



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.12.2023

Pronounced on : 01.03.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.8864 of 2023
and
WMP(MD)Nos.8091 & 8093 of 2023

Valliammai

... Petitioner

VS.

1.The Presiding Officer, District Appellate Tribunal,
constituted under the
Maintenance and Welfare of Parents and
Senior Citizens Act, 2007 cum
District Collector, Tenkasi District.

2.The Presiding Officer, Maintenance Tribunal,
constituted under the Maintenance and
Welfare of Parents and Senior Citizens Act, 2007
cum Revenue Divisional Officer,
Sankarankovil Division, Tenkasi District.

3.Palpandi

4.Gurusamy

5.Guruvammal

6.Selvi

7.Tamilarasi

8.Chelladurai

... Respondents



(R4 to R8 are suo motu impleaded
vide order dated 11.12.2023)

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Prayer : Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the first respondent in Mu.Mu./COLR/11029/2022-B1 dated 28.12.2022 and quash the same insofar as it not directs the third respondent to transfer the residential property bearing Door No.4/18 comprised in Old Survey No.310/1, New Survey No.1334/3 situated at Therku Theru, Duraisamiapuram, Thenmalai Village, Sivagiri Taluk, Tirunelveli District to the name of the petitioner herein and consequently direct the third respondent to re-convey the residential property bearing Door No.4/18 comprised in Old Survey No. 310/1, New Survey No.1334/3 situated at Therku Theru, Duraisamiapuram, Thenmalai Village, Sivagiri Taluk, Tirunelveli District to the name of the petitioner and put the petitioner in possession of the said property.

For Petitioner : Mr.Maria Roselin J

For Respondents : Mr.K.Balasubramani,
Special Government Pleader for R1 and R2

Mr.Vishnuvardhan for R3

ORDER

The petitioner is the mother of the private respondents herein. She settled the petition-mentioned property in favour of one of her sons/R3 herein vide settlement deed dated 18.09.2014. She subsequently moved the Maintenance Tribunal under Section 23 of the Maintenance and



Welfare of Parents and Senior Citizens Act, 2007 for cancelling document.

The Maintenance Tribunal vide proceedings dated 06.10.2022 gave certain directions. Aggrieved by the same, the third respondent filed appeal before the District Collector, Tenkasi. Vide order dated 28.12.2022, the appellate authority confirmed the order passed by the Maintenance Tribunal. Not satisfied with the same, this writ petition came to be filed by the petitioner herein.

2.The petitioner feels aggrieved by the fact that the authorities did not direct the third respondent to transfer the petition mentioned residential property which is also covered by the settlement deed dated 18.09.2014 (Doc No.3069 of 2014). The learned counsel appearing for the petitioner reiterated the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to grant relief as prayed for.

3.I am not persuaded by the submission of the learned counsel appearing for the petitioner. The power under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 can be invoked by the Maintenance Tribunals only if the deed of conveyance contains a condition as envisaged under the said provision. In this case, I do not find any condition incorporated in the settlement deed. The



recital is to the effect that since the third respondent was taking care of her, she out of love and affection had settled the property in his favour.

The settlement deed confers absolute title on the third respondent. It is also irrevocable in character. Section 23 of the Act came to be considered by the Hon'ble Supreme Court in the decision reported in **2022 SCC OnLine SC 1684 (Sudesh Chhikara v. Ramti Devi)**. It was held 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.”

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4. Therefore, the order impugned in this writ petition does not call for any interference. However, the third respondent had filed an undertaking affidavit. He states that he would maintain his mother. It is also stated that the mother/the petitioner herein can very well reside in the house. Recording the said undertaking given by the third respondent, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

01.03.2024

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

SKM

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