



W.P.No.17540 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.17540 of 2022
and
W.M.P.No.16817 of 2022

J.Kavitha

...Petitioner

-Vs-

1. The Sub Collector,
Mettur, Salem District.

2. Chinnakannammal

...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned order issued by the 1st respondent in Mu.Mu.No. 1925/2022/D dated 29.04.2022 and to quash the same.

For Petitioner : Mr.G.Sankaran
Senior Counsel
for Mr.S.Nedunchezhiyan

For R1 : Mr.S.J.Mohammed Sathik
Government Advocate

For R2 : Mr.M.Elango



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ORDER

This Writ Petition has been filed challenging the order passed by the first respondent dated 29.04.2022, thereby given life interest of the property in favour of the second respondent which was already settled in favour of the husband of the petitioner by the second respondent.

2. The petitioner got married to one P.Jayakumar, who is the son of the second respondent. After their marriage, they gave birth to two daughters and one son. Unfortunately, due to Covid -19, the husband of the petitioner died on 30.04.2021. When her husband was alive, he was settled with the property comprised in S.No.87/1 to an extent of 1.18.50 hectares belong to his father and the property comprised in S.No.87/4 to an extent of 0.68.0 hectares belongs to his mother by the registered settlement deeds dated 03.10.2019 vide Document Nos.2971 and 2972 respectively. After execution of settlement deeds, the revenue records were mutated in favour of the petitioner's husband and he was also issued with patta in Patta No.1715. Due to misunderstanding between the petitioner's mother-in-law viz., the second respondent herein and her



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husband, they are living separately. The second respondent and her husband gave birth to four daughters and one son. After execution of settlement deeds, their daughters filed a suit in O.S.No.85 of 2020, on the file of the Sub Court, Mettur for declaration declaring that the settlement deed executed in favour of the petitioner's husband is null and void and also for partition and separate possession.

3. While being so, the second respondent lodged a complaint before the first respondent under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, alleging that the second respondent and her husband had executed a settlement deed in favour of the petitioner's husband and they are continued to cultivate the said land after the demise of their son viz., the husband of the petitioner. The petitioner failed to take care of the second respondent and her husband and the second respondent was also driven out from the subject property and she is living with her daughter. Therefore, the second respondent sought for cancellation of settlement deed executed by her dated 03.10.2019 registered vide Document No.2972 of 2019. After



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enquiry, the first respondent ordered granting life interest over the subject property in favour of the second respondent, thereby she was permitted to construct the house and enjoy the property. Her possession and enjoyment should not be disturbed by the petitioner, her husband and her daughters in respect of the subject property. If they indulge in restraining the second respondent from enjoying the subject property, action will be taken under Section 107 of Cr.P.C as against them. Aggrieved by the same, the present writ petition has been filed.

4. The learned Senior Counsel appearing for the petitioner would submit that the petitioner was not served with any notice and she was not given any opportunity of hearing by the first respondent. Therefore, the impugned order in this writ petition is a violation of principles of natural justice. After execution of settlement deed in favour of the petitioner's husband, the entire revenue records were mutated in his favour and he was also issued patta. Even according to the second respondent, she is in possession and enjoyment of the subject property. Therefore, she was never driven out from her house situated in the subject property.



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Unfortunately, the husband of the petitioner died due to Covid-19 and on the ill advise of her daughter, the second respondent filed a complaint before the first respondent with false allegations. In order to invoke the provisions under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the second respondent ought to have fulfilled the twin conditions. Apart from that that there must be a specific clause in the settlement deed that the property was settled on condition that the settlee should maintain the settlor. The second respondent failed to fulfill the twin conditions required to invoke the provisions under Section 23 of the said Act. There was absolutely no evidence to show that the second respondent was neglected or refused to maintain by the petitioner. In fact, after the demise of her husband, the petitioner was driven out from the matrimonial home and she is staying at some other village and going for cooli work for her livelihood and to maintain her children. Therefore, the first respondent ought not to have passed an order giving life interest in favour of the second respondent.



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5. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2022 SCC OnLine SC 1684** in the case of ***Sudesh Chikara Vs Ramti Devi and Another***, wherein it was held as follows:-

“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.”



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6. Thus, it is clear that in order to invoke the provisions under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, twin conditions must be fulfilled as follows:-

(i) 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.

(ii) If 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.

7. The learned counsel for the second respondent submitted that as against the order passed by the first respondent, there is an appeal remedy as provided under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Without even exhausting the appeal remedy, challenging the order before this Court is not at all maintainable. Even assuming that the settlement deed does not have the clause that the settlement deed was executed on condition that the settlee should maintain the settlor, Section 23 (2) says that where any senior



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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. Therefore, the petitioner is liable to maintain the second respondent even assuming that there is no specific clause in the settlement deed which was executed by the second respondent in favour of the husband of the petitioner.

8. The first respondent filed counter and the learned Government Advocate appearing for the first respondent would submit that during the enquiry, the petitioner failed to take care of the second respondent and also because of the difference of opinion between the second respondent and her husband, the second respondent is residing with her daughter. The first respondent did not pass any order to cancel the settlement deed executed in favour of the petitioner's husband. The second respondent was given life interest over the subject property. Further, there is no direction to maintain the second respondent by the petitioner herein.



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9. Heard the learned counsel appearing on either side and perused the materials available on record.

10. The points for consideration in this writ petition are as follows:-,

(i) Whether the writ petition is maintainable without exhausting the appellate remedy?

(ii) Whether the second respondent fulfilled the twin conditions as required under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007?

(iii) Whether the complaint under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is maintainable when there is no specific clause in the settlement deed to maintain the settlor by the settlee?

(iv) Whether the order passed by the first respondent is in violation of principles of natural justice?



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11. Admittedly, the subject property is a self acquired property of the second respondent. While the husband of the petitioner was alive, the second respondent had executed a settlement deed in respect of the subject property in favour of her son viz., the husband of the petitioner by the settlement deed dated 03.10.2019 registered vide Document No.2972 of 2019.

12. A perusal of the settlement deed revealed that due to love and affection and also the second respondent had been maintained by the settlee, she intended to settle the property in favour of the settlee. Though it does not have a specific clause, it has been mentioned that only because she had been maintained by the deceased and with fond hope that he would maintain in future, she had executed the settlement deed. Unfortunately, the settlee died due to Covid-19, on 30.04.2021. According to the second respondent, she was thrown out by the petitioner and she was not maintained by the petitioner.



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13. It is relevant to extract the provisions under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 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 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.

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.”

14. Accordingly, the second respondent fulfilled the requirements to maintain the complaint under Section 23 of the said Act before the



15. Though there is no specific provision to appeal as against the order passed by the first respondent, under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the Appellate Tribunal, the appeal can be filed by any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal. Therefore, there is no appeal remedy for the petitioner who is being the wife of the settlee. If the second respondent aggrieved by the order passed by the first respondent, there can be appeal remedy under Section 16 of the said Act. Therefore, the writ petition is very much maintainable before this Court.

16. After the demise of settlee, the property devolves on his legal heirs namely, the petitioner and his children. Therefore, it is needless to say that the petitioner is duty bound to maintain the second respondent. It is also relevant to mention the definition of relative under Section 2(g) of



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the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. It says that "relative" means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death. Now, the petitioner and her children are the legal heirs of the deceased settlee and they inherited the property which was settled in favour of the deceased husband.

17. Further, a perusal of the complaint lodged by the second respondent revealed that there is a specific allegation that the second respondent, after the demise of her son was not maintained by the petitioner, her husband and daughters. That apart, she was driven out from her house and she is residing with one of her daughters. She is unable to meet out her medical expenses and even for day-to-day expenses for her livelihood. On receipt of the complaint, the first respondent issued notice to the petitioner and the second respondent's husband. Thereafter, they appeared and gave statements before the first respondent. The statements were duly recorded and after giving opportunity of hearing, order has been passed by the first respondent.



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Therefore, it cannot be said that the petitioner was not given any opportunity and she was not issued any notice. Hence, there is no question of violation of principles of natural justice while passing order by the first respondent.

18. A perusal of the impugned order revealed that the first respondent ordered only life interest in favour of the second respondent in respect of the subject property. The settlement deed which was executed in favour of the husband of the petitioner was not cancelled. Further, restrained the petitioner, second respondent's husband and her daughters from interfering with her peaceful possession and enjoyment of the subject property during her lifetime. Therefore, after considering the petitioner and her position, the first respondent rightly ordered the life interest alone without cancelling the settlement deed.

19. In view of the above, the Judgment cited by the learned counsel for the petitioner is not applicable to the case on hand. Therefore, this Court finds no infirmity or illegality in the order passed by the first respondent in Mu.Mu.No. 1925/2022/D dated 29.04.2022 and this writ



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petition is devoid of merits and is liable to be dismissed.

20. Accordingly, this writ petition stands dismissed.

Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

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Internet: Yes

Index : Yes/No

Neutral Citation: Yes/No

Speaking/Non Speaking order

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To

The Sub Collector,
Mettur, Salem District.



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G.K.ILANTHIRAIYAN. J,

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