



W.P(MD)No.5771 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5771 of 2024

and

W.M.P.(MD)Nos.5445, 5446 and 5448 of 2024

C.Avudaiyappan

... Petitioner

Vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Revenue Divisional Officer,
Tiruchendur,
Thoothukudi District.

3.The Sub-Registrar,
Tiruchendur Taluk,
Thoothukudi District.

4.A.S.Sankaranarayanan

5.Rajeswari

... 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 relating to the impugned proceedings dated 14.12.2023 in Mu.Mu.(C1)/e-1279052/2023 issued by the 1st respondent by confirming the order passed by the



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2nd respondent by his proceedings dated 22.08.2023 in Na.Ka. A3/6248/2022

and quash the same.

For Petitioner : Mr.V.Sasi Kumar

For Respondents : Mr.V.Nirmal Kumar,
Government Advocate for R1 to R3.

ORDER

Heard the learned counsel for the writ petitioner and the learned Government Advocate for the respondents 1 to 3.

2.The petitioner is a senior citizen. He had executed a settlement deed dated 05.01.2022 in favour of his son / fourth respondent herein. Subsequently, he filed a petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 for cancellation the same. The Maintenance Tribunal vide order sated 22.08.2023 dismissed the petition. Questioning the same, the petitioner filed appeal before the first respondent. The appeal was also dismissed on 14.12.2023. Challenging the same, the present writ petition came to be filed.



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3.The learned counsel 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 set aside the impugned orders and grant relief as prayed for.

4.I am not persuaded by the submissions advanced by the learned counsel for the petitioner. I went through the contents of the settlement deed. It does not contain any condition as envisaged under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The Hon'ble Supreme Court in the decision reported in **2022 LiveLaw (SC) 1011 (Sudesh Chhikara vs Ramti Devi)** had held that if the document does not contain any condition as contemplated by the statute, the Maintenance Tribunal will not have the jurisdiction to cancel the document.

5.Therefore, the orders impugned in this writ petition cannot be interfered with. The petitioner has to necessarily move the jurisdictional Civil Court for relief. It has already been held that merely because the Maintenance Tribunal is not in a position to invoke his jurisdiction, that does not foreclose the right of the executant to move the jurisdictional Civil Court on all the available grounds. If any such suit is filed by the petitioner, it shall be numbered immediately and also disposed of within a period of six months thereafter. All the contentions of the petitioner are left open.



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6.I however will have make two remarks. The Maintenance Tribunal had declined to entertain the petitioner's petition on the ground that he is a pensioner getting Rs.40,000/- per month.

7.Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 states that a senior citizen including parent who is unable to maintain himself shall be entitled to make an application under Section 5 of the Act for maintenance. In other words, to maintain an application under Section 5, the applicant must be unable to maintain himself. There is no such restrictive condition set out in Section 23 of the Act.

8.Sections 4(1) and 23 (1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 read as follows:-

“4.Maintenance of Parents and Senior Citizens

1. A senior citizen including parent who is unable to maintain himself from his own earning or property owned by him, shall be entitled to make an application under section 5 in case of -

i. parent or grand-parent, against one or more of his children not being a minor

ii. a childless senior citizen, against such of his relative referred to in clause (g) of section 2.



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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.”

9.The absence of the expression “who is unable to maintain himself” in Section 23 (1) of the Act indicates that any executant of a document of transfer is entitled to invoke Section 23 of the Act, if the conditions set out therein are fulfilled. Therefore, the authorities were not correct in showing the door to the petitioner only on the ground that he is a pensioner who can maintain himself.

10.With this liberty to the writ petitioner, this writ petition is disposed of.
No costs. Consequently, connected miscellaneous petitions are closed.

12.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

ias

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