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W.P.No.29086 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024

CORAM

THE HONOURABLE MR. JUSTICE S. SOUNTHAR

W.P No.29086 of 2024

Sengoda Gounder

...Petitioner

Vs.

1. The District Collector,
Office of the Collectorate,
Kallakurichi District.
2. The Revenue Divisional Officer,
office of the RDO,
Kallakurichi Taluk,
Kallakurichi District.
3. The Sub Registrar,
Chinna Salem Sub Registrar Office,
Kallakurichi District.
4. Aththayi

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the third respondent to cancel the settlement deed dated 28.08.2008 vide document No.3319 of 2008 on the file of the third respondent in the light of the order passed by the first respondent in appeal No.104/A3/2024 dated 29.08.2024 within a time may be stipulated by this Court.



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For Petitioner : Mr.A.Rajakumar

For R1 to R3 : Mr.P.Harish
Government Advocate

ORDER

The petitioner herein seeks a direction to the third respondent to cancel the settlement deed dated 28.08.2008 registered as document No.3319 of 2008 on the file of the third respondent in the light of the order dated 29.08.2024 passed by the first respondent in appeal No.104/A3/2024.

2. By consent of both the learned counsel appearing for the petitioner as well as respondents 1 to 3, this writ petition is disposed of at the admission stage itself.

3. It is the case of the petitioner that he executed a settlement deed in favour of the fourth respondent i.e., his daughter and the same was registered on 28.08.2008 as Document No.3319 of 2008 on the file of Sub Registrar Officer, Chinnasalem @ Salem. Since the fourth respondent failed to take care of the petitioner, he submitted an application before the second respondent to cancel the settlement deed executed in her favour. The second respondent, by order dated 29.11.2023, directed the fourth respondent to pay a sum of Rs.10,000/- as monthly maintenance to the petitioner under Section 23 of the



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Maintenance and Welfare of Parents and Senior Citizen Act, 2007. The petitioner filed an appeal before the first respondent as the second respondent has not passed any order to cancel the settlement deed. The first respondent by order dated 29.08.2024 directed the fourth respondent to pay a sum of Rs.5,000/- as maintenance to the petitioner for every month. It was further observed by first respondent that in the event of failure on the part of the fourth respondent in paying the maintenance to the petitioner, the settlement deed executed in her favour will be cancelled and the property will be handed over to the petitioner. Even thereafter, the order passed by the first respondent was not complied with by the fourth respondent. Therefore, the petitioner is before this court.

4. Heard Mr.A.Rajakumar, learned counsel for the petitioner and Mr.P.Harish, learned Government Advocate taking notice for the respondents 1 to 3 and also perused the documents enclosed in the typed set of papers.

5. By way of this writ petition, the petitioner seeks a direction to the third respondent to cancel the settlement deed dated 28.08.2008 executed as Document No.3319 of 2008 in favour of the fourth respondent, in the light of the order dated 29.08.2024 passed by the first respondent in the appeal filed by



the petitioner.

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6. Section 23 of the Maintenance and Welfare of Parents and Senior

Citizen Act, 2007, reads as follows:-

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

(i) 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 organization referred to in explanation to sub-section (1) of section 5."

A reading of the above provision would indicate that only in cases, where settlement deed was executed by the settlor in favour of the settlee on condition that the settlee shall provide basic amenities and basic physical needs to the settlor, the authorities can invoke Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 to cancel the said document.

7. A perusal of the settlement deed executed by the petitioner dated



28.08.2008 would indicate that no such condition as indicated in Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 has been incorporated in the said document. Hence, the question of cancelling the settlement deed executed by the petitioner in favour of the fourth respondent would not arise. In this regard it would be appropriate to refer to the decision of Apex Court in ***Sudesh Chhikara vs. Ramti Devi and another*** reported in ***2022 SCC Online SC 1684***. The relevant observation of Apex Court 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 he 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



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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 22.05.2018 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. "



8. A perusal of settlement deed executed by petitioner herein, clearly establish that there was no condition in the document that settlee should provide basic amenities and basic physical needs to the settlor. Hence essential condition as mentioned in Section 23(1) of above mentioned Act is missing in this Case. Further, the first respondent in his order has not considered ingredients of Section 23(1) of above mentioned Act and passed a speaking order. Hence, this Court is not inclined to issue any direction for cancellation of settlement deed.

9. As stated earlier, the first respondent has already passed the order directing the fourth respondent to pay the maintenance of Rs.5,000/- to the petitioner. If the said order has not been complied with by the fourth respondent, the petitioner has to work out his remedy under section 11 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 by seeking enforcement of the order of maintenance. Therefore, this court is not inclined to issue any direction to the third respondent to cancel the settlement deed executed by the petitioner in favour of the fourth respondent. However, it is open to the petitioner to move the second respondent seeking enforcement of the direction issued to the fourth respondent to pay the maintenance by filing a petition under Section 11 of the Maintenance and Welfare of Parents and



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Senior Citizen Act, 2007.

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10. Accordingly, this Writ Petition is disposed of. No costs.

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