-cum-District Collector,
Chennai District,
Office of the District Collector,
Fourth Floor, M.Singaravelar Maaligai,
62, Rajaji Salai, Chennai Collectorate,
Chennai – 600 001.

2. The Revenue Divisional Officer,
Office of the Revenue Divisional Office,
North Chennai Revenue Division,
No.473, T.H.Road, Near Appollo Hospital,
Tondiarpet,
Chennai – 600 081.

3. L.R.Bharathi

4. L.G.Ravi

... Respondents



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Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in order dated 15.06.2021 passed by the first respondent in Appeal No.E.2/172/2021 (மே.மு.ம.எண்,0172/இ2/2021 நாள் 15.06.2021) confirming the order dated 28.12.2020 passed by the second respondent in proceedings No.A4/2304/2019 (செ.மு.எண். அ4/2304/2019) and quash the same as illegal.

For Petitioner : Mr.R.Vijayaraghaven

For Respondents : Mr.S.J.Mohamed Sathik,
Government Advocate (for R1 & R2)

Mr.D.Venkateswaran (for R3 & R4)

O R D E R

This Writ Petition has been filed challenging the order passed by the first respondent dated 15.06.2021, confirming the order passed by the second respondent dated 28.12.2020, thereby the second respondent rejected the petition filed by the petitioner seeking to cancel the settlement deed executed in favour of the third respondent.

2. The petitioner owned the property of an extent of 2557 ½ sq.ft situated at Plot No.23, Kasmass Nagar, Puthagaram Village, Ambattur Taluk.



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The said property was purchased by the petitioner on her own income by the registered sale deed dated 06.09.2006, vide Document No.10283 of 2006.

While that being so, the third respondent being her daughter and on the assurance given by her, she is to take care of her by providing all maintenance, etc., and the petitioner had settled the said property in her favour by the settlement deed dated 09.09.2019, registered vide Document No.13112 of 2019. It is a vacant house plot. After the settlement deed, the petitioner did not maintain as promised by the third respondent. In fact, the fourth respondent had attempted to murder the petitioner to grab her belongings. On the Police complaint, there was enquiry conducted by the Police Personnel and even then, the third and fourth respondents failed to return the property in favour of the petitioner. Therefore, the petitioner filed an application before the second respondent under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act' for short) to declare that the settlement deed executed in favour of the third respondent is null and void. After enquiry, the second respondent found that in the settlement deed dated 09.09.2019, there was no recital to fulfil the conditions stipulated under Section 23 (1) of the Act. Further, the



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second respondent concluded that the petitioner is residing in her house and she has no means to maintain herself. Aggrieved by the same, the petitioner preferred an appeal before the first respondent and the same was also dismissed on condition that the third respondent shall pay a sum of Rs.10,000/- to the petitioner as monthly maintenance till her life time.

3. The learned counsel for the third and fourth respondents submitted that the settlement deed was executed in favour of the third respondent without any conditions to maintain the petitioner. It was executed purely on the love and affection. That apart, the petitioner filed a suit as against the third and fourth respondents in O.S.No.57 of 2021 on the file of the District Munsif Court-cum-Judicial Magistrate Court, Madavaram, challenging the very same settlement deed. However, the said suit was dismissed for default and the petitioner did not take any steps to restore the said suit. He further submitted that the third respondent had settled the said property in favour of the fourth respondent by way of settlement deed, dated 08.06.2020, registered vide Document No.5312 of 2020. In turn, the fourth respondent had sold the subject property under the



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three registered sale deeds dated 07.07.2023, 06.10.2023 and 16.10.2023 respectively, registered vide Document Nos.9748, 1395 and 14285 of 2023, respectively in favour of three different third parties. The third and fourth respondents are in possession and enjoyment of the subject property. As directed by the Appellate Tribunal, the third respondent is continuously paying the monthly maintenance of Rs.10,000/- towards maintenance through the petitioner's Savings Bank Account. They also undertake to continue to deposit the maintenance amount till the life time of the petitioner.

4. It is relevant to extract the provisions under Section 23 of the Act, 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 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



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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. (2) 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. (3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.”

5. Section 23 of the Act provides that when a property has been transferred by way gift or otherwise by the senior citizen on the condition that the transferee or ownee shall provide the basic amenities and basic



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physical needs to the transferor or the owner, but, if such transferee or owner subsequently fails to provide such amenities, then it would be deemed that the transfer was made by fraud, or coercion or under undue influence and the transferor would have the option of obtaining declaration from Tribunal that such transfer was void. In the case on hand, the mother has gifted the subject property to the daughter out of love and affection and as a reward for the respect and care that the daughter had shown to the mother.

6. On a perusal of the settlement deed, it reveals that being pleased with the care, love, affection, respect and good behaviour, the mother had executed gift deed as a reward in favour of her daughter and in discharge of her responsibilities towards the daughter, she has also given future security to the daughter. 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



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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.

7. 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 and the settlor has taken care even 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, the relatives grab the property on the pretext of providing emotional support. Therefore, the Legislature thought that such 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 of the Act 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



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settlement deed. Further, sub-Section 2 of Section 23 of the Act envisages a 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.

8. 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 in W.P.No.28190 of 2022) and 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 counsel for the petitioner, it was held as follows:-

“33. Close reading of the principles considered by the various High Courts and the Supreme Court, there is no ambiguity with reference to the purpose and object sought



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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



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“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 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.



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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



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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.

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



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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



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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 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



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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 condition in the document, “Love and Affection” being the consideration for execution of Gift or Settlement Deed, such love and affection becomes



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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



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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 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.

44. In respect of the judgment relied on by the petitioner in the case of Sudesh Chhikara vs. Ramti Devi



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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 petitioner is of no avail as far as the present facts and circumstances of the case on hand is concerned.”

9. The above case is squarely applicable to the case on hand. The third respondent requested the petitioner to settle the subject property to enable her to get loan from Bank and the third respondent assured that she will re-settle the subject property in favour of the petitioner being her mother. The recitals shown in the settlement deed would be enough to satisfy the requirements of Section 23(1) of the Act.



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10. Though this Court finds infirmity and illegality in the orders passed first and second respondents herein, now the third and fourth respondents herein encumbered the subject property with the third parties by registering the sale deeds. The subject property is not available to return back to the petitioner. Therefore, this Court feels that it would be appropriate to direct the third and fourth respondents to deposit the reasonable amount in favour of the petitioner in order to safeguard the interest of the petitioner, apart from the monthly maintenance payable by the third respondent to the petitioner.

11. In view of the above findings, the third and fourth respondents are jointly and severally directed to deposit a sum of Rs.20,00,000/- (Rupees Twenty Lakhs Only) by way of Fixed Deposit in favour of the petitioner, within a period of four weeks from the date of receipt of a copy of this order. The third respondent shall continue to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) as monthly maintenance in favour of the petitioner (mother) till her life time.



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12. With the above directions, this Writ Petition is disposed of.

Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No

Neutral Citation/Yes/No

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To

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Chennai District,
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Fourth Floor, M.Singaravelar Maaligai,
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