



W.P.No.32915 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 17.12.2024

CORAM:

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN**

W.P.No.32915 of 2022  
and WMP.Nos.32313, 32314 & 32315 of 2022

Periyasamy

... Petitioner

**Vs.**

1. The Revenue Divisional Officer,  
Dharapuram,  
Tiruppur District.

2. The Sub Registrar  
Vellakovil SRO,  
Tiruppur District.

3. Loganayagi

4. Ambigadevi

... Respondents

**PRAYER :** Writ Petition filed under Article 226 of Constitution of India, to issue Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 16.06.2022 made in Mu.Mu.1967/2022/A passed by the 1<sup>st</sup> respondent and quash the same as arbitrary, illegal, without jurisdiction and non est in the eye of law and consequently direct the 2<sup>nd</sup> respondent to remove the entry of the impugned order in the Encumbrance Certificate.



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For Petitioner : Mr.R.Prabakar

For Respondents : Mr.M.R.Gokul Krishnan  
Additional Government Pleader  
for R1 & R2

Mr.K.T.S.Sivakumar  
for R3 & R4

### **ORDER**

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 16.06.2022 made in Mu.Mu.1967/2022/A passed by the 1<sup>st</sup> respondent and quash the same as arbitrary, illegal, without jurisdiction and non est in the eye of law and consequently direct the 2<sup>nd</sup> respondent to remove the entry of the impugned order in the Encumbrance Certificate.

2. The petitioner is the son of the 3<sup>rd</sup> respondent. He is the brother of the 4<sup>th</sup> respondent. It is contended by him in his affidavit that the family owned land measuring 2.50 acres of agricultural land in S.F.No.752 corresponding to resurvey No.752/1A in Uthamapalayam village, Vellakoil, Tirupur, Nagamani post. It is also contended that apart from that the family owned 6.39 acres of pasture land. Out of the land in S.F.No.752 it had been stated that the land



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measuring 3 acres had been conveyed to his mother, the third respondent herein. The petitioner claims that he had been taking treatment since 2006 in a Government Hospital owing to neurological problem. He has also two children. His wife had suffered burn injuries. To bear the marriage expenses of his sister land measuring 1.50 acres have also been sold. The petitioner had also met with an accident and had suffered grievous injuries.

3. It is contended that the 3<sup>rd</sup> respondent had executed a settlement deed to an extent of 35 cents of the land in S.F.No.752/1A on 01.11.2021 vide document No.4498/2021 registered in the Sub Registrar Office at Vellakoil. It is contended that the possession had been given and the mother had also executed another settlement deed for land measuring about 65 cents in the same survey number on 23.12.2021 in favour of the 4<sup>th</sup> respondent. It had been stated that however the third respondent had given a complaint before the 1<sup>st</sup> respondent seeking cancellation of the settlement deed executed in favour of the petitioner. The first respondent had passed the impugned order cancelling the settlement deed. Questioning that particular order, the present writ petition has been filed.



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4. The learned counsel for the petitioner pointed out that the order is prima facie illegal and is against the judgment of the Hon'ble Supreme Court reported in **2022 SCC online SC 1684** in the case of ***Sudhesh Chikara Vs Ramki Devi and another***. The Hon'ble Supreme Court while examining the right of the authorities to cancel a settlement deed by invoking Section 23 of the Maintenance and Welfare of the Parents and Senior Citizen Act, 2007 had very clearly stated that unless there is a clause stipulating reciprocal performance of obligation by the settlee, the settlor cannot invoke the provision of the Act to seek cancellation of a settlement deed. The Hon'ble Supreme Court at paragraph nos. 12, 13, 14 and 15 held 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.

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.



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13. 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.

14. 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.

15. 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.

5. The point laid by the petitioner is legally sustainable. However, it is



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contended on behalf of the 3<sup>rd</sup> & 4<sup>th</sup> respondents that the father of the petitioner is also sick and taking medical treatment. It is claimed that the petitioner should come forward to pay atleast maintenance to the third respondent. It is contended that the petitioner had sold the 35 cents of land to a third party. He is also doing business and is financially sound. The third respondent is also sick and requires medical treatment.

6. Taking into consideration of all factors, I would direct the petitioner to pay maintenance of Rs.5,000/- (Rupees Five Thousand Only) directly to the third respondent in her bank account. This would have to be paid on and from April 2022 when the third respondent had given a petition before the first respondent. This would indicate that in the year 2022, eight months maintenance ought to be paid and maintenance will also have to be paid for the years 2023 & 2024. This would come to maintenance for the past 32 months @ Rs.5,000/- p.m. which will come to Rs.1,60,000/-. Let me be a little indulgent on the petitioner and direct him to pay the said amount in five monthly equal installments commencing from January 2025. Each installment would be Rs.32,000/- and they should be paid with a gap of two months between two installments.



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7. Quite apart from that, the petitioner must also pay Rs.5,000/- directly to the bank account of the third respondent on or before the 10<sup>th</sup> day of every English calendar month. Since the father of the petitioner is also sick and the petitioner may come forward to bear 50% of the expenses which are incurred for the medical treatment of his father.

8. I am confident that the petitioner would keep up with his commitment which had been issued as instructed by him to his counsel who is present before this Court. The third respondent is at liberty to seek enhancement of maintenance by filing appropriate application if required taking recourse to the provisions of the said Act. Since the petitioner has been directed to pay maintenance, the impugned order is set aside. The said order is legally unsustainable in view of the judgment referred supra of the Hon'ble Supreme Court.

9. With the above directions and observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are also closed.



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Index : Yes /No

Speaking Order : Yes/No

**C.V.KARTHIKEYAN, J.**

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To

1. The Revenue Divisional Officer,  
Dharapuram,  
Tiruppur District.
2. The Sub Registrar  
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