



W.P.(MD).No.1947 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.1947 of 2022
and
W.M.P.(MD)No.1677 of 2022

Maridurai Pandian.K

... Petitioner

Vs.

- 1.The District Collector/Appellate Tribunal, Under the Maintenance and Welfare of Parents and Senior Citizens Act, Tenkasi District.
- 2.The Revenue Divisional Officer/ Maintenance Tribunal, Under the Maintenance and Welfare of Parents and Senior Citizens Act, Tenkasi District.

3. Krishnasamy

... 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 Na.Ka.K3/17301/2021 dated 11.01.2022 passed by the 1st respondent and quash the same.



WEB COPY



W.P.(MD).No.1947 of 2022

For Petitioner : Mr.Vinayagamani,
For C.Muthu Saravanan

For R-1 & R-2 : Mr.S.Kameswaran,
Government Advocate

For R-3 : Mr.R.J.Karthick

ORDER

Challenging the impugned order passed by the 1st respondent on 11.01.2022 in an appeal preferred by the father/3rd respondent under Section 16 of the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007, this writ petition is filed.

2.Heard the learned counsels on either sides and carefully perused the materials available on record.

3.The writ petitioner is the son of the 3rd respondent. The 3rd respondent executed a settlement deed dated 16.04.2021, with respect to a house property and other buildings bearing door Nos. 47A, 47B, 47C, 47D, 47E and 47F situated in an area of 11.55 cents equivalent to 5044.5 square feet comprising in survey Nos.692/3 of Kadayanallur village, Tenkasi district, vide settlement deed bearing document No. 1711 of 2021



W.P.(MD).No.1947 of 2022

out of his own volition, love and affection. Later, the 3rd respondent had made an application under Section 5 of the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007, (herein after referred to be Act, 2007) to the 2nd respondent requiring to cancel the aforesaid settlement deed and for maintenance. The 2nd respondent after conducting an enquiry declined to cancel the settlement deed and directed the petitioner to pay a maintenance of Rs.5,000/- per month to the 3rd respondent by an order dated 27.10.2021. Challenging the same, the 3rd respondent had filed an appeal before the 1st respondent under Section 16 of the Act, 2007. The 1st respondent setting aside the order passed by the 2nd respondent dated 27.10.2021 had cancelled the settlement deed bearing document No.1711 of 2021 of Kadayanallur Sub Registry which was executed by the 3rd respondent in favour of the petitioner. Challenging the same, this writ petition is filed.

4.The learned counsel for the petitioner Mr.Vinayagamani, categorically submitted that the settlement executed by the 3rd respondent in favour of the petitioner is an unconditional settlement deed executed out of his own volition without any coercion out of his love and affection in favour of the petitioner. The 3rd respondent has two more sons and only on



W.P.(MD).No.1947 of 2022

their instigation the 3rd respondent has made an application under Section 5 of the Act, 2007. The 1st respondent without going into the merits of the case contrary to the provisions mandated in Section 23 of the Act, 2007 has hastily passed the impugned order by cancelling the settlement deed executed by the 3rd respondent in favour of the petitioner and it is quite ridiculous as to why the 1st respondent has set aside the order of maintenance which was passed in favour of the 3rd respondent by the 2nd respondent and on that basis pressed for allowing the writ petition.

5.For which, the learned Government Advocate, Mr.S.Kameswaran on instructions submitted that though the co-owners of the settlement deed have drafted it hyper-technically that, the same has been executed by the 3rd respondent out of his own volition, the fact remains that the petitioner had convinced his father, that is, the 3rd respondent to accompany him to the registration office for the purpose of executing a mortgage deed for availing a loan towards disbursal of certain loans availed for the purpose of meeting the medical expenses of his elder son who is the Paralysed. Believing that the said deed is a mortgage deed, the 3rd respondent had signed the same, however, later he came to understand that it is not a mortgage deed but a settlement deed and it is a fraud played by the petitioner on the 3rd



W.P.(MD).No.1947 of 2022

respondent and in that way, it has been executed in favour of the petitioner. The said factum has been recorded by the 1st respondent while appreciation of the appeal. That apart, the fact that the father had preferred a police complaint before the Kadayanallur Police Station on 07.07.2021 in this regard has also been recorded by the 1st respondent. It is also recorded by the 1st respondent that the petitioner had further executed a settlement deed of the said property in favour of his wife, namely, Muthulakshmi, on 12.07.2021. Hence, there is no illegality or infirmity in the 1st respondent's order cancelling the said settlement deed because the same is vitiated by fraud and pressed for dismissal of the writ petition.

6.The learned counsel for the 3rd respondent, Mr.R.J.Karthick, submitted that fraud vitiates everything and hence, the impugned order passed by the 1st respondent need not be interfered.

7.Though it is a settled proposition of law that fraud vitiates everything, the same could be substantiated only by a competent Civil Court because it could be proved only on appreciation of the various disputed facts on record. Going by the provision of the Act, 2007, Section 23 has a clear



W.P.(MD).No.1947 of 2022

mandate that in case of an unconditional settlement deed, the authorities do not have any right to cancel the same.

8.This has been confirmed by the Hon'ble Supreme Court in Civil No. 174 of 2021 dated 06.12.2022 in the case of **Sudesh Chhikra .vs. Ramti Devi and another reported in 2022 SCC online SC 1684** and the relevant portion of the same is extracted as follows:

“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.”



W.P.(MD).No.1947 of 2022

WEB COPY

9.Following the said judgment, the Division Bench of this Court to which I was a party (Hon'ble Mrs.Justice.L.Victoria Gowri) in W.A.(MD)No. 809 of 2023 dated 12.06.2023, this Court has already held that any settlement deed executed by a senior citizen in favour of his / her children in the absence of a specific condition for providing maintenance to the transferer could not be cancelled by the authorities concerned who are acting upon on an application under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The said proposition has been confirmed by the Hon'ble full bench of this Court in the case **Sasikala and others .vs. Revenue Divisional Officer, dated 02.09.2022** had dealt with a similar case and passed similar orders and the relevant portion of the same is extracted as follows:

“41.Section 126 of the Transfer of Property Act, reads as follows:

“126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked.



W.P.(MD).No.1947 of 2022

WEB COPY

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.”

42. Section 126 of the Transfer of Property Act recognizes the power of revocation where the donor reserves a right to suspend or revoke the gift on happening of any specified event. However, the illustrations clarify that the revocation should be with the assent of the donee and it shall not be at the will of donor as a gift revocable at the mere Will of the donor is void. The Subregistrar cannot decide whether there was consent for revocation outside the document. If the donor by himself reserves a right to revoke the gift at his Will without the assent by donee, the gift itself is void. Since we are dealing with unilateral cancellation, the power of registration of cancellation or revocation of gift deed cannot be left to the discretion or wisdom of registering authority on facts which are not available or discernible from the deed of gift. When the power of revocation is reserved under the document, it is permissible to the registering officer to accept the document revoking the gift for registration only in cases where the following conditions are satisfied;

(a) There must be an agreement between the donor and donee that on the happening of a specified event which does not depend on the Will of the donor the gift shall be suspended or revoked by the donor.

(b) Such agreement shall be mutual and expressive and seen from the document of gift.



W.P.(MD).No.1947 of 2022

WEB COPY

(c)Cases which do not fall under Section 126 of Transfer of Property Act, unless the cancellation of Gift or Settlement is mutual, the registering authority shall not rely upon the self serving statements or recitals in the cancellation deed. For example questioning whether the gift deed was accepted or acted upon cannot be decided by the registering authority for the purpose of cancelling the registration of gift or settlement deed.

44.

(f)As regards gift or settlement deed, a deed of revocation or cancellation is permissible only in a case which fall under Section 126 of Transfer of Property Act, and the Registering Authority can accept the deed of cancellation of gift for registration subject to the conditions specified in para 42 of this judgment.

46.The writ petition in W.P(MD)No.6889 of 2020 is filed by the daughter of the second respondent to quash the order passed by the first respondent under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007. The gift deed executed by the second respondent in favour of the writ petitioner was unilaterally cancelled by the second respondent father. The settlement deed stated to have been executed by the second respondent, dated 06.03.2015 is



W.P.(MD).No.1947 of 2022

WEB COPY

irrevocable and it is a deed of settlement out of love and affection. The second respondent has specifically stated that he has no right to revoke the settlement deed. From the recitals, the settlement does not attract Section 126 of Tamil Nadu Property Act. It is seen that the settlor viz., the second respondent, has not put any condition. In other words, the gift deed is not subject to any condition or terms that the transferor shall provide the basic amenities and basic physical needs to the second respondent. In such circumstances, this Court is of the view that there is no scope for invoking the power provided to the second respondent under Section 23 of the Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Therefore, the order impugned is liable to be quashed.”

10. Section 2 (b) of the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007, defines the word maintenance and the same is extracted as follows:

*“2(b) **“maintenance”** includes provision for food, clothing, residence and medical attendance and treatment;”*



W.P.(MD).No.1947 of 2022

WEB COPY

The 1st respondent is directed to pay a maintenance of Rs.10,000/- to the 3rd respondent from January 2025 every month without default. That apart, he is also directed to pay the entire arrear amount by calculating the maintenance of Rs.5,000/- per month from the date of order of the 2nd respondent, that is, from 27.10.2021 within 30th January 2025.

11.However, the 3rd respondent is at liberty to seek for cancellation of a settlement deed before the competent authority without referring to the limitation since the matter was pending before this Court.

12.With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

09.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

1.The District Collector/Appellate
Tribunal, Under the Maintenance
and Welfare of Parents and Senior



W.P.(MD).No.1947 of 2022

Citizens Act,
Tenkasi District.

2.The Revenue Divisional Officer/
Maintenance Tribunal,
Under the Maintenance and Welfare
of Parents and Senior Citizens Act,
Tenkasi District.



WEB COPY



W.P.(MD).No.1947 of 2022

L.VICTORIA GOWRI, J.

Sml

W.P.(MD).No.1947 of 2022

09.12.2024