



W.P.No.17272 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.17272 of 2021

and

W.M.P. Nos. 18295 and 18296 of 2021

1. Natchimuthu

2. Chinnappan

... Petitioners

Vs

1. The District Collector,
Tiruppur District,
Tiruppur.

2. The Revenue Divisional Officer,
Udumalpet,
Tiruppur District.

3. Kaliammal

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari, calling for the records relating to
impugned order dated 30.07.2021 passed by the first respondent in Na. Ka.
No. 19893/2020/E1, quash the same.



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For Petitioners : Mr. D.R.Arun Kumar

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

Mr. B.Srinivasan (for R3)

ORDER

This Writ Petition has been filed challenging the order dated 30.07.2021 passed by the first respondent.

2. The third respondent married one Karuppuchamy and they gave birth to the petitioners and one daughter. The petitioners as well as her daughter got married and living separately. The petitioners failed to look after their father and he is in custody of only daughter. The petitioners did not even provide food and medical facilities. While that being so, on 27.02.2020, the petitioners by misrepresenting and also on compulsion, the third respondent had executed settlement deeds in respect of the properties, which were purchased by her. Immediately on 28.08.2020, the first petitioner executed a sale deed in favour of the third party in respect of part of the property. Therefore, the third respondent and her husband are in street



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and they were not provided any maintenance and also medical facilities.

Subsequently, the third respondent filed a complaint under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act' for short) before the second respondent.

The second respondent after due enquiry without declaring the settlement deeds which were executed by the third respondent in favour of the petitioner as void, ordered maintenance of Rs.7,000/- by the first petitioner and a sum of Rs.3,000/- by the second petitioner payable to the third respondent. Aggrieved by the same, the third respondent filed appeal before the first respondent and after due enquiry, the first respondent cancelled the settlement deeds, which were executed by the third respondent in favour of the petitioners under Section 23(1) of the Act. Aggrieved by the same, the present Writ Petition has been filed.

3. The learned counsel for the petitioners submitted that when the third respondent made specific allegations of fraud, she has to prove the fraud before the authority concerned. The Order 6 Rule 4 of CPC contemplates, the third respondent should provide necessary particulars such



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as, exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading. Whereas, the complaint lodged by the third respondent fails to provide specific particulars and events in support of the allegations of the fraud. He further stated that the settlement deeds do not contain any conditions requiring the maintenance of the third respondent upon their execution.

4. In support of his contentions, the learned counsel for the petitioners relied upon the Hon'ble Supreme Court of India in the case of ***Sudesh Chhikara -vs- Ramti Devi*** (Order dated 06.12.2022 in Civil Appeal No. 174 of 2021), reads 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



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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



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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.



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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.”

5. Thus, it is clear from the above judgment that there are two essential pre-conditions in order to invoke the provisions of Section 23 of the Act and that the documents should have been executed after coming into force of the Act and it should contain a clause imposing an obligation on the settlor or transferee to maintain settlor or transferee.

6. In view of the above, this Court finds no infirmity or illegality in the impugned order passed by the first respondent and the Writ Petition is devoid of merits and it is liable to be dismissed.



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7. Accordingly, this Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index:Yes/No
Neutral Citation/Yes/No
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To

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G.K.ILANTHIRAIYAN, J.

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