



W.P.No.22708 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.22708 of 2024

and

W.M.P. Nos. 24728 and 24729 of 2024

Kanniappan

... Petitioner

Vs

1. The Revenue Divisional Officer,
Maduranthakam,
Chengalpattu District.

2. Angamuthu

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings dated 05.01.2023 passed in Ni. Mu. No. 4535/2022/B on the file of the first respondent, quash the same.

For Petitioner : Mr. K.Govi Ganesan

For Respondents : Mr. S.J.Mohamed Sathik,
Government Advocate (for R1)



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ORDER

This Writ Petition has been filed challenging the order dated 05.01.2023 passed by the first respondent, whereby the settlement deed executed in favour of the petitioner was declared null and void.

2. The second respondent, who is the father of the petitioner, owned agricultural lands measuring an extent of 1.05 acres comprised in S.F. No. 43/2B situated at Sirunagar Village, Cheyyur Taluk, Chengalpattu District, and measuring an extent of 1.95 acres in S.F. No. 69/4A situated at Pilankuppam Village, Cheyyur Taluk, Chengalpattu District. While that was so, the second respondent executed a settlement deed in favour of the petitioner through the settlement deed dated 30.09.2021, registered vide Document No. 4766 of 2021, due to love and affection for the petitioner herein.

3. Immediately after the execution of the settlement deed, the petitioner failed to maintain the second respondent as well as his wife. The petitioner also refused to repay the loan, which was borrowed by mortgaging



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the subject property. Therefore, the second respondent lodged a complaint under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

4. On a perusal of the records and the statement made by the petitioner as well as the second respondent, it reveals that the second respondent executed the settlement deed in favour of the petitioner herein, on the understanding that the petitioner would maintain him and his wife. However, immediately after the execution of the settlement deed, the petitioner failed to maintain the second respondent and his wife.

5. In support of his contentions, the learned counsel for the petitioners relied upon 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:



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- 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.



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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 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.*



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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.”

6. 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.

7. In view of the above, this Court finds no infirmity or illegality in the impugned order passed by the first respondent and the Writ Petition is



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devoid of merits and it is liable to be dismissed.

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8. Accordingly, this Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index: Yes/No
Neutral Citation: Yes/No
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To

The Revenue Divisional Officer,
Maduranthakam,
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G.K.ILANTHIRAIYAN, J.

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