



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**RESERVED ON : 26.11.2024**

**PRONOUNCED ON : 13.12.2024**

CORAM

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

**W.P.No. 34432 of 2024**

**And**

**W.M.P.No. 37298 of 2024**

1. M.Tamilselvan

2. Mrs. T.Sangeetha

... Petitioners

**..Vs..**

1. The District Collector  
Chennai District  
Chennai – 600 001.

2. The Revenue Divisional Officer  
North Madras, Gandhi Main Road,  
Puzhal, Chennai – 600 066.

3. Mrs. M.Jayalakshmi

4. Mr.L.Muniyandi

... Respondents

**PRAYER:** Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records relating to the order dated 25.10.2024 in Na.Ka.No. A7/2574/2024 of the second respondent herein and quash the same.



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For Petitioners

:: Ms. AL Gandhimathi  
Senior Counsel  
for M/s. L.Palani Muthu

For RR 1 & 2

:: Mr. Vadivelu Deenadayalan  
Additional Government Pleader

For RR 3 & 4

:: Mr. T.V.Ramanujun  
Senior Counsel  
for Ms. R.Ramya

### **ORDER**

The Writ Petition has been filed in the nature of a Certiorari seeking records relating to an order dated 25.10.2024 passed by the second respondent / the Revenue Divisional Officer, North Madras, Gandhi Main Road, Puzhal, Chennai and quash the same.

2. In the affidavit filed in support of the Writ Petition, it had been stated that the first petitioner was the beneficiary of a settlement deed dated 28.11.2018 registered as Document No. 7344 of 2018 in the office of the Sub Registrar, Madhavaram, with respect to a property measuring 1620 sq.ft., in Old S.No. 13/1C3 at Errunkencheri Village, Subramanian Street, Chennai – 600 118 which settlement deed had been executed by his mother, the third respondent herein. The first petitioner claimed that on and from the date of execution of the settlement deed, he had become the absolute



owner of the property. Later, on 11.03.2021, he had executed a registered settlement deed in favour of the second petitioner/ his wife, which settlement deed had been registered as Document No. 2068 of 2021 in the office of the Sub Registrar, Madhavaram.

3. The second petitioner, in exercise of her right as the owner, had executed a registered agreement of sale dated 01.12.2022 in favour of her relative S.Karuppiah and had also received a sum of Rs.10,00,000/- as advance. Subsequently, owing to various circumstances, the registered agreement of sale was cancelled by deed dated 04.05.2023 registered as Document No. 3357 of 2023 in the office of the Sub Registrar, Madhavaram.

4. Thereafter, the second petitioner had conveyed the said property to one Sridhar by a registered sale deed dated 04.05.2023 registered as Document No. 3358 of 2023. The said Sridhar was put in possession of the property.

5. The third and fourth respondents are the parents of the first petitioner herein. The first petitioner received information from H3 Police Station at Tondiarpet that the settlement deed executed by his mother on 28.11.2018 and registered as Document No. 7344 of 2018



in the office of the Sub Registrar, Madhavaram, had been cancelled by her and that therefore, the first petitioner will have to hand over the original title documents to the said respondents. The first petitioner then came to know that the third respondent had given a petition to the second respondent, the Revenue Divisional Officer, North Madras at Chennai, seeking to cancel the settlement deed dated 28.11.2018 and an order had been passed on 19.01.2023 to that effect.

6. It is contended that the petitioner has no right of appeal before the first respondent/District Collector which right was only available to a Senior Citizen if a petition given by him/her is rejected in the first instant.

7. The petitioner earlier filed W.P.No. 16593 of 2023 challenging the order dated 19.01.2023 of the second respondent. A learned Single Judge of this Court had granted interim stay on condition that the first petitioner should pay a sum of Rs.25,000/- per month as interim maintenance to his mother/the third respondent. The petitioners then filed an Appeal in W.A.Nos. 1203 and 1204 of 2023 questioning such direction. When the Writ Appeals were pending, the Writ Petition came up for disposal and was disposed on 19.07.2023 remitting the matter back to the second respondent to



again hear the complaint of the third respondent. Thereafter, the second respondent conducted an enquiry and by an order dated 25.10.2024 cancelled the settlement deed executed by the third respondent in favour of the first petitioner herein. It is under those circumstances that this Writ Petition had been filed.

8. A counter affidavit had been filed by the third and fourth respondents/parents of the first petitioner herein wherein it had been sated that the fourth respondent had purchased the property in the name of the third respondent for sale consideration of Rs.2,43,000/-. It had been further stated that in the year 2018, the first petitioner approached the third respondent stating that he wanted to start a business of his own and required money and that he would mortgage the property with the bank to raise funds. He asked the third respondent to sign a document which he represented to be a mortgage deed. The third respondent's signatures were obtained in various papers in the office of the Sub Registrar, Madhavaram and she signed them under the belief that she was executing a mortgage deed. She continued to be in possession of the property. Thereafter, owing to Covid-19 pandemic financial crunch she wanted to sell the property. When she applied for encumbrance certificate, she found that the document which she had signed was actually registered as a



settlement deed and registered as document No. 7344 of 2018 on 28.11.2018. When the third respondent questioned the first petitioner, he threatened her. The petitioners then brought about an agreement of sale which they later cancelled and the second petitioner, who was the beneficiary of a settlement deed executed by the first petitioner, had sold the property to one Sridhar. It is under those circumstances that the third respondent had lodged a complaint with the first respondent. An enquiry was conducted and the order was passed under the Provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

9. It is contended that the third respondent is still in possession of the property. It had also been stated that the petitioners were aware of the order dated 19.01.2023. It had also been contended that the sale deed in favour of Sridhar is null and void and not binding on the third respondent. It had been stated that those documents had been executed after the order dated 19.01.2013.

10. It had also been stated that the impugned order had been communicated to the Sub Registrar at Madhavaram and the cancellation of the settlement deed had also been entered in records of the Sub Registrar Office. Thus the order had been given effect to.



It had therefore been contended that no issue survives to be adjudicated in this Writ Petition. It had therefore been urged that the Writ Petition should be dismissed.

11. On behalf of the first and second respondents, the learned Additional Government Pleader contended that after following due procedure, the impugned order had been passed. He stated that the complaint had been properly examined and notices had been sent to all the parties concerned and after giving fair opportunity to everyone, the order had been passed. He further stated that the order had been communicated to the Sub Registrar Office at Madhavaram and necessary entries had also been made cancelling the settlement deed executed by the third respondent in favour of the first petitioner. He further contended that there is a right of Appeal before the first respondent which had been indicated in the impugned order itself. He therefore contended that the Writ Petition should be dismissed.

12. Heard arguments advanced by Ms. AL.Gandhimathi, learned Senior Counsel on behalf of the petitioners, Mr.Vadivelu Deenadayalan, learned Additional Government Pleader appearing for the first and second respondents and Mr.T.V.Ramanujun, learned Senior Counsel appearing on behalf of the third and fourth



respondents.

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13. It had been contended by the learned Senior Counsel for the petitioners that though it had been stated in the impugned order that there is a right of appeal against the impugned order, the right did not accrue to the petitioners and would accrue only to the Senior Citizen, who is aggrieved by an order passed by the second respondent / Revenue Divisional Officer. Learned Senior Counsel contended that the third respondent was the original owner of the property, land measuring 1620 sq.ft., in Old S.No.13/1C3, Errunkencheri Village, Subramanian Street, Chennai – 600 118. She had settled the same in favour of the first petitioner by a registered document bearing No. 7344 of 2018 registered in the office of the Sub Registrar, Madhavaram, on 28.11.2018.

14. The learned Senior Counsel pointed out that the first petitioner in exercise of such acquired title had also executed a settlement deed in favour of the second petitioner. Subsequently, the second petitioner executed a registered agreement of sale which was later cancelled and thereafter she had conveyed the property by a sale deed in favour of one Sridhar. It had therefore been contended that the property had been dealt with. It had been further stated that the



petitioners were not put on notice before the impugned order came to be passed and that therefore, the order should be interfered with and set aside by this Court.

15. It had been further contended that the settlement deed could be cancelled only when there is a condition that the settlee must take care of the settlor and if there is breach of such condition, then, Section 23 of the Act would apply and the settlement deed could be cancelled. It had been contended that the third respondent had sought cancellation of the settlement deed on the ground that she had signed the documents under the impression that they were a mortgage deed and not a settlement deed. The learned Senior Counsel stated that this could not be a reason for cancellation of a deed under the provisions of the said Act. It was therefore argued that the Writ Petition should be allowed and the impugned order should be set aside.

16. The learned Senior Counsel placed reliance on the Judgment of the Hon'ble Supreme Court reported in **2022 SCC OnLine SC 1684 [ Sudesh Chhikara Vs. Ramti Devi and Another]** wherein, the Hon'ble Supreme Court had held that if the twin conditions required under Section 23 of the Act are not satisfied,



then the order cannot be maintained.

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17. Mr.Vadivelu Deenadayalan, learned Additional Government Pleader appearing for the first and second respondents contended that the second respondent had passed the impugned order after taking into consideration all factors and also after giving fair opportunity to all the parties to put forth their respective cases. It had been contended that the third respondent had given the complaint on the ground that she had been misled into signing the document and that, it had been held out that it was only a mortgage deed and that, had she known that it was a settlement deed, she would not have signed the same. The learned Additional Government Pleader therefore stated that the Writ Petition should be dismissed.

18. Mr.T.V.Ramanujun, learned Senior Counsel appearing for the third and fourth respondents pointed out that the property in question had been purchased by the fourth respondent out of his own funds in favour of the third respondent. Later, the first petitioner had held out that he wanted to start a business and wanted to mortgage the property. It was only under that circumstance had the third respondent gone over to the office of the Sub Registrar at Madhavaram and had signed the document under the impression that



it was a mortgage deed. Unfortunately it turned out to be a settlement deed. Later, owing to Covid-19 pandemic, the third respondent wanted to deal with the property and at that time when the encumbrance certificate was applied, it was found that the property had an encumbrance, namely a settlement deed executed allegedly by her. Immediately thereafter, the third respondent had filed a complaint before the second respondent and after following due procedure, the document had been cancelled. The learned Senior counsel stated that at that time, the third respondent had not sought any maintenance but that would not preclude her claim for maintenance. The learned Senior Counsel contended that the order impugned had been passed after giving due and proper notice to all the parties and after following due procedure, the learned Senior Counsel therefore contended that the writ Petition should be dismissed.

19. I have carefully considered the arguments and perused the materials available on record.

20. This is a case under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The first petitioner is the son of the third and fourth respondents. The second petitioner is the



daughter-in-law of the third and fourth respondents/wife of the first petitioner. The property in question at Errunkencheri, had been purchased in the name of the third respondent. Subsequently, a settlement deed had been executed by the third respondent on 28.11.2018 registered as Document No. 7344 of 2018 in the office of the Sub Registrar, Madhavaram, in favour of the first petitioner.

21. It is the contention of the third respondent that she was misled into signing the document. It was held out to her that it was a mortgage deed. Later, when the third respondent came to know that the document she had signed was actually a settlement deed, she had preferred a complaint before the second respondent/ Revenue Divisional Officer, North Madras. The first petitioner, who was the beneficiary under the settlement deed executed a settlement deed in favour of the second petitioner / his wife. The second petitioner then entered into a registered agreement of sale in favour of her relative S.Karuppiyah and later cancelled the said agreement of sale. She then conveyed the property in favour of one Sridhar by registered sale deed dated 04.05.2023 registered as Document No. 3358 of 2023. There is also a suit pending between the parties in O.S.No. 5890 of 2023 before the 19<sup>th</sup> Assistant City Civil Court, Chennai.

22. The only issue to be examined is whether the impugned



order passed by the second respondent cancelling the settlement deed executed by the third respondent in favour of the first petitioner on 28.11.2018 and registered as Document No. 344 of 2018 in the office of the Sub Registrar, Madhavaram could withstand judicial scrutiny.

23. Section 23 of the Act is 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 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 organisation referred to in Explanation to sub-section (1) of section 5. "*

24. The said provision is quite clear. It provides for a transfer of property to be declared void under certain circumstances.

25. The said provision had come up for consideration before the Hon'ble Supreme Court in ***Sudesh Chhikara Vs. Ramti Devi and Another*** reported in ***2022 SCC OnLine SC 1684***, the Hon'ble Supreme Court had 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***



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*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 subsection (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 22<sup>nd</sup> 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."*

26. In the instant case, in the settlement deed, dated 28.11.2018, there is no clause or condition that the settlee / first petitioner should provide basic amenities and basic physical needs to the third respondent/settlor. Therefore, on a conjoint reading of Section 23 of the Act and the settlement deed, it is clear that Section 23 of the Act is not attracted. But however, it is to be noted that there is an earlier order of this Court in W.P.No. 16593 of 2023 that the first petitioner shall pay maintenance at the rate of Rs.25,000/- per month to the third respondent. There is no document produced by the petitioners that they have complied with the said direction.

27. It is the contention of the learned senior counsel for the



third respondent that the third respondent was misled into signing the settlement deed when she was on the impression that she was executing a mortgage deed. If that be the case, the provisions of the Indian Contract Act, 1872 come into play and if any agreement had been entered into by fraud or misrepresentation, then the relief would lie only before the Civil Court, seeking necessary declaration.

28. The object of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 is to ensure that no Senior Citizen or no parent is left deserted by those on whom she or he had placed confidence and trust and to whom, he or she had extended a helping hand by transferring property out of love and affection. If there is no reciprocal duty discharged, then under Section 23 of the Act, the document so executed could be cancelled by the authorities. But however, the provision itself states that such duty should be embellished in the document and if such condition had not been put in writing, then the Court cannot step in and impose a fresh condition to be satisfied between the parties. Therefore, on a plain interpretation of Section 23 of the Act, I hold that the second respondent had exceeded authority by cancelling the settlement deed.

29. It is to be noted that subsequently there have been entries made in the Office of the Sub Registrar at Madhavaram. In view of the



multiple transaction, it would only be appropriate that the parties are directed to work out their respective remedies before the Civil Court.

30. But, however, the obligation of the first petitioner and also of the second petitioner to maintain the third and fourth respondents is paramount. There cannot be any denial of that obligation. An order had already been passed directing the first petitioner to pay maintenance at the rate of Rs.25,000/- per month. That order had been passed when W.P.No. 16593 of 2023 came up for admission.

31. I would maintain the same order and direct the first petitioner to pay the said maintenance amount of Rs.25,000/-. The arrears should be paid within a period of two weeks from this date. Thereafter, every month, the maintenance should be paid on or before the 5<sup>th</sup> day of every successive English Calendar month. If there are arrears, the third respondent may again approach the second respondent seeking enforcement of the order. The third respondent is also at liberty to seek enhancement of maintenance by filing necessary application before the second respondent.

32. The Writ Petition stands disposed of. The impugned order is



set aside but directions are issued directing the first petitioner to pay maintenance at the rate of Rs.25,000/- every month to the third respondent as aforementioned. Consequently, connected Miscellaneous Petition stands closed. No order as to costs.

13.12.2024

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

To

1. The District Collector  
Chennai District  
Chennai – 600 001.
2. The Revenue Divisional Officer  
North Madras, Gandhi Main Road,  
Puzhal, Chennai – 600 066.

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



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**Pre-Delivery Order made in**

**W.P.No. 34432 of 2024**

**And**

**W.M.P.No. 37298 of 2024**

**13.12.2024**