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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2024

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THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.19618 of 2023
and W.M.P.Nos.18875, 20256 of 2023 & 10834 of 2024

Minor N.Kalandhika
Rep. through her mother and natural Guardian
Dr.Mrs.M.Jeyapriya

.. Petitioner

Vs.

1.The District Collector/Appellate Tribunal,
For Senior Citizen Maintenance & Welfare,
Rajaji Salai, 4th Floor, 62, Beach Road, George Town,
Chennai,
Tamil Nadu 600 001.

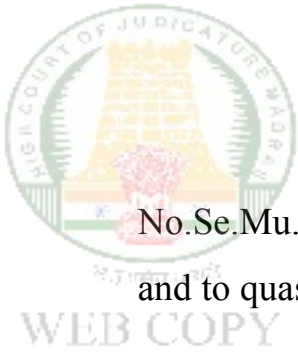
2.The Revenue Divisional Officer/Tribunal
For Senior Citizen Maintenance & Welfare,
Bharathidasan Road, 60 Feet Road,
West Jaffer Khanpet, Chennai 600 083.

3.The Sub-Registrar, Office of the Sub-Registrar,
Virugambakkam,
Chennai – 600 083.

4.S.Munirathinam

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari, call for the records relating to the impugned order in



No.Se.Mu.Na.Ka.No.1567/a1/2023 dated 17.05.2023 passed by the 1st respondent and to quash the same as contrary to law.

For Petitioner .. Mr.A.K.Rajaraman
For Respondents .. Mr.M.R.Gokul Krishnan
Additional Government Pleader
for R1 & R2
Mr.K.H.Ravikumar
Government Advocate for R3
Mr.M.Raja for R4

ORDER

This writ petition has been filed in the nature of certiorarified mandamus seeking to call for the records of the order dated 17.05.2023 passed by the 1st respondent, District Collector/Appellate Tribunal for Senior Citizens Maintenance and Welfare at Chennai and to quash the same.

2.In the affidavit filed in support of the writ petition, it had been contended that the writ petitioner who is a minor and grand daughter of the 4th respondent, was a beneficiary of a Settlement Deed dated 01.06.2022, registered as Document No.4277 of 2022 in the Office of the Sub Registrar, Virugambakkam with respect to a property viz., Flat No.2, First Floor, Sai Krishna Apartments, Park View Street, Alwarthirunagar, Valasarawakkam, Chennai – 600 087.



3. The 4th respondent owing to various grievances, had given a petition before the 2nd respondent, Revenue Divisional Officer/Tribunal for Senior Citizens Maintenance and Welfare at Chennai seeking to cancel the said Settlement Deed.

4. In the first instance, the 2nd respondent had rejected the said application. The 4th respondent then preferred a further appeal before the 1st respondent/Appellate Tribunal/District Collector, Chennai. The order dated 17.05.2023 passed by the 1st respondent reversing the decision of the 2nd respondent and cancelling the aforementioned Settlement Deed, is put in challenge in this writ petition.

5. It is contended on behalf of the petitioner that the petitioner is a minor and therefore, reciprocal promise cannot be extracted from a minor. Even if such a clause is specifically mentioned in a Settlement Deed, it is stated that as a minor, the petitioner would be incapable of performance of any such promise. It is also contended that the 4th respondent is a retired Government employee and is receiving pension and therefore, does not suffer from any monetary shortcoming and therefore, the issue of payment of maintenance would not arise. It is further contended that the 4th respondent had actually undergone three surgeries and that his daughter/mother of the writ petitioner who is also a medical professional had actually taken care of her



father/4th respondent and that therefore there has been no breach of any condition if ever imposed in the Settlement Deed.

6.It is further contended that the grand mother of the writ petitioner, had a estranged relationship with the 4th respondent, necessitating the 4th respondent to institute HMOP No.2060 of 2024 before the Family Court at Chennai against his wife. The mother of the writ petitioner had taken care of her mother/wife of the 4th respondent and that was the cause of grievance for the 4th respondent to give a representation seeking to cancel the Settlement Deed of the said property which Settlement Deed had been granted in favour of the writ petitioner herein.

7.The learned counsel stated that the mother of the writ petitioner is always ready and willing to maintain the 4th respondent. It is contended that since the 4th respondent is getting pension and is not facing any financial difficulty and also because the writ petitioner is a minor, the order of the 1st respondent canceling the Settlement Deed should be interfered with by this Court.

8.Notice had been directed to the 4th respondent and counsel had entered appearance and counter had also been filed.



9. The learned counsel for the 4th respondent in his arguments pointed out that the 4th respondent, being a Government employee is entitled to receive pension for the services rendered by him during his period of service as Government employee and that is a right accrued and cannot be equated to any maintenance which the mother of the writ petitioner is obliged to pay and also to maintain the 4th respondent.

10. It is contended that merely because the 4th respondent is receiving pension would not disqualify him from seeking maintenance from the mother of the writ petitioner. The learned counsel also pointed out that the Settlement Deed contained a very specific clause that the Settlee viz., the minor and her guardian/her mother would maintain the 4th respondent and since there had been breach of the same, the 4th respondent had given a petition before the 2nd respondent who had not examined the facts properly, which necessitated the 4th respondent to file a further appeal before the 1st respondent.

11. It is contended by the learned counsel that the 1st respondent had duly appreciated all the facts and considered all the circumstances and had taken a decision to cancel the Settlement Deed. It is therefore contended that the order of the



1st respondent had been passed keeping in view the provisions of law, particularly, Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and that the said order therefore does not require to be interfered with by this Court.

12. On behalf of the 1st and 2nd respondents, it is submitted that the order had been passed in accordance with the provisions of law and does not warrant any interference.

13. I have carefully considered the arguments advanced and perused the material records.

14. This is an unfortunate case where the 4th respondent, the maternal grandfather of the writ petitioner, having at one point of time expressed love and affection for the writ petitioner had executed a Settlement Deed of the flat at Flat No.2, First Floor, Sai Krishna Apartments, Park view Street, Alwarthirunagar, Valasarawakkam, Chennai – 600 087. He had then given a petition before the 2nd respondent, Revenue Divisional Officer/Tribunal for Senior Citizens Maintenance and Welfare at Chennai seeking cancellation of the Settlement Deed.



15. It is his grievance that the Settlee/the writ petitioner and also her guardian/daughter of the 4th respondent had failed to look after him in his hours of need and had practically deserted him and therefore, the said document should be cancelled.

16. Reliance had also been placed on Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which provides that if a Settlee was under an obligation to maintain the Settlor in view of a specific covenant in the Settlement Deed and fails to maintain such Settlor as expected by the Settlor, then the Settlee will have to face the consequence of revocation of the Settlement Deed by operation of law. The 4th respondent therefore, rested his case by stating that he several problems and the mother of the writ petitioner had failed to take care of him. It was contended that his own wife was also not taking care of him which necessitated him to file an application in HMOP No.2060 of 2024 before the Family Court at Chennai seeking to dissolve his marriage.

17. The petition seeking to cancel the Settlement Deed came up for consideration before the 2nd respondent. The petition was rejected by the 2nd respondent. The 4th respondent filed an appeal as is provided under Act before the 1st



respondent/Appellate Tribunal/District Collector, Chennai. The order passed by the 1st respondent dated 17.05.2023, reversing the order of the 2nd respondent and cancelling the Settlement Deed, is questioned in this writ petition.

18. It is to be noted that the Settlement Deed was executed in favour of a minor. Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, provides a right to a senior citizen including a parent who is not able to maintain himself from his earning or out of the property owned by him to make an application under Section 5 against anyone of his children seeking maintenance. But there is a very significant phrase included in Section 4(1)(i) and it states that the children would not include a minor. Section 4(1)(i) is as follows:

4. Maintenance of parents and senior citizens.-(1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of-

(i) parent or grand-parent, against one or more of his children not being a minor;

(emphasis supplied)

19. The application had been filed under Section 5 which is as follows:



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5. Application for maintenance.-(1) An application for maintenance under section 4, may be made-

- (a) by a senior citizen or a parent, as the case may be; or*
- (b) if he is incapable, by any other person or organization authorized by him; or*
- (c) the Tribunal may take cognizance suo motu.*

Explanation. For the purposes of this section "organization" means any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860), or any other law for the time being in force.

20. Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 also provides for declaring any transfer of the property either by way of a gift or in any other manner as void in certain circumstances. A specific circumstance which had been mentioned in Section 23 of the said Act is that if there is a condition or a covenant in the said Gift Deed or in any other document by which transfer was made that the Settlee or the Donee or the beneficiary under the document was under an obligation to provide basic amenities and basic physical needs to the Transferor or the Settlor or Donor and fails to keep up such obligation then it can be presumed that the document had been obtained through fraud and through coercion or undue influence and therefore, comes be cancelled by the Authority nominated under the



Act. The 4th respondent had taken recourse to that particular provision to seek cancellation of the document viz., the Settlement Deed executed by him in favour of the writ petitioner.

21. The 1st respondent had also taken note of the said provision and had passed the order impugned by observing that the writ petitioner and her mother had failed to properly maintain the 4th respondent/the Settlor.

22. In the Settlement Deed, there is a specific clause which provides that till the Settlor viz., the 4th respondent is alive, the writ petitioner who is incidentally a minor and her guardian would both take care of him and would ensure that he is not put to any grievance. It is stated that the Settlement Deed is executed under that specific condition. The said covenant is extracted below:

மேலும் என்னுடைய ஜீவிதகாலம் வரையில் நீங்கள் இருவரும் என்னை நன்றாக கவனித்துக் கொண்டும் என்னை எந்தவிதமான இன்னல்களுக்கும் ஆளாக்காமல் என் ஜீவித காலம் வரை என்னை பராமரிக்க வேண்டும் என்ற நிபந்தனையுடன் இந்த செட்டில்மெண்ட் பத்திரத்தினை எழுதி வைக்கிறேன்.



23. A rough translation of the aforementioned clause would indicate that the Settlee viz., the minor and her guardian/the mother of the writ petitioner would have to take care of the Settlee during his life time and to ensure that he is not put to any unnecessary grievance.

24. But it must be also observed that the Settlement Deed is an agreement between two parties. When one party is a minor, it has to be examined whether any condition imposed could be satisfied or be forced on the minor to perform such condition. The Settlee is a minor, and was represented by her mother/guardian only for the purpose of execution of the document. The defacto beneficiary was the minor alone.

25. Section 11 of the Indian Contract Act, 1872 provides as to who are competent to contract. Section 11 is as follows:

11. Who are competent to contract.--- Every person is competent to contract who is of ***the age of majority*** according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

(emphasis supplied)



26. One of the basic requirement is that the person who enters into a contract must have attained the age of majority according to the law to which he or she is subject only then is he recognized in law to be competent to contract. This would in converse mean that if a person had not attained the age of majority and still enters into a contract he can seek a declaration that such contract is voidable at his instance. The issue of voidability can only be at the instance of the minor and not at the instance of the other party to contract.

27. There cannot be an enforceable obligation placed on a minor, since a minor is not recognized by law to be competent to enter into a contract.

28. In a Settlement Deed, if a clause is provided that the Settlee, a minor will have to look after the Settlor, that particular covenant which places such obligation on the minor, would be voidable at the instance of the minor. It cannot be enforced at the instance of the other party to the contract. A minor always has a option to declare that such a clause is voidable and unenforceable.

29. It is to be noted that in the clause which is extracted above, the Settlor in this case, the 4th respondent had placed an obligation not only on the writ petitioner,



but also on her mother/his own daughter to maintain him and look after him. But the 4th respondent had not settled the property in favour of the mother of the writ petitioner. The beneficiary is only the minor. The mother had signed the document since a minor is not competent to contract. There is no legal obligation placed on the mother by the agreement to maintain the 4th respondent. It only boils down to a moral responsibility and a moral obligation on the part of the mother of the petitioner to take care of the 4th respondent. But such obligation cannot be read in conjunction with the Settlement Deed. The Settlement Deed is independent. The moral obligation of the daughter of the 4th respondent to take of her father is independent. If the 4th respondent has grievances against his daughter, then he can make an application under Section 4 and seek maintenance independently under Section 5. But he cannot link that particular obligation with the Settlement Deed executed by him in favour of his grand daughter who is a minor.

30. The both are two separate concepts. One is a right to seek maintenance from a daughter which right is provided under the Act by filing an application under Section 5 and seeking performance of a moral obligation. The other is seeking performance of a covenant in a contract, in this case a Settlement Deed to maintain the Settlor. But the Settlee should be competent to enter into a contract and to



understand the nature of the obligation stipulated in the covenant. If the Settlee is a minor, naturally the Settlee can fall back seeking to declare that such covenant is voidable.

31. In the instant case, the writ petitioner is a minor and therefore, there cannot be any obligation placed by law forcing her to bind herself to the contract. She had not signed the contract. Her mother had signed since law requires that a guardian alone can sign on behalf of the minor.

32. The 4th respondent can workout his remedies as against the mother of the writ petitioner, but cannot enforce the covenant in the Settlement Deed executed independently in favour of the writ petitioner herein. Viewed from that angle, I hold that the 1st respondent had failed to appreciate the correct position of law. The impugned order suffers.

33. The learned counsel for the 4th respondent had listed out various grievances and stated that the mother of the writ petitioner had failed to look after the 4th respondent. On the other hand, the learned counsel for the writ petitioner pointed out that documents have been filed indicating that the mother of the writ petitioner, a



medical professional had actually taken care of the 4th respondent. These are facts which cannot be examined on the basis of affidavits and counter affidavits filed before this Court. The 4th respondent had not filed any application against his daughter seeking maintenance. If he had independently filed such an application, then all these aspects could have been examined by the Tribunal under the Act and further examined by the Appellate Authority under the Act.

34. The learned counsel for the petitioner placed reliance on the observation of a Full Bench of this Court in ***W.P.(MD)No.6889 of 2020 batch, Sasikala vs. The Revenue Divisional Officer, cum Sub Collector, Devakottai and Others***, wherein, the Full Bench was concerned with the registration of a unilateral cancellation deed. In the instant case, it is not an issue of unilateral cancellation but cancellation of a Settlement Deed by force of law and by an authority recognized by law viz., the 1st respondent. Even otherwise, the Full Bench had examined Section 126 of the Transfer of Property Act, which deals with suspension or revocation of a gift.

35. Section 126 of the Transfer of Property Act is as follows:

126. When gift may be suspended or revoked--- *The donor and donee may agree that on the happening of any specified event*



which does not suspended or revoked; but a depend on the will of the donor a gift shall be suspend gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

36. While examining Section 126 of the Transfer of Property Act, the Full Bench had occasion to examine a fact situation when the Donee is a minor. The Full Bench had stated as follows:

42. Section 126 of the Transfer of Property Act recognizes the power of revocation where the donor reserves a right to suspend or revoke the gift on happening of any specified event. However, the illustrations clarifies that the revocation should be with the assent of the donee and it shall not be at the will of donor as a gift revocable at the mere Will of the donor is void. The Sub-registrar cannot decide whether there was consent for revocation outside the document. If the donor by himself reserves a right to revoke the gift at his Will without the assent by donee, the gift itself is void. Since we are dealing with



unilateral cancellation, the power of registration of cancellation or revocation of gift deed cannot be left to the discretion or wisdom of registering authority on facts which are not available or discernible from the deed of gift. When the power of revocation is reserved under the document, it is permissible to the registering officer to accept the document revoking the gift for registration only in cases where the following conditions are satisfied;

(a) There must be an agreement between the donor and donee that on the happening of a specified event which does not depend on the Will of the donor the gift shall be suspended or revoked by the donor.

(b) Such agreement shall be mutual and expressive and seen from the document of gift.

(c) Cases which do not fall under Section 126 of Transfer of Property Act, unless the cancellation of Gift or Settlement is mutual, the registering authority shall not rely upon the self serving statements or recitals in the cancellation deed. For example questioning whether the gift deed was accepted or acted upon cannot be decided by the registering authority for the purpose of cancelling the registration of gift or settlement deed.

37. That was an answer to a gift or settlement deed and specifically it had been with reference to Paragraph No.44(f):



44. *From the discussions and conclusions we have reached above with reference to various provisions of Statutes and precedents, we reiterate the dictum of Hon'ble Supreme Court in Thota Ganga Laxmi and Ors. vs. Government of Andhra Pradesh & Ors., reported in MANU/SC/1267/2010: (2010) 15 SCC 207 and the Full Bench of this Court in Latif Estate Line India Ltd., case, reported in MANU/TN/0310/2011: AIF 2011(Mad) 66 and inclined to follow the judgment of three member Bench of Hon'ble Supreme Court in Veena Singh's case reported in MANU/SC/0615/2022: (2022) 7 SCC 1 and the judgment of two member Bench of Hon'ble Supreme Court in Asset Reconstruction Company (India) Ltd., case, reported in MANU/SC/0579/2022 for the following propositions:*

.....

f) As regards gift or settlement deed, a deed of revocation or cancellation is permissible only in a case which fall under Section 126 of Transfer of Property Act, and the Registering Authority can accept the deed of cancellation of gift for registration subject to the conditions specified in para 42 of this judgment.

38. The reasoning of the Full Bench is that if one of the parties to a contract or Settlement Deed is incapacitated or incompetent to execute or enter into such agreement or contract, there cannot not be unilateral enforcement of a condition imposed upon such party.



39. The dictum applies in favour of the writ petitioner herein.

40. The learned counsel for the petitioner also placed reliance on the judgment of the Hon'ble Supreme Court reported in **2004 1 SCC 581, K.Balakrishnan and others vs. K.Kamalan and others**. The question of law involved in that appeal was whether the appellant therein who was a minor on the date of execution of a Gift Deed could be held to have legally accepted the property gifted to him and whether the Gift Deed was irrevocable.

41. It must be mentioned in this connection that it will only be appropriate that reference is also made to Section 122 of the Transfer of Property Act, which defines a gift and stipulates the condition under which gift could be termed to be completed. Section 122 of the Transfer of Property Act is as follows:

Section 122. "Gift" defined

"Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made-Such acceptance must be made



during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

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42.A gift is completed only when it is accepted by the Donee and such acceptance must be done during the life time of the Donor. The issue before the Hon'ble Supreme Court was whether a minor could lawfully accept a gift. The Supreme Court had answered that particular issue in the following manner.

20.The last part of Section 127, underlined above, clearly indicates that a minor donee, who can be said to be in law incompetent to contract under Section 11 of the Contract Act is, however, competent to accept a non onerous gift. Acceptance of an onerous gift, however, cannot bind the minor. If he accepts the gift during his minority of a property burdened with obligation and on attaining majority does not repudiate by retains it, he would be bound by the obligation attached to it.

43.A careful reading of the above observation would clearly imply that a minor who receives a gift and had not repudiated the same on attaining the age of majority would be bound by the conditions imposed on such gift. Therefore it directly implies till the minor attains the age of majority, the conditions cannot be made enforceable



against the minor. It could be made enforceable only when the minor attains the age of majority and if the minor then does not repudiate the gift, then the conditions attached to the gift could be made enforceable.

44. In the instant case, the writ petitioner is still a minor. She cannot be held competent to abide by any condition imposed in the Settlement Deed. She could not have validly received or accepted the settlement. She could accept the gift and still be obliged to maintain the 4th respondent only after she attains the age of majority, if she takes a decision not to repudiate the gift. If she takes a decision to accept the gift after attaining the age of majority, then she would be bound by the clause in the Settlement Deed.

45. It is to be noted that the condition of the 4th respondent is certainly pitiable. He had a wife, but he now instituted divorce proceedings against the wife. He had a son, but the son committed suicide. He had a daughter, but the daughter is now estranged and there is litigation pending against the daughter. He has a grand daughter, through the daughter, but the grand daughter is also embroiled in litigation. He has a monthly pension which he receives for services rendered owing to his avocation as a Government servant during the time when he was fit to discharge



services. Taking advantage of his avocation in Government service, the mother of the writ petitioner had educated herself and qualified to be medical professional. She should have some gratitude towards the 4th respondent. This is a moral obligation. It is not an obligation which flows from the Settlement Deed that had been executed by the 4th respondent in favour of the writ petitioner. In view of that moral obligation, though it had been stated that the mother of the writ petitioner had taken care of the 4th respondent during the period when he was sick and when he was convalescing from surgeries, I would direct that the mother of the writ petitioner must pay a sum of Rs.20,000/- every month as maintenance to the 4th respondent. Such amount should be paid from the date of application made before the 2nd respondent. Arrears could be paid in six monthly installments. But the monthly maintenance of Rs.20,000/- is to be paid on or before the 10th of every successive month according to the English calendar. It will also be appreciable that the mother of the writ petitioner/daughter of the 4th respondent, is able to somehow bring about reconciliation between the 4th respondent and her own mother/his wife. This Court hopes that all would be well and the family which is now broken to pieces owing to various circumstances probably for circumstances beyond their control would once again reunite and enjoy the pleasure of each other's companionship.



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46. The writ petition stands allowed. But however, the direction given to the mother of the writ petitioner to pay monthly maintenance as aforesaid would be binding on her and would be enforceable by the 4th respondent in manner known to law. The impugned order is set aside. A direction is given to the 3rd respondent to reverse any entry made reflecting cancellation of the Settlement Deed. It is held that the Settlement Deed is still in force. No Costs. Consequently, connected miscellaneous petitions are closed.

05.12.2024

Index: Yes

Internet: Yes

Speaking Order

Neutral Citation: Yes

ssr

To

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For Senior Citizen Maintenance & Welfare,
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C.V.KARTHIKEYAN,J.

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