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W.P.No.27492 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

CORAM:

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

W.P.No.27492 of 2024
and
W.M.P.No.30001 of 2024

D.Eswari

.... Petitioner

Vs

1.The Collector,
Office of the Collectorate,
Erode District.

2.Palanisamy

.... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, call for the records of the first respondent in his proceedings in Na.Ka.No.1618594/2023/3C4 and quash the proceedings dated 24.08.2024 passed therein and further declare the settlement deeds executed by the petitioner in favour of 2nd respondent in Document No.150 of 2012 dated 23.01.2012 and Document No.1687 of 2020 dated 12.07.2020 registered in the office of Sub Registrar at Ammapettai as void.

For Petitioner	: Mr.B.Raveendran
For R1	: Mr.P.Gurunathan
	Additional Government Pleader
For R2	: Mr.E.C.Ramesh



W.P.No.27492 of 2024

ORDER

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This Writ Petition has been filed challenging the order dated 24.08.2024 passed by the first respondent, thereby partly confirmed the order passed by the second respondent and ordered maintenance of Rs.5,000/- and the order dated 11.10.2023, thereby rejected the request made by the petitioner to cancel the settlement deed executed in favour of the second respondent and ordered to give the possession of the property in favour of the petitioner for her enjoyment.

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

3. The petitioner is the mother and the second respondent is the son. The petitioner has two sons : one son died and the other son viz., the second respondent herein, is alive. The petitioner owned a property comprised in Sec.No.63/6, S.No.268/1 to 7, 8A, 10, 12 situated at Kesarimangalam Village, Bhavani Taluk, Erode District. That apart, the petitioner also inherited some properties by way of partition. While being so, the second respondent, being the elder son, compelled the



W.P.No.27492 of 2024

petitioner to execute a settlement deed and transferred all immovable properties owned by the petitioner in his favour by a registered settlement deed dated 23.01.2012. Once again, by another settlement deed dated 12.07.2020, the property, which was purchased by the petitioner, was also settled in favour of the second respondent. The petitioner had with a fond hope that he will maintain her during her life time and had executed the settlement deeds. However, after execution of the settlement deed dated 12.07.2020, the petitioner was left in distress and was not maintained by the second respondent.

4. Therefore, the petitioner was forced to lodge a complaint under Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the “Act”) before the first respondent and the same was forwarded to the Revenue Divisional Officer. On receipt of the same, the Revenue Divisional Officer issued with a notice to the petitioner and the second respondent for enquiry and directed the second respondent to hand over possession of the properties, which were settled in his favour and also restrained the second respondent from interfering with the peaceful possession and enjoyment



W.P.No.27492 of 2024

of the subject property by the petitioner. Aggrieved by the same, the petitioner preferred an appeal before the first respondent. The first respondent, by an order dated 24.08.2024, confirmed the order passed by the second respondent and also ordered maintenance of Rs.5,000/- payable by the second respondent in favour of the petitioner herein.

5. The learned counsel for the petitioner submitted that though the Revenue Divisional Officer directed the second respondent to hand over the vacant possession of the subject property in favour of the petitioner for her enjoyment, the petitioner was not allowed to cultivate the land. In fact, the sugarcane, which was cultivated by the petitioner, was harvested by the second respondent. Though the petitioner lodged a complaint, the jurisdictional police supported the second respondent and failed to take any action as against him. As a result, the petitioner is now left in the streets and no one is maintained her. The petitioner is aged about 86 years. She is also produced the photographs showing that the second respondent harvested the sugarcane and loaded it in the lorry.



W.P.No.27492 of 2024

6. The learned counsel for the second respondent submitted

that apart from the property, the petitioner also owned other properties.

The subject land is the only source of livelihood for the second respondent. He is also a senior citizen and suffering from heart ailments.

Only on the instigation of the third person, the petitioner lodged a complaint under Section 23 of the Act. That apart, the settlement deed does not contain a specific clause regarding the execution of the settlement deed which would obligate the second respondent to maintain the petitioner. Therefore, the complaint itself is not maintainable under Section 23 of the Act. In support of his contention, he relied upon the Judgment reported in **2022 SCC online SC 1684** in the case of ***Sudesh Chhikara Vs. Ramti Devi and another***, by an order dated 06.12.2022, passed in ***Civil Appeal No.174 of 2021***.

7. The learned counsel for the petitioner would submit that

though the petitioner gave a birth to two sons, the first son died without marriage. The second respondent is the only son to look after the petitioner. The second respondent, after marrying his first wife and having children, left the children and his wife and is now living with his second wife. He has not been taking care of the first wife.



W.P.No.27492 of 2024

8. A perusal of the records reveals that the subject properties are self acquired properties of the petitioner. Some of the properties were inherited the petitioner, that too, through her family. No property was purchased from the income derived by the second respondent. At this juncture, the petitioner was driven out and the second respondent failed to maintain the petitioner. Therefore, the petitioner was constrained to lodge a complaint under Section 23 of the Act. It is relevant to extract Section 23(2) 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 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



W.P.No.27492 of 2024

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.

9. The learned counsel appearing for the second respondent 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



W.P.No.27492 of 2024

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 respondent no. 1)



WEB COPY



W.P.No.27492 of 2024

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



W.P.No.27492 of 2024

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

10. 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 and basic physical needs to the transferor or the owner, but such transferee or ownee 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.



W.P.No.27492 of 2024

11. In the case on hand, the petitioner, being the mother, had settled the properties in favour of the second respondent out of love and affection for respect of the reward cum care that the son had shown to the mother. Further, on perusal of the settlement deeds, it reveals that being pleased with the care, love, affection, respect and good behavior, the petitioner had executed a settlement deed as a reward in favour of his son and in discharge of his responsibilities towards the son, she has also given future security to the son. Further, though no consideration was passed for execution of settlement deeds, 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.

12. Thus, in the absence of any other circumstances, it must be presumed that the settlor expects continuation of the care and love from the settlee even after the execution of the settlement deed in



W.P.No.27492 of 2024

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.

13. 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 right however cannot be enforced against a



W.P.No.27492 of 2024

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 High Court including the cases referred by the learned Senior Counsel 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 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



WEB COPY



W.P.No.27492 of 2024

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 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



W.P.No.27492 of 2024

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



WEB COPY



W.P.No.27492 of 2024

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 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



W.P.No.27492 of 2024

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



W.P.No.27492 of 2024

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.



W.P.No.27492 of 2024

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 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. Further, though the settlement deeds does not contain a clause to the effect that only on condition to maintain the petitioner, the settlement deeds were executed in favour of the second respondent.



W.P.No.27492 of 2024

14. In view of the above, the complaint lodged by the petitioner under Section 23 of the Act is very much maintainable. Even after orders were passed by the Revenue Divisional Officer and the first respondent, the second respondent failed to hand over the vacant possession of the subject land to the petitioner and did not permit her to enjoy the subject land. Therefore, the orders passed by the Revenue Divisional Officer and the first respondent are liable to be quashed. Accordingly, they are hereby quashed. The complaint lodged by the petitioner under Section 23 of the Act is hereby allowed. The settlement deeds executed by the petitioner are hereby declared null and void as sham and nominal. The second respondent shall hand over vacant possession to the petitioner forthwith.

15. In the result, this writ petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

22.10.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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W.P.No.27492 of 2024

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W.P.No.27492 of 2024

G.K.ILANTHIRAIYAN. J,

Lpp

W.P.No.27492 of 2024

22.10.2024