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W.P.No.19714 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.19714 of 2024
and W.M.P.No.21587 of 2024

P.Kathirvel @ Krishnamoorthy

... Petitioner

-Vs-

1. The District Collector,
Villupuram District.

2. The Sub-Collector,
Tindivanam,
Villupuram District.

3. The Sub-Registrar,
Vikkravandi,
Villupuram District.

4. K.Suresh Kumar

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Na.Ka.No.289/A1/2024 dated 05.06.2024 and quash the same and accordingly directing the first respondent to direct the fourth respondent to pay the maintenance allowance for monthly a sum of Rs.10,000/- to the petitioner within a time frame to be fixed by this Court.

For Petitioner : Mr.A.Pramila



W.P.No.19714 of 2024

For Respondents

For R1 to R3 : Mr.N.Naveen Kumar
Government Advocate

For R4 : Mr.D.Senthil Kumar

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 05.06.2024, confirming the order passed by the second respondent dated 24.01.2024, thereby dismissing the complaint lodged by the petitioner filed under Sections 5 & 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2017 (hereinafter referred to as “the Act”).

2. The petitioner got married two wives and gave birth to one son and three daughters. The fourth respondent was born to the first wife. The petitioner owned property ad measuring 50 cents comprised in survey Nos.322/8, 322/12, 323/4, 323/5, 304/2A2, 304/2B2, 294/1, 294/8, 297/2 & 122/3 situated at Villupuram District. However, it was fraudulently settled in favour of the fourth respondent by way of settlement deed dated 02.05.2013 vide document No.1923/2013. Only in the year 2018, the petitioner came to the knowledge of the said settlement deed. When it was questioned by the petitioner on the ground that the



W.P.No.19714 of 2024

other children were not settled and the female children have to be married, the fourth respondent has not treated the petitioner well. Thereafter, the petitioner and other family members were driven out and they are struggling even for their day to day livelihood. Therefore, the petitioner lodged complaint under Section 23 of the Act.

3. The second respondent after conducting due enquiry, dismissed the complaint filed by the petitioner, on the ground that in the settlement deed there was no clause to maintain the petitioner in lieu of the settlement of the property. Aggrieved by the same, the petitioner preferred an appeal before the first respondent and the same was also dismissed on the very same ground. Hence, the petitioner filed the present writ petition with the above said prayer.

4. The learned counsel appearing for the fourth respondent submitted that the complaint can be maintained by fulfilling two conditions as per Section 23(1) of the Act. The first condition is that, the settlement deed should have been executed after coming into force of the Act and the second one is, it should contain a specific clause imposing an obligation on the settlee or transferee to maintain settlor or transferor.



W.P.No.19714 of 2024

Though the first condition has been fulfilled, the petitioner failed to fulfill the second conditions. As per the settlement deed, there is no specific clause that the fourth respondent shall maintain the petitioner till his life time.

4.1. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Sudesh Chhikara Vs. Ramti Devi*** in Order dated **06.12.2022** in ***Civil Appeal No. 174 of 2021***, which reads as follows:-

“12. Sub-section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression “by way of gift or otherwise”. For attracting sub-section (1) of Section 23, the following two conditions must be fulfilled:

- a. The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and*
- b. the transferee refuses or fails to provide such amenities and physical needs to the transferor.*

13. If both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of the



W.P.No.19714 of 2024

WEB COPY

transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void.

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 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



W.P.No.19714 of 2024

WEB COPY

basic physical needs to the transferor - senior citizen is sine qua non for applicability of sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent no. 1 that the release deed was executed subject to such a condition.

16. We have perused the counter affidavit filed by respondent no. 1. Even in the counter, it is not pleaded that the release was subject to such a condition. It is merely pleaded that the appellant had no intention to take care of her mother. Thus, the order of the Maintenance Tribunal cannot be sustained as the twin conditions incorporated in sub-Section (1) of Section 23 were not satisfied. Unfortunately, the High Court has not adverted to the merits of the case at all.

17. There is an application for intervention on behalf of a developer. The intervenor claims that he is a bona fide buyer of a part of the land subject matter of the release deed from the appellant and that he has carried out substantial work of development. It is not necessary for us to deal with the rights claimed by the intervenor. All questions regarding the rights claimed by the intervenor are left open to be decided in appropriate proceedings.”

Thus, it is clear from the above judgment that there are two essential pre-conditions in order to invoke the provisions of Section 23 of the Act and that the documents should have been executed after coming into force of



W.P.No.19714 of 2024

the Act and it should contain a clause imposing an obligation on the settlee or transferee to maintain the settlor or transferor.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. The petitioner lodged complaint to cancel the settlement deed executed in favour of the fourth respondent on 02.05.2013 vide document No.1923/2013. On perusal of the settlement deed executed in favour of the fourth respondent revealed that the petitioner had settled the property in order to make arrangement for the fourth respondent during his life time to settle him down. It was executed due to love and affection on the fourth respondent. It is relevant to extract Section 23 of the Act as follows :-

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

1. Where any senior citizen who, after the commencement of this Act, has by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide



W.P.No.19714 of 2024

WEB COPY

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. ”

Therefore, if the settlee failed to provide basic amenities and basic physical needs to the settlor and such settlee refuses or fails to provide such amenities and physical needs, the said settlement of subject property shall be deemed to have been made by fraud or coercion or under undue influence.

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



W.P.No.19714 of 2024

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 that such transfer was void.

8. On a perusal of the settlement deed, it reveals that in order to make arrangement, the petitioner had executed settlement deed in favour of the fourth respondent and in discharge of his responsibilities towards the son, he has also given future security to his son. Further, though no consideration was passed for execution of 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 settlor in the settlement deed would expect in the natural course of human conduct that the settlee 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.

9. Thus, in the absence of any other circumstances, it must be



W.P.No.19714 of 2024

presumed that the settlor expects continuation of the care and love 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.

10. Further, sub-Section 2 of Section 23 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



W.P.No.19714 of 2024

right however cannot be enforced against a transferee for consideration without notice of right. It is also relevant to rely upon the judgement of this Court in the case of ***Mohamed Dayan Vs. District Collector.***, order dated **08.09.2023** made in ***W.P.No.28190 of 2022*** in which this Court, after discussing various judgements of the Hon'ble Supreme Court of India and various judgements of the High Court including the cases referred by the learned counsel appearing for the petitioner, 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



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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 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



WEB COPY



W.P.No.19714 of 2024

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



WEB COPY



W.P.No.19714 of 2024

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”



WEB COPY



W.P.No.19714 of 2024

employed under Section 23(1) of the Act, is to be understood with reference to the love and 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



WEB COPY



W.P.No.19714 of 2024

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



WEB COPY



W.P.No.19714 of 2024

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 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



W.P.No.19714 of 2024

WEB COPY

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.”

The above case is squarely applicable to the case on hand.

11. On perusal of the complaint lodged by the petitioner revealed that the fourth respondent fraudulently obtained the settlement deed and when the same was questioned, he has not treated the petitioner well. Therefore, there are specific allegations in order to attract the provision under Section 23 of the Act. In view of the above reasons stated, this Court finds infirmity and illegality in the orders passed by the first and second respondents as such the impugned orders cannot be sustained and liable to be quashed.

12. Accordingly, the order passed by the first respondent dated 05.06.2024, and the order passed by the second respondent dated 24.01.2024, are hereby quashed. The complaint lodged by the petitioner is allowed and the settlement deed dated 02.05.2013 registered vide document No.1923/2013, executed in favour of the fourth respondent, is declared as null and void. The possession of the subject property shall be



W.P.No.19714 of 2024

handed over to the petitioner by the fourth respondent, within a period of six weeks from the date of receipt of a copy of this Order.

13. With the above directions, the Writ Petition stands allowed.

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

09.08.2024

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

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WEB COPY



W.P.No.19714 of 2024

G.K.ILANTHIRAIYAN. J.

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W.P.No.19714 of 2024
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