



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-01-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

**WP No.16720 of 2020
And
WMP No.20735 of 2020**

Gandhimathi

.. Petitioner

-VS-

1.The Sub Divisional Magistrate/Revenue
Divisional Officer,
(Tribunal for Maintenance and Welfare of
Parents and Senior Citizens),
Salem.

2.The Joint Sub Registrar No.III,
Salem West,
Salem.

3.Mrs.Baby Saroja

.. Respondents



Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records with respect of the impugned order passed by the first respondent in his proceedings dated 08.10.2020 in Na.Ka.5109/2019/A3 and quash the same.

For Petitioner : Mr.R.Nalliyappan
For Respondents-1 and 2: Mr.G.Krishna Raja,
Additional Government Pleader.
For Respondent-3 : Mr.A.Arumugam for
Mr.R.Asokan

ORDER

The lis on hand and the issues raised are under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

2. The order passed by the first respondent-Revenue Divisional Officer dated 08.10.2020 cancelling the Settlement Deed executed by the third respondent-mother in favour of the writ petitioner-daughter, is under challenge in the present writ proceedings.



3. The property comprised in SF No.162/5, Pallapatti Village, Salem Taluk and District to an extent of 2503 sq.ft., has been purchased by one Baby Chitra @ Chitra, who is the second elder sister to the petitioner. The property was purchased in the name of one R.Premakumari, who is the elder sister of the petitioner. Both the sisters of the petitioner, namely Baby Chitra and Premakumari executed a Settlement Deed in favour of the third respondent-mother of the writ petitioner on 20.01.2005. The said Settlement Deed was registered as Document No.66 of 2005. Subsequently, the third respondent-mother of the writ petitioner, executed a Settlement Deed in favour of the writ petitioner on 15.07.2008, which was registered as document No.1730 of 2008.

4. The purchaser of the property Smt.Baby Chitra is residing in United States of America. She has settled the property in favour of the third respondent-mother out of love and affection for her peaceful living. The third respondent in turn executed the Settlement Deed in favour of the writ petitioner with the fond hope that the petitioner will take care of the third respondent-mother at her old-age.



5. The relationship strained between the parties. The third respondent found that the petitioner was not looking after the third respondent-mother and consequently executed Cancellation Deed on 30.05.2012. The said Cancellation Deed was challenged by the writ petitioner in OS No.546 of 2013 to declare that the cancellation of Settlement Deed is null and void. The brother and elder sister of the petitioner filed another suit in OS No.481 of 2012 to declare that the cancellation of Settlement Deed dated 30.05.2012 is valid. The suits were tried by the Civil Court and the suit instituted by the petitioner in OS No.546 of 2013 was decreed. Consequently, the other suit was dismissed.

6. The learned counsel for the petitioner Mr.R.Nalliyappan would submit that the Civil Court declared that the cancellation of Settlement Deed is null and void and therefore, the subsequent petition filed before the Revenue Divisional Officer under the Senior Citizens Act, is untenable and therefore, the order impugned is to be set aside.

7. It is contended that the petitioner is taking care of her third respondent-mother and she is ready and willing to look after the interest of



the third respondent her mother. Under the wrong guidance of the brother of the petitioner, the third respondent-mother executed the Cancellation Deed and the facts in this regard was not considered by the Revenue Divisional Officer, while conducting an adjudication on the petition filed by the third respondent-mother to cancel the Settlement Deed dated 15.07.2008

8. The learned counsel Mr.R.Nalliyappan would rely on the order passed by the learned Single Judge of the Madurai Bench of the Madras High Court in WP(MD) No.27135 of 2023 dated 10.11.2023, so as to substantiate that under Section 23 of the Senior Citizens Act, it is mandatory that the condition to maintain the senior citizen is to be stipulated and in the absence of any such condition in the Settlement Deed, the cancellation is impermissible.

9. The learned counsel for the third respondent Mr.A.Arumugam would oppose the contention raised on behalf of the petitioner by stating that the findings of the Revenue Divisional Officer would be sufficient that the petitioner has not taken care of the senior citizen-third respondent herein and neglected her. The third respondent-



mother cancelled the Settlement Deed mainly on the ground that the petitioner developed strained relationship and neglected the third respondent-mother.

10. The property was purchased by the sisters of the petitioner and was settled in favour of the third respondent-mother only for the purpose of providing shelter to their mother and the petitioner had not contributed anything for the purchase of the subject property. Therefore, the third respondent-mother settled the property in favour of the petitioner only with the fond hope that she will take care of the third respondent-mother during her old-age. Since the petitioner failed in her duty, the third respondent-mother cancelled the Settlement Deed and thus, there is no infirmity. The decree in the suit was passed in favour of the petitioner is mainly on the ground that unilateral cancellation of Settlement Deed is invalid. Such a ground would not affect the case of the third respondent under the provisions of the Senior Citizens Act. Thus the present writ petition is to be rejected.

11. The learned Additional Government Pleader, appearing on



behalf of the respondents 1 and 2 would also oppose the contentions raised on behalf of the petitioner by stating that the complaint given by the third respondent-mother was independently enquired into by the Revenue Divisional Officer and by affording opportunity to all the parties concerned. The order of the Revenue Divisional Officer would reveal that the petitioner neglected her mother after execution of Settlement Deed by the third respondent-mother and therefore, the relief was granted in favour of the third respondent-mother, who is the senior citizen.

12. It is brought to the notice of this Court that a criminal case was also registered against the writ petitioner at the instance of the third respondent-mother. The quash petition filed challenging the FIR made against the petitioner was dismissed by the High Court. When the third respondent-mother filed criminal case against the writ petitioner, now there is no scope for reunion or settlement. Therefore, the present writ petition is to be rejected by confirming the order passed by the first respondent-Revenue Divisional Officer.

13. Considering the arguments as advanced by the respective



learned counsels appearing on behalf of the parties to the lis on hand, the facts are not disputed between the parties. The subject property was purchased by the sisters of the petitioner, which was settled in favour of the third respondent-mother for her benefits. The third respondent-mother in turn settled the property in favour of the petitioner with the fond hope that she will take care of the third respondent-mother during her old-age.

14. The learned counsel for the petitioner Mr.R.Nalliyappan would raise a ground that in the absence of any condition under Section 23 of the Senior Citizens Act, the Cancellation Deed is invalid. In this context, the learned counsel for the petitioner is of the opinion that there is no promise on the side of the writ petitioner to maintain the third respondent and therefore, the Settlement Deed cannot be cancelled by the Revenue Divisional Officer.

15. With reference to Section 23 of the Senior Citizens Act, this Court has elaborately considered the issues in the case of **Mohamed Dayan vs. District Collector [(2023) 4 LW 613]**. The consideration for such settlement deeds executed by the senior citizens in favour of any



person is out of love and affection. In other words, the love and affection, being the consideration for execution of the Settlement Deed, the condition to look after the senior citizen is to be construed as implied. Consideration, being the essence of contract under the Indian Contract Act and in such nature of cases, consideration would be on “love and affection”, the scope of Section 23 of the Senior Citizens Act, is to be interpreted pragmatically, so as to ensure that non-mentioning of any such condition in the Settlement Deed would not take away the right of the senior citizen to file a petition under the Senior Citizens Act, to cancel the Settlement Deed on the ground that the beneficiaries of the Settlement Deed is not looked after the interest of the senior citizen. Ultimately, the object of the Senior Citizens Act is to ensure life, protection and livelihood of the senior citizens. Therefore, the provisions are to be interpreted in the context of the objects sought to be achieved under the Senior Citizens Act.

16. The Act provides for more effective provisions for the Maintenance and Welfare of Parents and Senior Citizens guaranteed and recognised under the Constitution. Therefore Section 23 of the Senior Citizens Act, cannot be interpreted blindly to mean that the non-mentioning



of any condition in the Settlement Deed would deprive the senior citizen from approaching the Competent Authority under the Senior Citizens Act.

The principles of constructive interpretation is to be adopted, while interpreting the welfare legislation, which is enacted to protect the livelihood of the senior citizen in our country.

17. Section 23 of the Senior Citizens Act, contemplates “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”.

18. With reference to the above provision, the Kerala High Court also decided the issue in the case of **Radhamani & Others vs. The State of Kerala, represented by The Secretary, Revenue Department & Others reported in CDJ 2015 Ker HC 1019** and the relevant paragraphs



are as under:

“10. Section 23 of the Senior Citizens Act, 2007 does not contemplate that the condition should form part as recital in the deed of transfer. It only refers that there should be a condition for such transfer. This condition can be either express or implied. If there is no express recital in the deed, the Tribunal has to look around circumstances to find out whether conduct otherwise dispel the intention of donor to revoke. The consideration for executing a gift deed or settlement deed is based on human conduct, caring and conscientious. Transfer admittedly is out of love and affection. Any donor in a gift deed would expect in a natural course of human conduct that donee continues to behave in same manner as behaved before execution of the deed. The love and affection influenced for execution of the deed certainly must be enduring and without any barrier. The human conduct in relation to a particular relation is presumed to exist in all set of circumstances for governing relationship of those individuals. Transferee cannot disown his own action of love and affection after the transfer comes into effect. The transfer itself being based



on love and affection, that would form part as a condition of the transaction for future conduct as well. Thus, in the absence of any other circumstances to dispel, it must be presumed that transferor expects continuation of the care and love from the transferee even after execution of the deed in same manner, he was taken care prior to execution of the deed.

11. It is to be noted that the special scheme in terms of Senior Citizens Act, 2007 could declare certain transfer as void, taking note of the fact that by taking advantage of the emotionally dependent senior citizens, relatives grab the property on the pretext of providing emotional support. Therefore, legislature thought such transaction could be declared as void as the conduct leading to transaction was based on malice or fraud. Therefore, condition referred in Section 23 has to be understood based on the conduct of the transferee and not with reference to the specific stipulation in the deed of transfer. Thus, this Court is of the view that it is not necessary that there should be a specific recital or stipulation as a condition in the transfer of deed itself. This condition mentioned in Section 23 is



only referable as a conduct of the transferee, prior to and after execution of the deed of transfer. Thus, challenge based on the ground that there is no reference in the recital of deed that transferee will provide basic amenities and physical needs to the transferor is of no consequence.?”

19. Considering the scope of section 23(1) of the Act, the Senior Citizen is entitled to seek the relief of declaration to declare a settlement deed as null and void on the ground of fraud or coercion or undue influence and section 23(1) of the Act is a deeming provision, which provides that in the event of breach of promise if any made, then the transfer of property shall be deemed to have been made by fraud or coercion. It is sufficient, if the son or daughter of the Senior Citizen breached the promise given to their parents at the time of execution of settlement or gift deed or otherwise.

20. Section 3 of the Maintenance And Welfare of Parents and Senior Citizens Act, 2007 enumerates that “The provisions of this Act shall



have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.?

21. A notable judgment on the Senior Citizens Act, was delivered by the Three Judges Bench of the Hon'ble Supreme Court of India in the case of **S.Vanitha vs. Deputy Commissioner, Bengaluru Urban and District and Others [(2021) 15 SCC 730]**, wherein in paragraphs 15 to 25, it has been held as follows:-

“C. Legislative scheme : Senior Citizens Act, 2007

15. The rival submissions will now be analysed.

16. Our analysis of the rival submissions must begin with explaining and interpreting the salient feature of the Senior Citizens Act, 2007 which have a bearing on the present controversy. “Maintenance” is defined in an inclusive manner to incorporate, among other things, provisions for food, clothing, residence, medical assistance and treatment [“2.



(b) “maintenance” includes provision for food, clothing, residence and medical attendance and treatment;”] . In defining the expression “property”, the legislation uses broad terminology encompassing “property of any kind” and to include “rights or interests in such property” [“2. **(f) “property”** means property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property;”] . Overriding effect is given to the provisions of the enactment by Section 3 [“3. **Act to have overriding effect.**—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.”] . Besides the definitions which are comprised in Chapter I, Chapter II is titled “Maintenance of Parents and Senior Citizens” while Chapter V is titled “Protection of Life and Property of Senior Citizen”.



WEB COPY

WP No.16720 of 2



17. The Statement of Objects and Reasons indicates the rationale for the enactment of the law:

“Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.”

18. Briefly reviewed, Section 4



recognises an entitlement of maintenance to inhere in parents and senior citizens. Section 5 lays down the procedure by which an application for maintenance can be made. Section 6 elucidates provisions governing jurisdiction and procedure. Section 7 contains stipulations for the constitution of a Maintenance tribunal. Section 8 envisages a summary procedure for making an inquiry. Section 11 provides for the enforcement of an order of maintenance.

19. A senior citizen, including a parent, who is unable to maintain themselves from their own earning or out of property owned by them, is entitled to make an application under Section 4(i). A parent or grandparent may make an application against one or more of their children. A childless senior citizen can make an application against a relative specified in Section 2(g). Section 4 recognises a corresponding obligation on the part of the children or relative to maintain a senior citizen, extending to such needs as would



enable them to lead a normal life. In the case of a relative, the obligation is if they are in possession of the property of the senior citizen or would inherit property from them. Hence, in the case of the children of a senior citizen, the obligation to maintain a parent is not conditional on being in possession of property of the senior citizen or upon a right of future inheritance [**“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 grandparent, against one or more of his children not being a minor;(ii) a childless senior citizen, against such of his relative referred to in clause (g) of Section 2.(2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.(3) The obligation of the children to maintain his or her parent*



extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen:Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.”] .

*20. The procedure to be followed by a Maintenance Tribunal (constituted under Section 7) is of a summary nature as provided in Section 8(1) and with all the powers of a civil court, as provided in Section 8(2) [“8. **Summary procedure in case of inquiry.**—(1) In holding any inquiry under Section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.(2) The*



*Tribunal shall have all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).”]. Under sub-section (1) of Section 9, where a senior citizen is not able to maintain himself or herself and the children or relatives, as the case may be, neglect or refuse to maintain them, the Tribunal is empowered to order them to make a monthly allowance at such monthly rate for the maintenance of the senior citizen, as the Tribunal may deem fit [**“9. Order for maintenance.—(1) If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or***



relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.”] . The amount of the monthly allowance can be altered inter alia upon a change in circumstances, under Section 10 [**“10. Alteration in allowance.—**

(1) On proof of misrepresentation or mistake of fact or a change in the circumstances of any person, receiving a monthly allowance under Section 9, for the maintenance ordered under that section to pay a monthly allowance for the maintenance, the Tribunal may make such alteration, as it thinks fit, in the allowance for the maintenance.

(2) Where it appears to the Tribunal that, in consequence of any decision of a competent civil court, any order made under Section 9 should be cancelled or varied, it shall cancel the order or, as the case may be, vary the same accordingly.”] .

21. Of particular relevance to the



facts of the case at hand is Chapter V, which enacts provisions for protecting the life and property of a senior citizen. Section 23 proceeds in the following terms:

“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 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



WEB COPY

WP No.16720 of 2



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.”

22. Sub-section (1) of Section 23 covers a situation where property has been transferred after the enactment of the legislation by a senior citizen (by gift or otherwise) subject to the condition that the transferee must provide the basic amenities and physical needs to the transferor. In other words, sub-section (1) deals with a situation where the transfer of the property is accompanied by a specific condition to provide for the maintenance and needs of a senior citizen. In such an event, if the transferee fails to provide the maintenance and physical needs, the transfer of the property is deemed to have been vitiated by fraud, coercion or under undue influence.



Sub-section (1), in other words, creates a deeming fiction of the law where the transfer of the property is subject to a condition and the condition of providing for maintenance and the basic needs of a senior citizen is not fulfilled by the person upon whom the obligation is imposed. Then, at the option of the transferor, the transfer can be declared as void by the Tribunal.

23. On the other hand, sub-section (2) of Section 23 envisages a situation where a senior citizen has a right to receive maintenance out of an estate. Where such a right exists, the right of maintenance can be enforced where the estate or a portion of it, is transferred against a transferor who has notice of the right; or if the transfer is gratuitous. The right however cannot be enforced against a transferee for consideration and without notice of the right. Now, sub-section (1) of Section 23 envisages a situation where the transfer of property is by the senior citizen. This is evident from the language of sub-section (1), namely, “where any senior citizen who,



WEB COPY

WP No.16720 of 2



after the commencement of this Act, has transferred by way of gift or otherwise, his property...”. On the other hand, sub-section (2) of Section 23 does not confine itself to a transfer by a senior citizen, unlike sub-section (1). Sub-section (2) uses the expression “such estate or part thereof is transferred”. Where a senior citizen has a right to receive maintenance out of the estate and any part of it is transferred, sub-section (2) permits the enforcement of the right to receive maintenance out of the estate against a transferee with notice or against a gratuitous transferee. Sub-section (2), in other words, may cover a situation where the transfer of the estate (in which a senior citizen has a right to maintenance) is by a third party, in which event, the provision provides the right to enforce the claim of maintenance against such transferee (other than those transferees for consideration or without notice of the pre-existing right). Arguably, the language of sub-section (2) is broad enough to also cover a situation where the transfer is by



the senior citizen, in which event the transferee with notice of the right; or a gratuitous transferee, can be made subject to the enforcement of the right against the transferred estate.

24. Another distinction between sub-section (1) and sub-section (2) of Section 23 must also be noticed. Under sub-section (1), where a transfer has been made by a senior citizen subject to the condition that the transferee will provide for basic amenities or physical needs of the transferor and if there is a failure of the transferee to fulfil the condition, two consequences follow : (i) the transfer of property shall be deemed to have been made by fraud or coercion or under undue influence; and (ii) the transfer shall, at the option of the transferor, be declared to be void by the Tribunal. The deeming consequence which is provided for in sub-section (1) is not incorporated in sub-section (2). Sub-section (2), in contradistinction, stipulates that the right to receive maintenance can be enforced against a gratuitous transferee or a



transferee with notice of the pre-existing right of a citizen to receive maintenance out of an estate notwithstanding who is the transferee of the estate. In keeping with the salutary public purpose underlying the enactment of the legislation, the expression “transfer” would include not only the absolute transfer of property but also transfer of a right or interest in the property. This would also be in consonance with the provisions of Section 2(f) which defines the expression “property” to include “rights or interests in such property”. The expression “transfer” not having been defined specifically by the legislation, it must receive an interpretation which would advance the beneficent object and purpose of its provisions. Sub-section (2) of Section 23 speaks of the enforcement of the “right to receive maintenance” which is more comprehensive in its nature, than merely enforcing an order for maintenance passed under Section 9 of the Act.

25. The substance of sub-section (2) of Section 23, as submitted by the second



WEB COPY

WP No.16720 of 2



and third respondents, is that the Tribunal had the jurisdiction to pass an order directing the eviction of the appellant who is their daughter-in-law. According to the submission, the power to order eviction is implicit in the provision guaranteeing a “right to receive maintenance out of an estate” and the enforcement of that right. In supporting the submission, they have referred to the view which has been taken by several High Courts, indicating that the Tribunal may order the eviction of a child or a relative from the property of a senior citizen, where there has been a breach of the obligation to maintain the senior citizen. The Tribunal under the Senior Citizens Act, 2007 may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent. Eviction, in other words would be an incident of the enforcement of the right to maintenance and protection. However, this remedy can be granted only after advertent to the competing claims in the dispute. It is



necessary to recapitulate that the situation in the present case is that the eviction was sought of the daughter-in-law i.e. the appellant. The land, where the house has been constructed, was originally purchased by the son of the applicants who are seeking eviction of their daughter-in-law. The son had purchased the property a few months before his marriage to the appellant. He had subsequently transferred the property by a registered sale deed to his father and the fact that it was for the same consideration after the lapse of several years is of significance. The father, in turn, executed a gift deed in favour of his spouse. The appellant has asserted that she had been living in the house, as her matrimonial residence, until the application was filed. Her spouse has (according to her) deserted her and their minor daughter and left them in the lurch. The electricity to the premises was disconnected for non-payment of dues. Their daughter has sought admission to an engineering degree course however her father, fourth respondent has not provided



any financial support. The transfers which took place cannot be viewed in isolation from the context of the ongoing matrimonial dispute which has taken place. The issue is whether the appellant as the daughter-in-law and the minor daughter could have been ousted in the above manner.”

22. In the above judgment, the Apex Court, elaborated the scope of Section 23(1) of the Act and the statement of objects and reasons for the enactment of Senior Citizens Act. In order to provide speedy remedy to the Senior Citizens, the Act provides provisions to ensure their normal life during old-age.

23. In the case of **M.Venugopal vs. The District Magistrate-cum-District Collector [(2014) 5 CTC 162 (Mad)]**, wherein the learned Single Judge of this Court, considered the scope of the Act as under:-

“1. Indian society has a long cherished tradition to respect and protect the elders. It is the pious obligation of the siblings to maintain their Parents and grandparents. The great saint Tamil



poet “Avvaiyar” said “Annaiyum Pithavum Munnari Deivam” which means mother and father are the first God known to the children. Until few decades, in the past, these traditions, heritage and moral values were taught at the Schools as part of curriculum. Since, the children learnt these invaluable tenets, in their childhood, it was not required to remind them of their obligation towards the elders, by making any law to respect and protect them. In recent years, under the guise of preparing the younger generation to compete globally in knowledge sharing and employment, we have gradually removed the moral studies from the School curriculum. On the other side of the coin, when the Joint Family system was in prevalence, the grandparents, in order to at-least while away their time, used to tell moral stories to their grandchildren. “Patti Kathaigal” (Grandmother's stories) played a major role to imbibe good qualities in the children. Now joint family system has also slowly faded away. As a result, the children hardly have the golden opportunity of learning moral values from the elders also. As a consequence, we have witnessed crimes by juvenile delinquents on the increase. Even the Government



is forced to amend the Juvenile Justice (Care and Protection) Act to treat the Juveniles on par with adults in respect of certain heinous crimes. Feeling of togetherness has vanished. Love and respect for the elders have diminished. Some, among the younger generation, do also forget to maintain their parents. They are left in the lurch in the evening of their life. So, the Government had to think of converting the pious obligation to maintain the Parents as a legal obligation. Thus, for the first time in the Code of Criminal Procedure, 1973, provision was made for payment of maintenance to the Parents, who are unable to maintain themselves. Though a claim for maintenance is in the nature of a Civil claim, the said provision was inserted in the Criminal Procedure Code thereby giving jurisdiction to Judicial Magistrates hoping that it would be less expensive and speedy. But in course of time, the hope was belied. The aged Parents continue to suffer. Many of them have to spend their life in old age homes.”

24. In the case of **Radhamani and Others vs. State of Kerala**

[2015 SCC OnLine Ker 33530], wherein the Kerala High Court observed



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as under:-

“7. The Senior Citizens Act, 2007 has a pivotal role in Indian Societal frame work. The Act, in fact, comprehends a scheme of welfare provisions for senior citizens. The Act contemplates right of senior citizens beyond right of maintenance. The word “welfare” has a significant importance in the context. The welfare is defined under Section 2(k) as follows:-

“2(k) “welfare” means provision for food, health care, recreation centres and other amenities necessary for the senior citizens.”

8. Section 23 of the Senior Citizens Act, 2007 gives right to senior citizens to approach the Tribunal to declare any transfer of property, by way of gift or otherwise, after the commencement of the above Act, as void, in certain circumstances. It stipulates that such transfer must be with the condition that (a) transferee shall provide the basic amenities and basic physical needs to the transferor and (b) such transferee refuses or fails to provide such amenities and physical needs. Therefore, a deed can be declared as void on fulfilling the two conditions enumerated as above, declaring transfer as a fraud or coercion or under



undue influence, as the case may be at the option of the transferor.

9. The question in this case is in the absence of specific recital as conditions referred as above in the Settlement Deed, whether Tribunal has a power to declare transfer as void.

10. Section 122 of Transfer of Property Act, 1882 (hereinafter referred for brevity, as 'the T.P. Act') defines "gift" as a transfer of certain existing moveable or immoveable property made voluntarily and without consideration. Section 126 of T.P. Act makes a provision to suspend or revoke the gift on happening of any specified event on which donor and donee may agree. The word 'consideration' in the context of Section 122 of T.P. Act, only refers to monetary consideration and does not include natural love and affection. However, it cannot be revoked on a mere Will of the donor. The gift or Settlement Deed on a promise to look after the donor at the old age is a transaction without any consideration. If such promise and expectation are treated to be a consideration, certainly transaction as a gift will be deemed to be void. Therefore, such conditions forming part of gift deed are also reiterated under



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Section 23 of the Senior Citizens Act, 2007.

11. Section 23 of the Senior Citizens Act, 2007 does not contemplate that the condition should form part as recital in the deed of transfer. It only refers that there should be a condition for such transfer. This condition can be either express or implied. If there is no express recital in the deed, the Tribunal has to look around circumstances to find out whether conduct otherwise dispel the intention of donor to revoke. The consideration for executing a gift deed or settlement deed is based on human conduct, caring and conscientious. Transfer admittedly is out of love and affection. Any donor in a gift deed would expect in a natural course of human conduct that donee continues to behave in same manner as behaved before execution of the deed. The love and affection influenced for execution of the deed certainly must be enduring and without any barrier. The human conduct in relation to a particular relation is presumed to exist in all set of circumstances for governing relationship of those individuals. Transferee cannot disown his own action of love and affection after the transfer comes into effect. The transfer itself being based



on love and affection, that would form part as a condition of the transaction for future conduct as well. Thus, in the absence of any other circumstances to dispel, it must be presumed that transferor expects continuation of the care and love from the transferee even after execution of the deed in same manner, he was taken care prior to execution of the deed.

12. It is to be noted that the special scheme in terms of Senior Citizens Act, 2007 could declare certain transfer as void, taking note of the fact that by taking advantage of the emotionally dependent senior citizens, relatives grab the property on the pretext of providing emotional support. Therefore, legislature thought such transaction could be declared as void as the conduct leading to transaction was based on malice or fraud. Therefore, condition referred in Section 23 has to be understood based on the conduct of the transferee and not with reference to the specific stipulation in the deed of transfer. Thus, this Court is of the view that it is not necessary that there should be a specific recital or stipulation as a condition in the transfer of deed itself. This condition mentioned in Section 23 is only



referable as a conduct of the transferee, prior to and after execution of the deed of transfer. Thus, challenge based on the ground that there is no reference in the recital of deed that transferee will provide basic amenities and physical needs to the transferor is of no consequence.

13. Under Section 17 of the Indian Contract Act, 1872, 'fraud' includes a promise made without any intention of performing it. Section 92 of the Evidence Act places a restriction on the admissibility of evidence in variance or in contradiction of the term of a registered document in writing. However, under second proviso to Section 92, the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. Under third proviso to Section 92, the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property may be proved. Thus, there is no requirement under law that condition as such should form part of written document. It can be implied from the circumstances of human conduct."



25. In the case of **Premkumar vs. Krishan Kumar Sharma and Others [AIR 2016 P&H 40]**, wherein the Punjab and Haryana High Court in paragraph-12 observed as under:-

“12. Hon'ble Division Bench of this Court in Justice Shanti Sarup Diwan, Chief Justice (Retired) v. Union Territory, Chandigarh, 2014 (5) R.C.R. (Civil) 656 has examined the scheme of the Act and almost identical issue.

“28. SCHEME OF THE ACT-

In order to appreciate and answer the aforesaid questions in the context of the factual matrix, it is necessary to analyze the relevant provisions of the said Act. The Statement of Objects and Reasons set out that the traditional norms and values of the Indian Society which lay stress on providing care for elderly getting diluted due to the withering of the joint family system, the elders are facing emotional neglect and lack of physical and financial support. Thus, aging has become a major social challenge and despite the provisions of the Code of Criminal Procedure, 1973 for maintenance, it was deemed necessary that there should be simple, inexpensive



and speedy provisions to claim maintenance for the parents. The Act is not restricted to only providing maintenance but cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives. One of the major aims was to provide for the institutionalization of a suitable mechanism for the protection of 'life and property of older persons'.

26. In the case of **Deepak Sharma vs. State of Rajasthan [(2017) 170 AIC 637]**, wherein the High Court of Rajasthan (Jaipur Bench), has observed in paragraphs-4, 9 to 14 as under:-

“4. To borrow the words of Sanjay Kishan Kaul, J. in the judgment rendered in Justice Shanti Sarup Dewan, Chief Justice (Retired) v. Union Territory, Chandigarh, 2014 (14) RCR (Civil) 656, “The filial affections of a father have cost him dearly in the twilight years of his life.”

.. ..

9. Section 27 of the Act of 2007 specifically states that no civil court shall have jurisdiction in respect of any matter to which any provision of



this Act applies and no injunction shall be granted by any civil court in respect of anything which is done or intended to be done by or under this Act.

10. Section 23(1) of the Act of 2007 specifically state that 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 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. Section 23(2) further states that 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.

11. Having heard the learned counsel for



the petitioner, this Court is of the view that the Act of 2007 is not without teeth. To provide speedy redressal of grievance, the Act vests powers in the Tribunal to make any transfer of the property void. The petitioner as per his own averment in the application is unemployed. Nothing has been stated regarding source of income of the petitioner. On 22.1.1999, an agreement to sell and other papers were executed by Vijay Laxmi Mathur. The petitioner and his wife were not possessed of the funds to pay the sale consideration, noted in the agreement to sell. The respondent no. 3 Hanuman Prasad Sharma has specifically stated that he had purchased the flat for his wife Pushpa Devi Sharma, and possession was handed over to him and the original agreement to sell and other original documents like allotment letters, letter of possession are with Hanuman Prasad Sharma. Thus, it is discernible that the father in old age being not able to move here and there, had asked the seller to execute power of attorney in favour of his son.

12. In the present case, attorney has cheated the person who had provided funds for execution of the agreement to sell. Scope of



Section 23 of the Act of 2007 cannot be restricted as the Act of 2007 is beneficial legislation. The scope under Section 23 of the Act of 2007 can be enlarged and the Tribunal can hold an inquiry as to who had provided funds for purchase of flat by way of agreement to sell on 22.1.1999, what was the age of the petitioner on 22.1.1999 and when he was married, what were his resources, what were the resources of his wife to purchase the flat. In case, the funds were provided by the father and the mother in the year 1999, out of love and affection, the petitioner and his wife cannot become ungrateful to the parents. By extending widest interpretation to Section 23 read with Section 4 of the Act of 2007, this Court is of the view that the Tribunal should have held an inquiry compelling the petitioner and his wife to return sale consideration of the flat to the parents so that they can survive with dignity.

13. However, since parents have not challenged the order passed by the Tribunal, this Court shall rest the matter, where it is.

14. Relief to be granted by the Tribunal in a beneficial legislation enacted for maintenance and welfare of parents cannot be dependent upon the



prayer made in the application. In the present application, it has been specifically stated that wife of applicant/respondent no. 3 is having Arthritis in hands and other joints of the body. She is unable to cook food for herself and the husband. Thus, maintenance awarded by the Tribunal in favour of the parents is too meager. A pensioner requires additional amount to supplement his day to day living. Old parents have to maintain standard of life which they were having when one of them was in service. A father who has given his life long savings to settle the son cannot be denied fruits of earning by the son, merely because he is getting pension.”

27. In the case of **Jayashree vs. Union of India [(2019) 200 AIC 708]**, wherein in paragraph-21, the Kerala High Court observed as under:-

“21. The purpose of the Act being to ensure that a senior citizen or parent is able to live a life of dignity and self-respect and the statutory obligation, as is resolutely specified in Section 4(3) of the Act, being cast on the children to



maintain his/her parent, so that such parent may lead a normal life, it is ineffectual to hear the petitioner say that the words “having care and protection” is not capable of a definite meaning.”

28. In the case of **Anirban Chakraborty vs. State of West Bengal [(2019) 201 AIC 647]**, wherein the High Court of Calcutta observed as under:-

“11. The Tribunals constituted under the said Act are an alternative dispute redressal mechanism but, adjudication by the Tribunal does not infringe the power of this Court to issue writs under the Constitution by way of judicial review. Arriving at the conclusion that the writ petition is maintainable, this Court now proceeds to deal with the other questions which have arisen in this writ petition.

12. The order dated February 8, 2018 impugned to this writ petition has been passed in exercise of power under Section 23 of the said Act. The Appellate Tribunal affirmed the order. In this case, the provisions of Section 23 and Section 6 of the said Act are required to be discussed. Section



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23 is quoted below:—

“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 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 or right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-section (1) and (2), action may be taken on his behalf by any of the



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organisation referred to in Explanation to sub-section (1) of Section 5.”

13. Section 23 of the said Act provides that when a property has been transferred by way of a gift or otherwise, by a senior citizen on the condition that the transferee or the donee would provide the basic amenities and basic physical needs to the transferor or the donor but, such transferee or donee subsequently fails to provide such amenities then, it would be deemed that the transfer was made by fraud, coercion or undue influence and the transferor would have the option of obtaining a declaration from the Maintenance Tribunal that such transfer was void.

14. Coming to the deed of gift in this case, it appears that the grandfather had gifted the property to the petitioner out of love and affection and as a reward for the respect, regard and care that the petitioner had shown to the grandfather. It has been specifically stated in the deed by the grandfather, that is, the respondent No. 5 that being pleased with the care, love, affection, respect and good behavior of the grandson, he was executing the deed of gift as a reward in favour of his grandson and in discharge of his



responsibility towards the grandson as also as a future security for the grandson. Thus, the deed of gift in this case was not a conditional gift and no responsibility had been cast upon the petitioner to maintain the grandfather that is, the respondent No. 5. That apart, according to the respondent no. 5, the deed of gift was void and liable to be cancelled having been obtained fraudulently. This is also not a case where respondent No. 5 had a right to receive maintenance out of an estate which was transferred by way of a gift to the petitioner and the petitioner not having given the maintenance out of the said estate, the respondent No. 5 in terms of Section 23(2) of the said Act had approached the Maintenance Tribunal. Section 27 of the said Act provides that a civil court shall not have any jurisdiction in respect of any matter to which the said Act applied and no injunction would be passed. However, the respondent No. 5 himself approached a civil court for cancellation of the deed of gift and also filed an application for temporary injunction prior to the order passed by the Chairman. The date of registration of Case No. 52 of 2017, before the Tribunal was November 7, 2017, that is, after the plaint was registered on



October 26, 2017. The cause of action in the civil suit as pleaded in the plaint, had arisen due to creation of the deed of gift by fraud, coercion and undue influence by the petitioner and his father. The respondent No. 5 prayed that the deed of gift should be declared illegal, void and liable to be cancelled by the civil court with a further prayer for declaration of the right, title and interest of the respondent No. 5 in respect of the said property. Along with the plaint, the respondent No. 5 filed an application for temporary injunction under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, with a prayer for an injunction upon the petitioner and the respondent No.6, restraining them from transferring and/or alienating the property in question as also from disturbing the peaceful possession and enjoyment of the property by the respondent No. 5 and 7. Thus, in this case, Section 27 of the said Act would not operate as a bar on the pending civil suit, inasmuch as, the ingredients of Section 23 of the said Act are not satisfied so as to enable the respondent no. 5 to maintain an application for a declaration that the deed of gift was void at his option under the said Act.”



29. In the case of **Deepak Kumar vs. Phoolwanti Devi and Others [(2019) 201 AIC 395]**, the High Court of Rajasthan in paragraph-6 observed as under:-

“6. I have given my thoughtful consideration to the arguments advanced at bar and gone through the material available on record. Indisputably, as per the sale deed placed on record with the reply by the respondents, the house in question is exclusively owned by the respondent Smt. Phoolwanti, who is registered owner thereof. The respondents while instituting the application under the Act of 2007, categorically asserted that the petitioner was not maintaining them and rather was harassing and ill-treating them in their own house, significant portion whereof had been provided by the respondent No. 1 to the petitioner for residence and for running his business. Thus, unquestionably, the respondent No. 1 Smt. Phoolwanti has a right under the scheme of the Act of 2007 to get vacated the portion of her own house, which, the petitioner had simply been given permission to reside and to do business. As the



petitioner has failed to perform a son's obligations towards the parents, he has no right to stay on in their house contrary to their wishes and to their detriment.”

30. In the present case, Mr.R.Nalliyappan, learned counsel for the petitioner would submit that the decree passed in the civil suit is to be considered in favour of the petitioner. As far as the civil court decree is concerned, no issues are framed regarding the maintenance of senior citizens under the Senior Citizens Act. In the absence of any issues raised under the provisions of the Senior Citizens Act, the said decree is of no avail to the writ petitioner. More-so, the cancellation of Settlement Deed was declared as null and void mainly on the ground that the Cancellation Deed was executed unilaterally, which is impermissible under the provisions of the Registration Act, 1908. Therefore, the scope of the provision of the Registration Act, 1908, with reference to the Full Bench judgment of this Court in **Latif Estate Line India Ltd vs. Hadeeja Ammal [AIR 2011(Mad) 66]**, the Civil Court hold that the cancellation of Settlement Deed is null and void. However, there is no issue relating to



maintenance of senior citizens under the Senior Citizens Act. Thus, the said decree passed by the Civil Court is of no assistance to the petitioner for the purpose of securing the relief as such sought for in the present writ petition.

31. The findings of the first respondent-Revenue Divisional Officer in the order impugned reveals that the writ petitioner is not supporting the third respondent-mother and the observations in this context would be sufficient to form an opinion that the relationship between the petitioner and the third respondent-mother is strained. On account of number of litigations and in view of the criminal case registered against the petitioner at the instance of the third respondent-mother, there is no near possibility of settlement and thus, the submission made by the learned counsel for the petitioner in this regard deserves no further consideration.

32. In view of the fact that the petitioner has failed in her duty to maintain the third respondent, who is her mother, the order passed by the first respondent-Revenue Divisional Officer is in consonance with the provisions of the Senior Citizens Act and such protective orders cannot be ordinarily interfered with by the High Court in the writ proceedings, unless



there is contra evidence. Consequently, the present writ petition stands dismissed. However, there shall be no order as to costs. The connected miscellaneous petition is also dismissed.

24-01-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

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- 1.The Sub Divisional Magistrate/Revenue
Divisional Officer,
(Tribunal for Maintenance and Welfare of
Parents and Senior Citizens),
Salem.
- 2.The Joint Sub Registrar No.III,
Salem West,
Salem.



WEB COPY

WP No.16720 of 2



S.M.SUBRAMANIAM, J.

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WP 16720 of 2020

24-01-2024