



WEB COPY



W.P. No.23528 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2024

CORAM:

THE HON'BLE MR. JUSTICE G.K. ILANTHIRAIYAN

W.P. No.23528 of 2021

and

W.M.P. No.24751 of 2021

1. Jeffery Ronald Antony

2. Michael Jude Antony

... Petitioners

vs.

1. The Maintenance Tribunal

Headed by Revenue Divisional Officer,

Tambaram,

Chennai – 600 045.

2. The District Magistrate and

District Collector,

Chengalpattu

3. Rudolph Jeo Antony

4. Madonna Silvia Antony

5. Lucy Hilda Antony

... Respondents

Prayer : Writ Petition is filed under Article 226 of Constitution of India to issue a writ of Certiorari to call for the records relating to the impugned order of the 1st respondent made in its Proceedings bearing Na.Ka. No.2352/2019/☞, dated 29.07.2020 and the order of the 2nd respondent made in its proceedings bearing R.C. No.11840/2020/M1, dated 26.08.2021 respectively and to quash the same.



W.P. No.23528 of 2021

For Petitioner : M. Vijayakumar
For Respondents 1 & 2 : Mr. T. Chandrasekaran
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned order of the 1st respondent made in its Proceedings bearing Na.Ka. No.2352/2019/②, dated 29.07.2020 and the order of the 2nd respondent made in its proceedings bearing R.C. No.11840/2020/M1, dated 26.08.2021 respectively and to quash the same.

2. The petitioner's paternal grandmother Pricilla Antony had purchased property situated at Plot No.5, Door No.3/11, Antony Cottage, Griffith 4th Street, Pallavaram, Chennai admeasuring 3506 Square feet from one Adikalraj in the year 1986 and registered vide document No.398 of 1986. Out of total extent she had already executed settlement deed to an extent of 1200 Sq.ft., in favour of the petitioner's Paternal Aunt Lucy Hilda Antony by way of settlement deed dated 04.10.1988 vide document No.3250/1988. The remaining extent to the said property was settled on 05.01.2009 in favour of the petitioners and the 3rd



W.P. No.23528 of 2021

respondent along with other son and daughter born through petitioner's father's first wife, vide document No.18 of 2009. While being so, at the time of execution of settlement deed the petitioners, 3rd respondent and petitioner's younger brother were minors. Therefore, the petitioner's grandmother also retained the right of life interest along with the petitioner's father James Antony over the above said property. The petitioners' father died on 16.09.2019. Thereafter, grandmother driven away from their house and as such filed complaint before the 2nd respondent to cancel the settlement deed dated 05.01.2009 under section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. After issuance of notice to the petitioners due enquiry the 2nd respondent allowed the said complaint and canceled the settlement deed dated 05.01.2009. Aggrieved by the same, the petitioners filed appeal before the first respondent represented through their mother. The first respondent by an order dated 26.08.2021 dismissed the appeal.

3. The learned counsel for the petitioner would submit that the said Priscila Anthony aged about nearly 100 years at the time of giving complaint before the 2nd respondent. She was brain washed by the respondents 3 to 5 herein and foisted up a false complaint as the



W.P. No.23528 of 2021

petitioners and her mother failed to maintain her. The settlement deed executed in favour of the petitioner without any consideration and there is no specific condition, if the settlee failed to maintain the settlor, the settlor serving the right to cancel the settlement deed. In order to attract the provisions under section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 conditions must be fulfilled by the settlor, in the absence of the said conditions the impugned order passed by the 2nd respondent cannot be sustained and without considering the above the first respondent also mechanically confirmed the order passed by the 2nd respondent.

4. It is settled proposition of law by the Hon'ble Supreme Court of India in the case of ***Sudesh Chhikara -vs- Ramti Devi*** (Order dated 06.12.2022 in Civil Appeal No. 174 of 2021), 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 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*



WEB COPY



W.P. No.23528 of 2021

respondent no. 1) would provide the basic amenities and basic physical needs to respondent no. 1. Even in the impugned order dated 22nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems that oral evidence was not adduced by the parties. As can be seen from the impugned judgment of the Tribunal, immediately after a reply was filed by the appellant that the petition was fixed for arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor - senior citizen is sine qua non for applicability of sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent no. 1 that the release deed was executed subject to such a condition.

16. We have perused the counter affidavit filed by respondent no. 1. Even in the counter, it is not pleaded that the release was subject to such a condition. It is merely pleaded that the appellant had no intention to take care of her mother. Thus, the order of the Maintenance Tribunal cannot be sustained as the twin conditions incorporated in sub-Section (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.”

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

6. Now, the settlor died. Therefore, the petitioners are the legal heirs of the deceased settlor, they are entitled for their respective shares. Therefore, the petitioners are at liberty to file a fresh civil suit for claiming their respective shares in the subject property if so advised and in the manner known to law.



W.P. No.23528 of 2021

7. In view of the above this Court cannot find any infirmity or illegality in the order passed by the respondents 1 and 2 dated 29.07.2020 and 26.08.2021. Therefore, this writ petition is devoid of merits and liable to be dismissed. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

26.04.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
gvn

To

1. The Maintenance Tribunal
Headed by Revenue Divisional Officer,
Tambaram,
Chennai – 600 045.

2. The District Magistrate and
District Collector,
Chengalpattu.



WEB COPY



W.P. No.23528 of 2021

G.K. ILANTHIRAIYAN, J.

gvn

W.P. No.23528 of 2021

26.04.2024