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W.P.No.21653 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

CORAM

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

W.P.No.21653 of 2021
and
W.M.P.No.22833 of 2021

R.Haridoss

....

Petitioner

Vs

1. The District Collector/
The Appellate Authority
Thiruvannamalai District Parent and
Senior Citizens Welfare and Maintenance
Dispute Redressal Tribunal,
Tiruvannamalai – 606 604.

2. Revenue Divisional Officer/
Sub Divisional Member,
Parent and Senior Citizens Welfare and Maintenance
Dispute Redressal Tribunal,
Tiruvannamalai Revenue Division,
Tiruvannamalai.

3. Rayar

....

Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for the records of the first respondent in Case No.I3/38548/2021 dated 24.08.2021 cancelling the settlement deed Doc.No.2963/2019 executed in favour of the petitioner



W.P.No.21653 of 2021

in so far as it relates to 0.82.0 Ares in Survey No.111/3A of Udayanandal Village, Tiruvannamalai District and to quash the same.

For Petitioner : M/s.Radhagopalan,
Senior Counsel
for M/s.G.P.Bhargavi

For R1 & R2 : Mr.S.J.Mohammed Sathik
Government Advocate

For R3 : Mr.P.Veeraraghavan

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent dated 24.08.2021, thereby cancelling the settlement deed by the third respondent in favour of the petitioner.

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

3. The petitioner is the son of the third respondent. The third respondent owned property to an extent of 3.66 acres. He had executed a settlement deed in favour of the petitioner by a settlement deed dated 25.09.2019 registered vide Document No.2963 of 2019. Immediately, on 24.10.2019, the third respondent filed a petition under Section 23 of The Maintenance and Welfare of Parents and Senior



W.P.No.21653 of 2021

Citizens Act, 2007 (hereinafter referred as the “Act”), to cancel the settlement deed executed in favour of the petitioner before the first respondent. The said application was forwarded to the second respondent and the second respondent conducted a detailed enquiry. However, after recording the statements from all the family members, the second respondent concluded that the petitioner is ready to maintain the third respondent and the property, which was settled in favour of the petitioner, is in possession and enjoyment of the third respondent herein. Therefore, the petition filed by the third respondent was closed. Aggrieved by the same, the third respondent preferred an appeal before the first respondent. After considering the facts and circumstances, the first respondent allowed the appeal filed by the third respondent and cancelled the settlement deed executed in favour of the petitioner. Aggrieved by the same, the petitioner filed this present writ petition.

4. The learned Senior Counsel appearing for the petitioner submitted that the third respondent had executed a sale deed in favour of the petitioner in respect of the property comprised in Survey No.111/3 admeasuring 0.86.0 hectares out of which 0.82.0 hectares and the same has been now cancelled under Section 23(1) of the Act.



W.P.No.21653 of 2021

5. A perusal of the statement recorded from the family members reveals that the petitioner is ready to maintain the third respondent and also willing to pay a sum of Rs.5,000/- as monthly maintenance to the third respondent. Further the third respondent is living separately for the past twenty years.

6. A perusal of the settlement deed reveals that there was no specific clause in respect of maintenance of the third respondent as consideration. In order to invoke the provision under Section 23(1) of the Act, two conditions must be fulfilled. The settlement deed shall contain a condition clause to maintain the settlor by the settlee. Further, there must be a violation of the said condition to apply Section 23(1) of the Act to cancel the settlement deed. In fact, as per Section 23(2) of the Act, 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. When the petitioner is always ready and willing to maintain the third respondent and also he is willing to pay a sum of Rs.5,000/- as monthly maintenance to the third respondent, who has refused to receive the same, the petitioner cannot be blamed. Further, the third respondent is still in possession and



W.P.No.21653 of 2021

enjoyment of the property, which was already settled in favour of the petitioner. Therefore, the first respondent ought not to have allowed the petition filed by the third respondent.

7. In support of his contention, she relied upon the Judgment passed by this Court in ***W.P.(MD) No.27135 of 2023*** in the case of ***Sankarappan Vs. The Appellate Authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.*** This Court relied upon the Judgment of the Hon'ble Supreme Court of India in the case of ***Sudesh Chhikara Vs. Ramti Devi*** reported in ***2022 SCC Online 1684*** and also the Judgment passed by this Court in ***W.P.No.28190 of 2022 dated 08.09.2023*** in the case of ***Mohammed Dayan Vs. The District Collector, Tiruppur District***, where in, it was held that in order to invoke Section 23(1) of the Act, there must be an express recital in the deed of transfer that the transferee is under an obligation to provide the basic amenities and basic physical needs to the transferor. If this condition is not expressly incorporated or found in the deed of transfer, the jurisdiction of the Maintenance Tribunal will not be available under Section 23 of the Act. The only remedy open to the transferor is to move the jurisdictional Civil Court for relief.



8. This Court had already dealt with the very same issue in a detailed manner. It is relevant to extract the provision under Section 23 of the Act, which reads as follows :

“23. Transfer of property to be void in certain circumstances.—

(1) Where any senior citizen who, after the commencement of this Act, has 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 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.”

11. Section 23 of the Act provides that when a property has been transferred by way gift or otherwise by the senior citizen on the condition that the transferee or ownee shall provide the basic amenities and basic



physical needs to the transferor or the owner, but such transferee or owner subsequently fails to provide such amenities, then it would be deemed that the transfer was made by fraud, or coercion or under undue influence and the transferor would have the option of obtaining declaration from Tribunal that such transfer was void.”

9. In the case on hand, the third respondent had executed a settlement deed in favour of the petitioner and the recital of the settlement deed revealed that being pleased with the care, love, affection, respect and good behaviour, the third respondent had executed the settlement deed in favour of the petitioner. Further, though no consideration was passed for the execution of the settlement deed, the consideration for executing the settlement deed is based on human conduct, caring and conscious. The transfer was made admittedly out of love and affection. The third respondent in the settlement deed would expect, in the natural course of human conduct, that the settlee viz., the petitioner, continues to behave in the same manner as behaved before execution of the settlement deed. Therefore, it would form part of condition of the transaction for future conduct as well.

10. Thus, in the absence of any other circumstances, it must be presumed that the settlor expects continuation of the care and love



W.P.No.21653 of 2021

from the settlee even after the execution of the settlement deed in the same manner, the settlor was taken care prior to the execution of the settlement deed. Further, the intention of the Legislature and terms of the Act would 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, the Legislature thought that such transaction could be declared as void, as the conduct leading to the transaction was based on malice or fraud. Therefore, the condition referred under Section 23 has to be understood based on the conduct of the settlor and not with reference to the specific stipulation in the deed of transfer. Therefore, it is sufficient if the settlee breached the promise given to the settlor at the time of execution of the settlement deed. Further, Section 23 (2) of the Act envisages the situation where a senior citizen has a right to receive the 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 noticed the right or if the transfer is gracious, the right however cannot be enforced against a transferee for consideration without notice of right.



W.P.No.21653 of 2021

11. It is also relevant to rely upon the judgement of this

WEB COURT in ***W.P.No.28190 of 2022 dated 08.09.2023*** in the case of

Mohamed Dayan -vs- District Collector, wherein, after discussing

various judgements of the Hon'ble Supreme Court of India and various

judgements of High Court including the cases referred by the learned

Senior Counsel for the petitioner, it was held as follows:-

“33. Close reading of the principles considered by the various High Courts and the Supreme Court, there is no ambiguity with reference to the purpose and object sought to be achieved under the provisions of the Senior Citizen Act. Section 4(2) of the Act, unambiguously stipulates that the obligation of the children or the 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.

34. In the context of the adoption of the phrase “lead a normal life” Rule 20(2)(i) of the Maintenance of Senior Citizen Rules, enumerates that “it shall be the duty of the District Collector to ensure that life and property of senior citizens of the District are protected and they are able to live with security and dignity”. Therefore, normal life includes security and dignity. Thus the normal life as indicated under Section 4(2) of the Act, is not mere life, but a life with security and dignity. In the context of Article 21 of the Constitution of India, life includes decent medical facility, food, shelter with dignity and security. All such combined necessities of human life is falling under the term “Normal Life” emboldened under Section 4(2) of the Senior Citizen Act. Therefore, simply providing food and shelter would be insufficient. But life includes providing of decent



WEB COPY



W.P.No.21653 of 2021

medical facilities, food, shelter and other requirements with dignity in commensuration with the status of the family and taking into consideration of the living style of the senior citizen throughout.

35. Therefore, the children defending their case merely on the ground that they are willing to provide food and shelter, cannot be taken as a ground for the purpose of sustaining the Settlement Deed executed by the senior citizen. The requirement of the provisions are to be complied in its real spirit and in the event of an iota of doubt, the Authority Competent is empowered to cancel the Settlement Deed or Gift Deed, as the case may be, in order to protect the normal life of senior citizen.

36. Section 4(3) denotes, 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 parents may lead a normal life. Therefore, it is an obligation on the part of the children to maintain his or her parents and ensure the parents to lead a normal life. In the event of complaint, the Authorities Competent are expected to ensure that the senior citizen and their life and dignity are protected. The above provision is to be read in conjunction with the Rules framed under the Act.

37. Rule 20 of the Maintenance of Senior Citizen Rules, provide duties and powers of the District Collector. The District Collector is casted upon the duty to ensure that the life and property of citizens of the District are protected and other people to live with security and dignity. Therefore, it is the statutory duty on the part of the District Collector to protect the safety and security of senior citizens in his District. Thus the complaint filed by the senior citizen, cannot be treated lightly. Such complaints are



to be enquired into in a pragmatic manner, so as to understand the real grievances of the senior citizen and accordingly, all appropriate actions are to be initiated to provide safety, security and to protect the dignity of the senior citizen.

38. The Kerala High Court observed in the case of Radhamani and Others (cited supra), Section 23(1) of the Senior Citizen Act, cannot be interpreted to the disadvantage of the senior citizen. Section 23(1) of the Act contemplates that “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”. The phrase “ subject to the condition that the transferee shall provide the basic amenities” does not mean that the Gift or Settlement Deed should contain any such condition expressly. “Subject to the condition” as employed in Section 23(1), is to be holistically understood with reference to the subsequent phrase i.e., “deemed to have been made by fraud or coercion or undue influence”. Both the phrases would amplify that the deeming clause should be considered so as to form an opinion that the phrase “subject to condition” amounts to an implied condition to maintain the senior citizen and any violation would be sufficient for the purpose of invoking Section 23(1) of the Act, to cancel the Gift or Settlement Deed executed by the senior citizen.

39. To elaborate, the phrase “subject to condition” employed under Section 23(1) of the Act, is to be understood with reference to the love and



WEB COPY



W.P.No.21653 of 2021

affection by the senior citizen towards the person in favour of whom such Gift or Settlement Deed has been executed.

40. *“Love and Affection” is an implied condition in the context of Section 23(1) of the Act, and therefore, there need not be any express condition in the Settlement Deed for the purpose of maintaining the senior citizen. Refusal of maintenance after executing the Settlement Deed or Gift Deed, is the ground for invoking the deemed ground of fraud or coercion or undue influence. When the deeming clause has been incorporated under the provisions of Section 23(1) of the Act, 'Love and Affection' to be construed as the consideration for executing the Gift or Settlement Deed. Thus the condition need not be expressly made in the document and the love and affection, which resulted in execution of the Deed by the senior citizen is to be construed as a condition for the purpose of invoking the deeming clause for declaring the document as fraud or coercion or undue influence.*

41. *The entire purpose and object of the Senior Citizens Act, is to consider the human conduct towards them. When the human conduct is indifferent towards senior citizen and their security and dignity are not protected, then the provisions of the Act, is to be pressed into service to safeguard the security and dignity of senior citizen. Therefore, the purposive interpretation of the provisions are of paramount importance and Section 23 of the Act, cannot be mis-utilised for the purpose of rejecting the complaint filed by the senior citizen on the ground that there is no express condition for maintaining the senior citizen. Even in the absence of any express condition in the document, “Love and Affection” being the consideration for execution of Gift or Settlement Deed, such love and affection becomes a deeming*



consideration and any violation is a ground to invoke Section 23(1) of the Act. Thus there is no infirmity in respect of the order passed by the second respondent in the present case.

42. The human conduct in the context of the senior citizen Act, is to be understood considering the relationship between the senior citizen and the beneficiaries of the Gift or Settlement Deed. Mostly the parents are executing the document in favour of their children. Since they may not be in a position to maintain the property at their old-age and more-so, they are intending to visibly express their love and affection towards their children by settling their properties. In some cases, the parents during their old-age are settling their property in order to avoid conflict between their children and to ensure that all children get equal share. If at all the parents decide to settle the property in favour of a son or daughter, then they are doing so, only with love and affection and with a fond hope that they will be taken care of by the son or daughter during their old-age. Thus love and affection, being the consideration and implied condition, within the meaning of Section 23(1) of the Act. The subsequent non-maintenance of senior citizen would attract Section 23(1) of the Act and the Authorities in such circumstances are empowered to declare the document as null and void.

43. Therefore, Section 23 is referable as a conduct of the transferee prior to and after execution of the Deed of Gift or Settlement, as the case may be. For all purposes, Section 23 is to be understood taking note of the conduct of the transferee and not with reference to the specific stipulation of condition in the Deed of Gift or Settlement.

44. In respect of the judgment relied on by the petitioner in the case of Sudesh Chhikara vs. Ramti



WEB COPY



W.P.No.21653 of 2021

Devi and Another (cited supra), 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 (cited supra) is to be followed. There are several judgments to establish that the purpose and object of the Senior Citizens Act, is to be complied with in its letter and spirit in order to protect the life, security and dignity of senior citizens. Thus the judgment relied on by the petitioner is of no avail as far as the present facts and circumstances of the case on hand is concerned."

12. The above case is squarely applicable to the case on hand. That apart, the specific case of the third respondent is that on 25.09.2019, on compulsion with coercion, he was taken to the Registrar Office and threatened to execute the settlement deed in favour of the petitioner. Thereafter, the third respondent and his wife were not maintained by the petitioner and the petitioner also failed to repay the loan amount which was borrowed to dig up the well and also borewell. Therefore, the third respondent had executed the settlement deed out of love and affection to support the petitioner and for the betterment of his future life. Without there being any recital, the natural expectation of a father is that he should be maintained by his son till his life time. Therefore, the recital shown in the settlement deed would be enough to satisfy the requirements of Section 23(1) of the Act. Hence, this Court



W.P.No.21653 of 2021

finds no infirmity or illegality in the orders passed by the Tribunal.

Thus, the writ petition is devoid of merits and is liable to be dismissed.

13. Accordingly, this writ petition stands dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

04.06.2024

Internet : Yes

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

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To

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The Appellate Authority
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WEB COPY



W.P.No.21653 of 2021

G.K.ILANTHIRAIYAN, J.

Lpp

W.P.No.21653 of 2021

04.06.2024