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W.P.No.29948 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2024

CORAM

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

W.P.No.29948 of 2024
and
W.M.P.No.32655 of 2024

Mohammed Rizwan

... Petitioner

Vs.

1. The District Collector, Coimbatore,
District Collectorate Building,
State Bank Road,
Coimbatore - 641 018.

2. The First Class Magistrate cum
The Sub Collector,
O/o. Sub Collector, Pollachi Division,
Pollachi, Coimbatore - 642 001.

3. Sherfunisa Begum

4. The Sub Registrar,
No.104, Taluk Office Campus,
Pollachi, Coimbatore - 642 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of certiorarified Mandamus, to call for the records in



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Pa. Mu. No.2201560/2023/U2 dated 13.09.2024 passed by the 1st respondent and to quash the same.

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For Petitioner : Mr. G. Abraham Parabhu

For Respondents : Mr. S. J. Mohamed Sathik
Government Advocate
for R1 and R2

ORDER

This writ petition has been filed challenging the order passed by the first respondent in Pa. Mu. No.2201560/2023/U2 dated 13.09.2024, whereby allowed the appeal filed by the third respondent as against the order passed by the second respondent dated 15.03.2024 in Na. Ka. No.5406/2023/A1.

2. The third respondent is the maternal grand mother of the petitioner. She owned property comprised in T.S. 412 part, T.S. 471 part, T.S. 468 part and T.S. 467 part at Town Survey Ward 2nd Block, 5, Kottur Road, Kaspapollachi Town, Pollachi Taluk, Coimbatore District ad-measuring to an extent of 3114 sq.ft. and building. She also owned property comprised in



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T.S.No.411 at Town Survey Ward 2nd Block, 5, Theppakulam Street, Kaspa
Pollachi Town, Pollachi Taluk, Coimbatore District ad-measuring to an
extent of 2561 sq.ft.

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3. The petitioner, being grand son born through her son, being undertaken to maintain her grand daughters and the third respondent, she executed settlement deed in respect of the properties stated above by way of registered sale deed dated 08.10.2021 vide Doc.No.10292/2021. While being so, the petitioner had driven out the third respondent and failed to maintain her. Therefore, the third respondent lodged complaint under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the second respondent.

4. The second respondent by an order dated 15.03.2024, dismissed the complaint lodged by the third respondent and directed them to approach the Civil Court for appropriate relief. Aggrieved by the same, the third respondent preferred an appeal before the first respondent and the same was allowed and thereby, declared that the settlement executed by the third respondent as void.



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5. Learned counsel for the petitioner would submit that the sale deed does not contain specific clause that the settlement deed was executed on condition that the petitioner shall maintain the third respondent, failing which the settlement deed is liable to be set aside. That apart, the property originally belong to the entire family and the property was not acquired by the third respondent. Further, the second respondent rightly directed the third respondent to approach the Civil Court for appropriate relief. The third respondent did not file any application as against the settlement deed executed in favour of the second son. That apart, the third respondent is well-off and she can maintain herself. Therefore, the complaint itself is not maintainable under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court in the case of ***Sudesh Chhikara Vs. Ramti Devi and Another reported in 2022 SCC Online SC 1684***, which reads as follows:

" 11. We have given careful consideration to the submissions. Before dealing with the factual aspects, it is necessary to advert to the legal aspects. The Sub-Divisional Magistrate acting as the Maintenance



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Tribunal under the 2007 Act has invoked the power under Section 23 to declare that the subject release deed was void. The 2007 Act has been enacted for the purposes of making effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution of India. The Maintenance Tribunal has been established under Section 7 to exercise various powers under the 2007 Act. Section 8 provides that the Maintenance Tribunal, subject to any rules which may be framed by the Government, has to adopt such summary procedure while holding inquiry, as it deems fit. Apart from the power to grant maintenance, the Tribunal exercises important jurisdiction under Section 23 of the 2007 Act which reads thus:

“23. Transfer of property to be void in certain circumstances.— (1) 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



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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.”

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.*



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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) 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



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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.



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All questions regarding the rights claimed by the intervenor are left open to be decided in appropriate proceedings."

6. In view of the above, this Court finds no infirmity in the order passed by the first respondent. Accordingly, this writ petition is dismissed. No Costs. Consequently, the connected writ miscellaneous petition is closed.

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Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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