



W.P.(MD).No.8831 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.11.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.8831 and 20062 of 2022

and

W.M.P.(MD)Nos.6423 and 14589 of 2022

W.P.(MD)No.8831 of 2022

Eswari ... Petitioner in W.P.(MD)No.8831/2022

Jothi ... Petitioner in W.P.(MD)No.20062/2022

Vs.

1.The Revenue Divisional Officer,
Usilampatti Taluk,
Madurai District.

2.The Tahsildar,
Peraiyur Taluk,
Madurai District.

3.Kumarthavar

4.Lakshmiyammal ... 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 passed by the 1st respondent in his proceedings in MOO.MU.No.4096/2020/AA4 dated 29.10.2021 and quash the same as illegal.



W.P.(MD).No.8831 of 2022

WEB COPY

For Petitioner in
W.P.(MD)No.8831 /2022 : Mr.A.Joseph Jerry

For Petitioner in
W.P.(MD)No.8831 /2022 : Mr.D.Ganeshwaran

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

For R-3 : Died

For R-4 : No appearance

ORDER

These writ petitions are filed to call for the records pertaining to the impugned order passed by the 1st respondent in his proceedings in MOO.MU.No.4096/2020/AA4 dated 29.10.2021 and quash the same as illegal.

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

3.The petitioner in W.P.(MD)No.20062 of 2022 is the daughter of the 3rd respondent and the petitioner in W.P.(MD)No.8831 of 2022 is the grand daughter of the 3rd respondent. The 3rd respondent had two wives, namely, Lakshmiammal, who is the 4th respondent herein



W.P.(MD).No.8831 of 2022

and Late.Karuppai Ammal. Jothi is the daughter of the 3rd respondent through his second wife Karuppai Ammal and Eswari is the daughter of Jothi. Apart from Jothi, the 3rd respondent second wife, namely, late. Karuppai ammal had been blessed with six children, five daughters and one son including the petitioner in one of these writ petitions, namely, Jothi. During 2021, the 3rd respondent filed an application under Section 5 of the Maintenance of Welfare of Parents and Senior Citizens Act, 2007, (Herein after referred as Act) before the 2nd respondent, claiming that the petitioner and four others did not maintain the 3rd respondent in his old age. The 1st respondent appreciating the application made by the 3rd respondent had passed the impugned order dated 29.10.2021, cancelling the settlement deeds executed by the 3rd respondent in favour of his daughter through his second wife namely, Pothum kani, Jothi and grand daughter Eswari, that is, settlement deed No. 1518/2019 dated 03.06.2019, 1873/2019 dated 01.07.2019 and 2323/2020 dated 26.08.2020 of Peraiyur Sub Registry which was executed by the 3rd respondent in favour of his grand daughter Eswari and settlement deed bearing document No.607/2018 dated 07.03.2018 of Peraiyur Sub Registry which was executed in favour of



W.P.(MD).No.8831 of 2022

his daughter, namely, Jothi, and settlement deed bearing document No.606/2018 dated 07.03.2018 which was executed in favour of Pothum Kani and yet another settlement deed bearing document No. 1355 of 2018 dated 10.10.2020 of Peraiyur Sub Registry which was executed in favour of his great grand sons, that is, sons of the Eswari, namely, Santhosh Kumar and Sarath Kumar. Challenging the same, these writ petitions is filed.

4.At the time of admission, this Court was pleased to pass an order of interim stay on the basis of the twin undertakings made by the petitioner in W.P.(MD)No.20062 of 2022 that she will not deal with the subject property pertaining to all the aforesaid settlement deeds or encumber the same in any manner and further she made an undertaking that she will pay an amount of Rs.10,000/- (Rupees Ten Thousand only) towards monthly maintenance in the bank account of her parents from 29.08.2022 till the disposal of the writ petition, that is, from the date of grant of the aforesaid interim stay.

5.However, in the meanwhile, during the pendency of this writ petition on 21.05.2023, the 3rd respondent passed away. The learned



W.P.(MD).No.8831 of 2022

WEB COPY

counsel for the petitioner drew my attention that from the date of interim order till the date of death of the 3rd respondent, the said Jothi had duly paid a monthly maintenance of Rs.10,000/- (Rupees Ten Thousand only) without default to the 3rd respondent. 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** has dealt with a similar case 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



W.P.(MD).No.8831 of 2022

WEB COPY

a transfer, existence of such conditions must be established before the Tribunal.”

6.It is observed by the Hon'ble Supreme Court in the aforesaid judgment that whenever a senior citizen executes a gift deed or settlement deed in favour of his loved ones, more particularly, children or grand children, the same is usually done out of the love and affection towards his offspring without any expectation in return. In view of the same, if any application made under Section 5 of Maintenance and Welfare of the Senior Citizens and Parents Act, 2007, the same has to be dealt with by the respondents in terms of Section 23 of the aforesaid Act. Section 23 of the aforesaid Act is extracted 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 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.

(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.”

7.A careful perusal of all the six settlement deeds executed in favour of Jothi, Eswari, Pothumkani, Santhosh Kumar and Sarathi Kumar by the 3rd respondent, it can be found that the conditions as required under Section 23 of the Act, more particularly, that the transferee shall provide the basic amenities and basic physical needs to the transferor is not made conditional in the aforesaid settlement deeds. It is further found that the said deeds were executed by the 3rd respondent only out of his love and affection towards the aforesaid transferee voluntarily without any force or coercion. The



W.P.(MD).No.8831 of 2022

Hon'ble Supreme Court in the case of **Sudesh Chhikra .vs. Ramti Devi and another reported in 2022 SCC online SC 1684** has made it clear that if a transfer has been effected by any senior citizen in favour of his children, the absence of specific conditions for providing maintenance to the transferers in the aforesaid deed will be an impediment for the said senior citizens to seek for cancellation of the settlement deed in an application filed under Section 5 of the Act. In the absence of any specific condition providing maintenance to the transferer, the settlement deed already executed cannot be later cancelled under Section 23 of the Act.

8.However, a careful perusal of the impugned order would reveal that the 1st respondent on cancelling the aforesaid settlement deeds did not direct the children of the 3rd respondent to pay any maintenance. However only when these cases came up for admission before this Court, this Court had passed a conditional order by granting a stay directing the daughter, namely, Jothi to pay a maintenance of Rs.10,000/- from the date of the interim order till the disposal of the writ petition. The Hon'ble full bench of this Court in the case **Sasikala and others .vs. Revenue Divisional Officer,**



W.P.(MD).No.8831 of 2022

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. 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



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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.

(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



W.P.(MD).No.8831 of 2022

WEB COPY

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 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



W.P.(MD).No.8831 of 2022

WEB COPY

Act, 2007. Therefore, the order impugned is liable to be quashed.”

9.Fully fortified by the mandates of the aforesaid judgment, considering the fact that the petitioner in one of the writ petitions, namely, Jothi, had duly paid a maintenance of Rs.10,000/- every month till the death of the 3rd respondent and the fact that the settlement deed in favour of his daughter and grand children was never executed voluntarily without any condition of maintaining him, this Court following the aforesaid judgment, hereby quash the impugned order passed by the 1st respondent. However, it is made clear that if the Sub Registrar of Peraiyur, Sub Registry, had taken any steps to cancel the aforesaid settlement deeds, the same is also liable to be set aside.

10.Accordingly, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

19.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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W.P.(MD).No.8831 of 2022

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To

- 1.The Revenue Divisional Officer,
Usilampatti Taluk,
Madurai District.
- 2.The Tahsildar,
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W.P.(MD).No.8831 of 2022

L.VICTORIA GOWRI, J.

Sml

W.P.(MD).No.8831 of 2022

19.11.2024