IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

CORAM :

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.17205 of 2021
and
WMP.No.18218 of 2021

M.Latha ...Petitioner

Vs.

1. The District Revenue Officer,
Tambaram Taluk, Tambaram.

2. The Sub-Registrar,
Guduvancheri,
Defence Colony Road, Near Bernard Hospital,
Nandhivaram, Guduvanchery – 603 202.

3. The Tahsildar,
Pallavaram Taluk, Pallavaram.

4. N.Dhanapal

5. J.Jerline Jancy Rani

6. Devaki, Assistant,
The District Revenue Office,
Tambaram Taluk, Tambaram.

7. The Sub-Registrar,
Pallavaram,
7th Main Road, New Colony, Chromepet,
Jameen Pallavaram, Chennai – 600 044.

8. The Sub-Registrar,
Thiruvallur,
No.201, J.N.Road, Taluk Office Compound,
Thiruvallur – 602 001.
...Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the file relating to the impugned order in Na.Ka.No.1461/2021/A dated 15.07.2021 passed by the 1st respondent and quash the same.

For Petitioner	: Mr.G.Mutharasu
For Respondents	: Mr.U.Baranidharan, AGP, for R1 to R3 : Mr.M.Balasubramanian, for R4 : No appearance, for R5 & R6 : Mr.A.M.Ayyadurai, GA, for R7 & R8

ORDER

This writ petition has been filed seeking to quash the impugned proceedings dated 15.07.2021, in and by which, the two settlement deeds and the sale deed executed in favour of the petitioner by her father namely the 4th respondent were declared as invalid.

2. The case of the petitioner is that the petitioner is none other than the daughter of the 4th respondent. According to the petitioner, she got

married in the year 1999. Though the petitioner has a brother, namely D.Selvakumar, as he failed to look after their parents properly, the petitioner is the one who had taken care of her parents from 2007 to 2019. Due to love and affection, the 4th respondent executed two settlement deeds in favour of the petitioner (i) on 20.08.2009 vide Doc.No.4055 of 2009 in respect of the property measuring an extent of 1800 sq.ft. comprised in Old S.No.260, New S.No.260/1 at Mannivakkam Village, Chengalpattu, Kancheepuram District and (ii) on 02.09.2010 vide Doc.No.8233 of 2010 in respect of the property measuring an extent of 3000 sq.ft. of land comprised in S.Nos.53/1, 53/7B, 52/3 and 53/8 at Tamaraipakkam Village, Thiruvallur District. Subsequently, the property at Thiruvallur was sold by the petitioner in favour of the 5th respondent because of the compulsion of the 4th respondent for a sale consideration of Rs.4.5 lakhs and the money was handed over to the 4th respondent. Further, out of the said sale consideration, the petitioner's daughters were given a sum of Rs.1 lakh. Thereafter, the 4th respondent executed a sale deed on 05.01.2011 in favour of the petitioner, vide Doc.No.42 of 2011 in respect of the property measuring an extent of 2400 sq.ft. comprised in S.No.106/4(Part) at English Electric Nagar, Nemilicherry Village, Kancheepuram District, for which, the petitioner paid a sale consideration of Rs.14,64,000/- to the 4th respondent. The petitioner spent a huge sum towards the medical expenses of her parents. The petitioner's mother died on 28.50.2019. She also spent a sum of Rs.30,000/- towards the funeral expenses of her mother. Despite the same, the petitioner's brother, the said D.Selvakumar and even the 4th respondent gave false complaints against the petitioner and her husband, which led to filing of a first information report. Thereafter, the petitioner filed a civil suit in O.S.No.111 of 2020 on the file of the Principal District Court, Chengalput seeking for partition of the properties of her mother, since her brother and the 4th respondent colluded and created a forged and unregistered will in favour of her brother. Based on the false petition filed by the petitioner's brother, the 1st respondent issued summons to the petitioner for her appearance on 01.07.2021 and the petitioner and her husband also went to the office of the 1st respondent on 01.07.2021. However, the 6th respondent did not allow them to appear before the 1st respondent. Instead, she wanted them to give a statement. To her shock and surprise, the petitioner came to know about the present impugned order dated 15.07.2021, declaring the above said two settlement deeds and the sale deed executed in favour of the petitioner by the 4th respondent as invalid. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that, before passing the impugned order, the petitioner was not afforded an opportunity to submit necessary documents and to substantiate her case, which is a clear violation of principles of natural justice. Further, without impleading the 5th respondent and without verifying the previous transaction, the Revenue Divisional Officer passed the present impugned order, which is wholly unsustainable. Learned counsel further submitted that, the issue involved in the present Writ petition is no longer *res integra* and a similar issue was dealt with by the Hon'ble Apex Court in the case of ***Sudesh Chhikara Vs. Ramti Devi and Another*** in ***Civil Appeal No.174 of 2021*** reported in ***2022 SCC Online SC 1684***, wherein, the Apex Court by relying on Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 had allowed the said appeal. Therefore, the present Writ petition deserves to be allowed by following the said decision.

4. On the above said contentions, heard learned counsel appearing on behalf of the respective respondents and perused the material documents placed on record.

5. For better appreciation, the relevant portion of the decision of the Hon'ble Apex Court in the case of ***Sudesh Chhikara*** (stated supra) relied upon by the learned counsel for the petitioner is extracted hereunder:

> 11. We have given careful consideration to the submissions. Before dealing with the factual aspects, it is necessary to advert to the legal aspects. The Sub-Divisional Magistrate acting as the Maintenance Tribunal under the 2007 Act has invoked the power under Section 23 to declare that the subject release deed was void. The 2007 Act has been enacted for the purposes of making effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution of India. The Maintenance Tribunal has been established under Section 7 to exercise various powers under the 2007 Act. Section 8 provides that the Maintenance Tribunal, subject to any rules which may be framed by the Government, has to adopt such summary procedure while holding inquiry, as it deems fit. Apart from the power to grant maintenance, the Tribunal exercises important jurisdiction under Section 23 of the 2007 Act which reads thus:
>
> > *"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 fails to provide such*

<u>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.</u>

(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." (emphasis added)

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

6. In the present case in hand, as rightly pointed out by the learned counsel for the petitioner, the subject documents executed in favour of the petitioner by the 4th respondent being irrevocable and without any condition for cancellation of the settlement in case the settlee fails to take care of the settlor. There being no such condition, cancelling the settlement deed executed in favour of the petitioner by the 4th respondent is wholly perverse and unsustainable and the Revenue Divisional Officer, failed to take note of the twin condition as mandated under Section 23 of the said Act before

passing the said order. The decision of the Apex Court in ***Sudesh Chhikara*** case stands squarely attracted to the case on hand and the present petition deserves to be allowed.

7. Accordingly, this Writ Petition stands allowed and the impugned order of the Revenue Divisional Officer dated 15.07.2021 declaring the documents are invalid, is set aside. However, the 4th respondent is at liberty to workout his remedy in the manner known to law before the competent forum. No costs. Consequently, the connected Miscellaneous petition is closed.

8. Registry is directed to mark a copy of this order to the Revenue Divisional Officer, Tambaram.

05.08.2024

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Internet : Yes (or) No

To

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