



W.P.(MD).No.5026 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.5026 of 2022
and WMP(MD) No.4118 of 2022

Ayyanar

... Petitioner

Vs

1. The District Collector,
Madurai District, Madurai.

2. The Revenue Divisional Officer
and Presiding Officer of Senior Citizen,
Maintenance and Welfare Tribunal,
Thirumangalam, Madurai District.

3. The Sub-Registrar,
Kallikudi Sub-Registrar Office,
Madurai District.

4. Pandiyammal

... 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 of the 2nd Respondent in his proceedings in Mu.Mu.No.1304/2021/A2 dated 02.02.2022 and quash the same as illegal, arbitrary, violation of law, violation of Principles of Natural Justice.



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For Petitioner : Mr.M.Jothi Basu

For Respondents : Mr.S.Kameswaran (R1-R3)
Government Advocate

Mr.A.Sivasubramanian (R4)

ORDER

This writ petition has been filed challenging the proceedings in Mu.Mu.No.1304/2021/A2 passed by the second respondent on 02.02.2022, in which, the settlement deed executed by the fourth respondent in favour of the petitioner bearing Doc.No.5604 of 2012, dated 23.08.2012 on the file of Kallikudi Sub Registry was cancelled.

2.The petitioner is one among the two sons of the fourth respondent. The 4th respondent made an application under section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. (hereinafter referred to as 'the Act') before the second respondent seeking to cancel the settlement deed executed by her in favour of the petitioner.

3.The petitioner is working as a Mason. On receipt of the said application, the second respondent had passed the impugned order, dated 02.02.2022 cancelling the settlement deed along with the default clause, i.e., if



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the petitioner refuses to oblige the order, dated 02.02.2022, he would be subjected to 6 months imprisonment or to pay a fine of Rs.10,000/-.

4.The learned counsel for the petitioner submitted that the settlement deed bearing Doc.No.5604 of 2012, dated 23.08.2012 executed by the fourth respondent in favour of the petitioner is an unconditional one. The said settlement deed was executed by the fourth respondent out of her love and affection towards the petitioner. In view of the same, the second respondent did not have the authority to cancel the same. That apart, he also stated that the second respondent did not have any authority to inflict punishment in case of default by the petitioner to implement the said order. On that basis, pressed for dismissal of the writ petition.

5.The learned Government Advocate appearing for the second respondent drew my attention to the impugned order, which would reveal that at the time of enquiry, both the petitioner and the fourth respondent had appeared before the second respondent and the petitioner himself had admitted before the second respondent that the fourth respondent and her husband are residing in the house i.e., RCC building situated in 264.5 sq.ft land comprised



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in S.No.241 of Mochikulam village, Kuraiyur Post, Tirumangalam taluk, Madurai District.

6.It is submitted by the learned counsel for the fourth respondent that the aforesaid fact has been admitted by the petitioner in the reply notice given by his counsel on 03.03.2021 to the legal notice issued by the fourth respondent's counsel. He further submitted that the maintenance includes the right of living. In view of the same though the validity of cancellation of settlement deed is disputed by the petitioner. right to reside in the subject house cannot be negated by the petitioner and pressed for dismissal of the petition.

7.Section 2(b) of the Act defines the term 'maintenance'. The same is extracted as follows:

“2.Definitions:

b. "maintenance" includes provision for food, clothing, residence and medical attendance and treatment”

8.It is needless to state when the provision for food, clothing, residence, medical attendance and treatment is included to define in the word



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maintenance, the right of the fourth respondent to reside in the house situated in the property, which has already been settled by her in favor of the petitioner cannot be defeated under any circumstances.

9.However, the matter has already been dealt with by this Court in umpteen number of cases and the Hon'ble *Supreme Court in Sudesh Chhikara Vs Ramti Devi* reported in 2022 SCC Online 1687 has categorically held that absence of specific condition for providing maintenance to the transferor in the settlement deed, the absence of such caluse in the settlement deed will be a bar for the authorities to cancel the said settlement deed, in terms of the provisions of the aforesaid Act. The relevant portion is extracted as follows:

“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.

10.The Hon'ble Full Bench of this Court in the case of ***Sasikala vs The Revenue Divisional Officer*** reported in ***(2022) 7 MLJ 1*** has confirmed the said proposition of law and the relevant portion is extracted as follows:

“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. 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.



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

(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.

...

(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



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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.”

11. Accordingly, I have no hesitation to hold that the second respondent ought to have carefully perused the settlement deed in question before passing an order for cancellation of aforesaid settlement deed. In the absence of any condition made in the settlement by the fourth respondent, precisely, indicating that both herself and her husband should be maintained by the petitioner for their lifetime, they cannot insist by making an application under the Act for cancellation of the same. The second respondent



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inadvertently without going to the said aspect rushed to cancel the aforesaid settlement deed. The said exercise is per se illegal.

12.That apart, the default clause in the impugned order is also beyond the power vested by the Act on the authorities. None of the provisions of the Act has empowered the second respondent to exercise such a power to inflict punishment on the fourth respondent's children in a default clause, under any application under the Act. More specifically, Chapter 6 of the Act deals with the offence and procedure for the trial. Section 24 and 25 of the Act is extracted hereunder:

*“24. Exposure and abandonment of senior citizen
Whoever, having the care or protection of senior citizen leaves,
such senior citizen in any place with the intention of wholly
abandoning such senior citizen, shall be punishable with
imprisonment of either description for a term which may extend
to three months or fine which may extend to five thousand
rupees or with both.*



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25. Cognizance of offences

1. Notwithstanding any thing contained in the Code of Criminal Procedure, 1973, every offence under this Act shall be cognizable and bailable.

2. An offence under this Act shall be tried summarily by a Magistrate.”

Section 25 makes it clear that any offence under the Act shall be cognizable and the same shall be tried summarily by the Magistrate.

13. Section 11 of the Act mandates that a maintenance order made under this Act shall have the same force and effect, as the order passed under chapter 9 of the Cr.P.C 1973 (2 of 1974) and shall be executed in the manner prescribed in the execution of such order by that Court. However, in view of implementation of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS Act, 2023'), the relevant provision would be under Chapter 10 of the new Act in Section 144 of BNSS Act, 2023.

14. Now the significant question, which has to be decided by this Court is that, having decided that the cancellation of the aforesaid settlement deed as illegal, whether the fourth respondent has the right to continue to reside



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in the property in question. I have no hesitation to answer positively “YES”.

The definition clause of maintenance of the Act clearly mandates that the word “maintenance” provides for food, clothing, residence, medical attendance and treatment, under Section 2(b) of the Act.

15. In view of the same, it is the responsibility of the children to take care of the maintenance not only monetarily, but also medical attendance and treatment including food, clothing and residence. Accordingly, the fourth respondent and her husband are entitled to live in the house situated in the subject property, more specifically, the property, which has been already settled by them in favor of the petitioner during their lifetime.

16. That apart, the question of grant of maintenance in monetary terms has not been touched upon by the second respondent. Considering the same, I am of the considered view that the second respondent ought to have passed an order directing the petitioner to pay a monthly maintenance to the fourth respondent. Since the same is not done, I hereby direct the *petitioner as well as his brother namely, Marudhupandy to pay an amount of Rs.3,000/- each per month, which would sum up to Rs.6,000/- to fourth respondent and*



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her husband during their lifetime from the month of December 2024. In case of default in payment of maintenance, the fourth respondent shall make an application before the jurisdictional Magistrate under Section 144 of BNSS Act, 2023.

17.Since the amount of maintenance has already been determined by this Court, it is not necessary for the jurisdictional Magistrate to adjudicate upon the quantum of maintenance to be granted to the fourth respondent and her husband. The quantum of maintenance shall be confirmed and appropriate orders may be passed in accordance with law and the order of maintenance passed by this Court may be implemented.

18.Accordingly this writ petition stands allowed. No costs.
Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
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3. The Sub-Registrar,
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L.VICTORIA GOWRI, J.

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**ORDER IN
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