



W.P.No.19808 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.19808 of 2021
And
W.M.P.No.21090 of 2021**

K.Jayakumar

... Petitioner

Vs.

1.The District Magistrate &
District Collector,
Chengalput District.

2.The Revenue Divisional Officer,
Maintenance Tribunal
Chengalput.

3.Devikarani

4.T.S.Kathirvelu

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the impugned order dated 30.07.2021 in R.C.No.10432/2020/M1 passed by the first respondent, quash the same.

For Petitioner : Mr.K.V.Babu

For Respondents : Mr.U.Baranidharan for R1 & R2
Additional Government Pleader
Mr.V.Shanmuga Sundaram for R3 & R4



W.P.No.19808 of 2021

WEB COPY

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records pertaining to the impugned order dated 30.07.2021 in R.C.No.10432/2020/M1 passed by the first respondent and to quash the same.

2.The learned counsel appearing for the petitioner submitted that the respondents 3 and 4 are the parents of the petitioner and they executed irrevocable settlement deed in favour of the petitioner on 10.07.2018. Subsequently, at the instigation of the sister of the petitioner, respondents 3 and 4 filed complaint before the second respondent under the provisions of the Maintenance of Senior Citizen's and Welfare of Parents Act, 2007 for cancellation of settlement deed and the same was allowed on 05.11.2020. Aggrieved by the same, the petitioner filed appeal before the first respondent and the first respondent confirmed the order passed by the second respondent.

3.The learned counsel appearing for the petitioner further submitted that there is no condition in the settlement deed and it is an irrevocable settlement deed, however, the second respondent



W.P.No.19808 of 2021

cancelled the settlement deed and the same was confirmed by the first respondent which is not sustainable one.

4.Per contra, the learned counsel appearing for the respondents 3 and 4 submitted that admittedly out of love and affection the respondents 3 and 4 executed settlement deed in favour of the petitioner and there was a condition incorporated in the settlement deed that the petitioner has to take care of the respondents 3 and 4 but the petitioner failed to take care of them, thereby they made complaint before the second respondent under the provisions of the Maintenance of Senior Citizen's and Welfare of Parents Act, 2007 for cancellation of settlement deed and the second respondent cancelled the settlement deed and the same was confirmed by the first respondent, which warrants no interference.

5.The learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that the issue arises in the writ petition is no longer res integra and it has already been settled by the Hon'ble Apex Court in the decision reported in 2022 LiveLaw (SC) 1011: 2022 SCC OnLine SC 1684 [Sudesh Chhikara Vs. Ramti Devi and another] and by the Hon'ble Division Bench of the Madurai Bench of this Court



W.P.No.19808 of 2021

in the order dated 02.09.2022 made in W.P.(MD) Nos.6889 of 2020 etc., batch [Sasikala Vs. The Revenue Divisional Officer cum Sub Collector and another], wherein, it is held that when there is no condition in the settlement deed, an irrevocable settlement deed cannot be cancelled. In the present case, there is condition in the settlement deed and the petitioner violated the condition and hence, the impugned order warrants no interference.

6.Heard the arguments advanced on either side and perused the materials available on record.

7.This Court perused the settlement deed dated 10.07.2018. Admittedly out of love and affection the respondents 3 and 4 executed settlement deed in favour of the petitioner and there is a condition incorporated in the settlement deed that the petitioner has to take care of the respondents 3 and 4.

8.The issue arises in the writ petition is no longer res integra and it has already been settled by the Hon'ble Apex Court in the decision reported in 2022 LiveLaw (SC) 1011: 2022 SCC OnLine SC 1684 [Sudesh Chhikara Vs. Ramti Devi and another] and by the Hon'ble



W.P.No.19808 of 2021

Division Bench of the Madurai Bench of this Court in the order dated 02.09.2022 made in W.P.(MD) Nos.6889 of 2020 etc., batch [Sasikala Vs. The Revenue Divisional Officer cum Sub Collector and another], wherein, it is held that when there is no condition in the settlement deed, an irrevocable settlement deed cannot be cancelled.

9.It is relevant to extract hereunder the relevant portions of the decision of the Hon'ble Apex Court reported in **2022 LiveLaw (SC) 1011: 2022 SCC OnLine SC 1684 [Sudesh Chhikara Vs. Ramti Devi and another]**:

"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



WEB COPY



W.P.No.19808 of 2021

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*



WEB COPY



W.P.No.19808 of 2021

(1) of Section 23 were not satisfied.
Unfortunately, the High Court has not adverted to the merits of the case at all."

10.It is also relevant to extract hereunder the relevant portions of the order of the Hon'ble Division Bench of the Madurai Bench of this Court dated **02.09.2022** made in **W.P.(MD) Nos.6889 of 2020 etc., batch [Sasikala Vs. The Revenue Divisional Officer cum Sub Collector and another]:**

"43.The donor must specifically reserves such right to suspend or revoke the gift deed with the consent of donee to attract Section 126 of the Transfer of Property Act. Unless the agreement is mutual, expressed in the recitals, the Registering Authority cannot accept the document for registration. However, the factual allegations with regard to the acceptance of gift or the issue where the gift was acted upon or not do not come under the purview of the Registering Officer. Hence, the Registering Officer is not excepted to accept the document unilaterally cancelling the gift deed, merely on the basis of the statement of the donor or the recitals in the document for cancellation.

46.The writ petition in W.P(MD)No.6889 of 2020 is filed by the daughter of the second



W.P.No.19808 of 2021

respondent to quash the order passed by the first respondent under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007. The gift deed executed by the second respondent in favour of the writ petitioner was unilaterally cancelled by the second respondent father. The settlement deed stated to have been executed by the second respondent, dated 06.03.2015 is irrevocable and it is a deed of settlement out of love and affection. The second respondent has specifically stated that he has no right to revoke the settlement deed. From the recitals, the settlement does not attract Section 126 of Tamil Nadu Property Act. It is seen that the settlor viz., the second respondent, has not put any condition. In other words, the gift deed is not subject to any condition or terms that the transferor shall provide the basic amenities and basic physical needs to the second respondent. In such circumstances, this Court is of the view that there is no scope for invoking the power provided to the second respondent under Section 23 of the Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Therefore, the order impugned is liable to be quashed. Even though we agree that the writ petition can be allowed, this Court is



W.P.No.19808 of 2021

unable to decide the writ petition in this batch where question referred to us is different. Hence, the writ petition in W.P(MD)No.6889 of 2020 is de-linked and the Registry is directed to list the matter before the appropriate Bench."

[Emphasis Added]

11.In the present case, there is condition in the settlement deed and the petitioner failed to take care of the respondents 3 and 4 and violated the said condition. Thereby the respondents 3 and 4 made complaint before the second respondent under the provisions of the Maintenance of Senior Citizen's and Welfare of Parents Act, 2007 for cancellation of settlement deed and the second respondent cancelled the settlement deed and the same was confirmed by the first respondent and hence, the impugned order warrants no interference.

12.The writ petition is dismissed. However, the petitioner is at liberty to work out his remedy before the civil Court in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

05.08.2024

pri
Index: Yes/ No

9/11



W.P.No.19808 of 2021

Speaking Order: Yes/ No NCC: Yes/ No

WEB COPY

To

- 1.The District Magistrate &
District Collector,
Chengalput District.
- 2.The Revenue Divisional Officer,
Maintenance Tribunal
Chengalput.



WEB COPY



W.P.No.19808 of 2021

M.DHANDAPANI,J.
pri

W.P.No.19808 of 2021
And
W.M.P.No.21090 of 2021

05.08.2024