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W.P.(MD)NO.6078 OF 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6078 of 2020 AND
W.M.P.(MD)No.5263 of 2020

S.Sundarraaj

... Petitioner

Vs.

1. The District Collector,
Madurai District.
2. The Revenue Divisional Officer,
Madurai District.
3. The Sub Registrar,
Thirumangalam,
Madurai District.
4. N.Murugesan
(R-4 is deleted vide order dated 04.05.2020)
5. S.Solappan
6. Puspam @ Perumalakkal

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 02.03.2020 in Ne.Mu.No.482/2020/A1 passed by the 2nd respondent and quash the same and consequentially to forbear the respondents 1 and 2 from invoking Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 to cancel or to declare as void the settlement deed dated 26.10.2016 registered as Document No.5749/2016 on the file of the 3rd respondent.



For Petitioner : Mr.J.Barathan
For R-1 to R-3 : Mr.M.Lingadurai,
Special Government Pleader.
For R-5 & R-6 : Dr.C.Guhaseelarupan

* * *

ORDER

Heard both sides.

2. The writ petitioner is the son of respondents 5 and 6. The parents executed settlement deed dated 26.10.2016 in favour of the petitioner settling the petition-mentioned land measuring 48 cents(document No.5642/2016). Subsequently, the parents filed a petition before the Maintenance Tribunal for cancelling the document. The Maintenance Tribunal vide proceedings dated 02.03.2020 cancelling the settlement deed. Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing for the writ 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.

4. The learned Special Government pleader as well as the learned counsel for respondents 5 and 6 submitted that the impugned order does not warrant interference. The learned



counsel appearing for respondents 5 and 6 submitted that the parents are become very old and that they are not able to maintain themselves.

5. I carefully considered the rival contentions and went through the materials on record.

6. A copy of the settlement deed dated 26.10.2016 has been enclosed in the typed set of papers. It does not contain any condition as envisaged under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act. The Hon'ble Supreme Court in the decision reported in **2022 SCC OnLine SC 1684 (Sudesh Chhikara V. Ramti Devi and Another)** had held as follows:-

“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.

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 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."

7. The learned counsel appearing for respondents 5 and 6 relied on the order reported in **2023 SCC OnLine Mad 6079 (Mohamed Dayan V. The District Collector, Tiruppur District, W.P.No.28190 of 2022 dated 08.09.2023)**. After referring to the said decision, I had held vide order dated **10.11.2023 W.P(MD)No.27135 of 2023 (Sankarappan Vs. The Appellate Authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007)** as follows:-

"6.With utmost respect, I must hold that



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this judgment runs counter to the judgment of the Hon'ble Division Bench of the Madurai Bench of the Madras High Court rendered in WA(MD) No.809 of 2023 on 12.06.2023 (R.Sekkappan Vs. S.Kannappan and Ors). It was held therein that Section 23 of the Act can be invoked only in respect of the documents which contain a stipulation that the transferee or settlee must maintain the senior citizen/s who executes the document. The same view has been taken by the Hon'ble High Court of Calcutta in ***Himangshu Mondal V. Sachirani Mondal (2023 SCC OnLine Cal 695)***. After referring Radhamani V. State of Kerala and Sudesh Chhikara v. Ramti Devi, it was held as follows :

“17. If the deed of gift in question revolve around allegations of misrepresentation and fraud, that can only be the subject matter of a civil suit. Section 23 of the Act of 2007, cannot confer jurisdiction on a Magistrate or Sub-divisional Officer to exercise the power of a regular civil court as envisaged in the Code of Civil Procedure, particularly when the pre-condition of Section 23 are not met. The language of the deed of gift does



not speak that the transfer contemplated in the deed of gift being conditional upon the transferee providing the basic amenities and/or basic physical needs of the transferor. Previous good conduct of the transferee could be a reason for the gift but could not be construed as a condition of basic amenities or physical needs being provided by the donees to the donor.....”

The learned Judge also referred to the earlier decision of the Division Bench of the Calcutta High Court in *Debashish Mukherjee @ Zen Acharya v. Dr. Sanjib Mukherjee* reported in (2018) 1 CHN 481 (Cal) in which it was held as follows :

“12. We have carefully gone through a copy of the deed of gift dated 29th April, 2015. It is clear that the flat in question was gifted absolutely and unconditionally to the appellant reserving no right at all to the donor being the mother of the appellant. No conditions were attached that the appellant would have to provide basic amenities and basic physical needs to the transferor. Accordingly in our opinion, section 23 of the Act can have no manner of application to the facts of the present case”.



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7.In ***Pokar Ram v. Maintenance Tribunal cum Sub Divisional Magistrate, Jodhpur*** (S.B. Civil Writ Petition No.1841 of 2019 dated 23.02.2023), the Rajasthan High Court held that for exercising jurisdiction under Section 23 of the Act, an explicit condition binding the transferee to provide the basic amenities and basic physical needs to the transferor has to be incorporated in the deed of transfer of property.

8.The next question that calls for consideration is whether in ***S.Vanitha v. the Deputy Commissioner (2021) 15 SCC 730***, it had been laid down that the deed of transfer need not contain any express recital as envisaged by Section 23 of the Act and that it can be a matter for investigation and inference by the Maintenance Tribunal. I could not find any proposition in S.Vanitha that can sustain the ratio laid down in Mohamed Dayan. Vanitha is more on the interplay between the Domestic Violence Act and the Senior Citizens Act.

9.The issue can be approached from yet another perspective. Section 9 of the Transfer of



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Properties Act, 1882 is to the effect that a transfer of property may be made without writing in every case in which a writing is not expressly required by law. Section 54 of the T.P Act, 1882 contemplates that any sale of property above the value of one hundred rupees must be made only by a registered instrument. Section 123 of the Act also contemplates that gift of immovable property should be effected only by a registered instrument. A deed of settlement also has to be in writing. Section 92 of the Indian Evidence Act, 1872 would forbid adducing evidence of any oral agreement or statement for the purpose of contradicting, varying, adding to or subtracting from the terms of a document relating to disposition of property required by law to be reduced to the form of a document. If a document falling within the scope of Section 91 and 92 of the Indian Evidence Act is unconditional, then, its executant cannot subsequently claim that there was an implied condition. A deed of transfer envisaged by Section 23 of the Senior Citizens Act would definitely fall within the scope of Section 91 and 92 of the Indian



Evidence Act.

10. In the case on hand, in the gift settlement deeds executed by the petitioner in favour of his son, there is no condition obliging the fourth respondent to provide for the basic amenities and basic physical needs of the writ petitioner. The petitioner had executed them out of love and affection. He had undertaken not to cancel the same for any reason. The transfer is unconditional and absolute.

11. I, therefore, hold that to invoke Section 23 of the Senior Citizens Act, there must be an express recital in the deed of transfer that the transferee is under an obligation to provide the basic amenities and basic physical needs to the transferor. If this condition is not expressly incorporated or found in the deed of transfer, the jurisdiction of the Maintenance Tribunal will not be available under Section 23 of the Act. The only remedy open to the transferor is to move the jurisdictional Civil Court for relief."

8. The learned counsel appearing for the petitioner points out that the Hon'ble Division Bench in the decision reported in



2023 (6) CTC 870 (D.Devi V. Inspector General of Registration) had held as follows:-

“ 13. As indicated earlier, the interpretation of Section 23 is central to this dispute. Section 23 is set out below:

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. (Emphasis added)

(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.

From the above provision, it follows that Section 23



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can be invoked only if certain conditions are satisfied. The said conditions are:

(i) A senior citizen should transfer the property by way of a gift or otherwise;

(ii) Such transfer should be after the commencement of the Senior Citizens Act; and

(iii) Such transfer should be on condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and the transferee should refuse or fail to provide such amenities and physical needs.

The text of the provision also clearly indicates that the above conditions are cumulative. If all the above conditions are satisfied, the legal fiction is triggered by virtue of which it is deemed-and, therefore, need not be proved-that the transfer is vitiated by fraud or coercion or undue influence. Consequently, the transferee gets the option to avoid the transfer by having the same declared void by the Tribunal formed under the Senior Citizens Act. “

9. Two Hon'ble Division Benches had held that if the condition as envisaged under Section 23 of the Act is not incorporated in the settlement deed, Section 23 of the Act cannot be invoked by the Maintenance Tribunal for cancelling the same. This aspect of the matter has not been taken note of by the Maintenance Tribunal. In this view of the matter, the order impugned in this writ petition is set aside.



10. It is stated that during the intervening period, the property in question had been settled in favour of the daughters by the parents (document Nos.5018/2022). Obviously, the execution of the settlement deed in favour of the daughters was pursuant to the order dated 02.03.2020 passed by the Maintenance Tribunal. Since the impugned order has been set aside as a corollary and consequence, execution of the settlement of the parents in favour of the daughters also will have to be nullified. Since the daughters are not before this Court, this Court will not be justified in passing any positive declaration. It is seen that the petitioner had already filed O.S.No.16 of 2020 before the Principal District Munsif, Thirumangalam. The learned trial Judge is directed to dispose of the said suit within a period of three months from the date of receipt of a copy of this order. The petitioner can very well produce this writ order before the learned trial Munsif and get appropriate decree in his favour.

11. The issue cannot rest there. Since the parents settled 48 cents of the land in favour of the petitioner, the petitioner has a duty to take care of his parents. The petitioner is present before this Court and he categorically states that he is earning hardly Rs.14,000/-. He has a family(wife and two daughters) to maintain. The petitioner states that the parents are residing in their own house and that he was residing along with them till four years ago.



If the parents take him take, the petitioner's family will maintain and take care of the parents. This undertaking given by the petitioner is placed on record. I hope the differences between the parents and the son and his family would be amicably resolved. If the arrangement proposed by the petitioner does not take place, it is open to the parents to approach the Maintenance Tribunal to claim appropriate relief. As and when any such petition is filed, the same will be disposed of by the Maintenance Tribunal within a period of two months thereafter. This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

05.01.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes/ No

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Note : Issue order copy on 09.01.2024.

To:

1. The District Collector,
Madurai District.
2. The Revenue Divisional Officer,
Madurai District.
3. The Sub Registrar,
Thirumangalam,
Madurai District.



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G.R.SWAMINATHAN,J.

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