



W.P(MD)No.33 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.33 of 2020

and

W.M.P.(MD)Nos.16 & 17 of 2020

N.Srinivasan

... Petitioner

Vs.

1.The State of Tamil Nadu

Through its Secretary to Government,
Department of Revenue,
Secretariat,
St.George fort,
Chennai-600 009.

2.The District Collector,

Madurai District,
Collectorate,
Madurai-625 002.

3.The Revenue Divisional Officer,

The Tribunal under the Maintenance and
Welfare of Parents and Senior Citizens Act,
O/o The Revenue Divisional Officer,
Collectorate,
Madurai-625 002.

4.The Sub-Registrar,

Theppakulam Sub-Registrar Office,
Rajakampeeram,
Thirumohur Road, Y.Othakadai,



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Madurai-625 107.

5. The Joint Sub Registrar,
No.1 Joint Sub Registrar Office,
Madurai (South),
Palace Road,
Madurai-62 001.

6.A.Nachiappan

7.N.Indira

8.N.Balajee

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order of the 3rd respondent in K.Dis.No.4386/2019/J dated 29.11.2019 and quash the same.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.M.Lingadurai
Special Government Pleader for R1 to R5

: Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi for R6 & R7

: Mr.R.Narayanan for R8

ORDER

Heard both sides.



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2. The petitioner is the son of the 6th and 7th respondents. The 6th respondent executed sale deed dated 31.05.2007 conveying the property mentioned therein in favour of the petitioner. In respect of the said property, the petitioner executed the power of attorney dated 07.09.2016 in favour of his father. The said power of attorney was cancelled by him on 15.02.2019. The 7th respondent who is the mother of the petitioner herein executed the sale deed dated 23.11.2018 in favour of the petitioner conveying the property set out therein. The parents filed the petition under the relevant provisions of the Senior Citizens Act before the third respondent. After putting the petitioner on notice, the 3rd respondent vide order dated 29.11.2019 cancelled the deed dated 15.02.2019, whereby the petitioner had cancelled the power of attorney executed in favour of his father and the sale deed dated 23.11.2018 executed by the 7th respondent in favour of the petitioner. Challenging the said order, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.



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4. The third respondent had filed counter affidavit and the learned Special Government Pleader took me through its contents and called upon this Court to sustain the impugned order and dismiss the writ petition. The stand of the learned Special Government Pleader was adopted by the learned counsel appearing for the respondents 6 & 7. The 8th respondent is the petitioner's brother and they are sailing together.

5. I carefully considered the rival contentions and went through the materials on record. Section 23 of the Senior Citizens Act empowers the maintenance Tribunal to declare the transfer of property to be void in certain circumstances. The said provision reads 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 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.



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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.”

The provision was dealt with by the Hon'ble Supreme Court in the decision reported in **2022 Live Law (SC) 1011 (Sudesh Chhikara Vs. Ramti Devi and Another)**. I also had an occasion to deal with the said provision in **W.P. (MD)No.27135 of 2023 dated 10.11.2023(Sankarappan Vs. The District Collector, Virudhunagar)**. It is beyond dispute that the sale deed dated 23.11.2018 executed by the 7th respondent in favour of the petitioner does not contain the condition envisaged under Section 23 of the Act.

6. Respectfully applying the ratio laid down in **Sudesh Chhikara**, I hold that the Maintenance Tribunal lacked the jurisdiction to declare the sale deed dated 23.11.2018 as null and void. It is well settled that the power of attorney is not a deed of conveyance. Section 23 of the Senior Citizens Act can be invoked only to declare a deed of conveyance as null and void. Since a deed of power of attorney is not a document falling within the purview of Section 23 of the Act, the Maintenance Tribunal could not have cancelled or set aside the cancellation deed dated 15.02.2019 executed by the petitioner cancelling the power of attorney earlier executed in favour of the petitioner.



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7. Looked at from any angle, the impugned order cancelling the two documents in question are lacking in jurisdiction. To this extent, the impugned order is set aside. The Maintenance Tribunal directed the petitioner to maintain his parents. The parents are presently not having means to maintain themselves. The petitioner's counsel states that considering the ways of the father, the petitioner wants to remit a sum of Rs.30,000/- per month directly to the mother. In fact, the petitioner is paying the rental amount directly to the landlord and the balance amount is being remitted in the mother's account.

8. However, considering the overall circumstances, even while directing the petitioner to pay the said sum of Rs.30,000/- as he has been hitherto doing, the petitioner is called upon to deposit a further sum of Rs.10,000/- per month in the bank account of the 6th respondent. It is not a judicial direction. It is only an appeal to the petitioner's conscience. Liability to maintain the parents will be borne jointly by the petitioner and the 8th respondent. The fourth respondent is directed to register this order on his own so that the earlier encumbrance created by the impugned order is undone.

9. The Writ Petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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