



W.P.(MD).No.10746 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.10746 of 2024

and

WMP(MD) No.9609 of 2024 & 17133 of 2024

S.Sugumar

... Petitioner

Vs

1.The District Collector,
Pudukkottai District,
Pudukkottai.

2.The Revenue Divisional Officer,
Aranthangi,
Pudukkottai District.

3.S.Palanimuthu

4.S.Revathi

5.The District Registrar (Administration)
Karaikudi,
Sivagangai District.

... 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 entire records pertaining to the impugned order passed by the first respondent vide his proceedings in Na.Ka.C6/1293359/2023 dated 15.03.2024 and quash the same.



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For Petitioner : Mr.B.S.Meltiue
For R1, R2 & R5 : Mr.S.Kameswaran
Government Advocate
For R3 & R4 : Mr.K.Gokul

ORDER

This writ petition has been filed challenging the proceedings in Na.Ka.C6/1293359/2023 passed by the first respondent on 15.03.2024.

2. The petitioner is the son of the third respondent and the fourth respondent is his sister. The petitioner's mother/third respondent had executed a gift deed in favour of the petitioner in Document No.828/2022 of Aranthangi Sub-Registrar Office, Pudukkottai District with respect of 2 acres comprised in S.Nos.114/5 and 114/3 situated at Vilanoor, Veelimangalam Revenue Village, Avudaiyarkovil Taluk, Pudukkottai District on 01.03.2022. While so, the third respondent made a complaint under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act') seeking maintenance. The second respondent issued an enquiry notice to the petitioner on 04.05.2022 and called upon him to attend an enquiry on 08.05.2022. The petitioner, third respondent as well as the fourth respondent and her husband attended the enquiry and after detailed enquiry, the second respondent by an order dated 15.05.2022 directed the petitioner to pay a sum of



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Rs.3,000/- per month as maintenance to the third respondent along with medical facilities. The petitioner duly complied with the said order without any default. Aggrieved against the said order, the third respondent filed an appeal before the first respondent and the first respondent has passed an order on 15.03.2024 cancelling the gift deed bearing Document No.828/2022, which was executed by the third respondent in favour of the petitioner. Challenging the same, this writ petition came to be filed.

3. 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”

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

5. Similarly matters have 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 any specific condition for providing maintenance to the transferrer 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



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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.

6. 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



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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.

(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



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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 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



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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.”

7. Accordingly, I have no hesitation to hold that the first respondent ought to have carefully perused the gift deed in question before passing an order for cancellation of aforesaid gift deed. In the absence of any condition made in the settlement by the third respondent, precisely, indicating that she should be maintained by the petitioner for her lifetime, she cannot insist by making an application under the Act for cancellation of the same. The first respondent inadvertently without going to the said aspect rushed to cancel the aforesaid gift deed. The said exercise is per se illegal. The definition clause of maintenance of the Act clearly provides for food, clothing, residence, medical attendance and treatment.

8. 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.



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9. This Court directs the *petitioner to pay a sum of Rs.5,000/- (Rupees five thousand only) per month to the third respondent till her life time and the same should be promptly deposited in her bank account in the first week of every month.* In case of default in payment of maintenance, the third respondent shall make an application before the jurisdictional Magistrate under Section 144 of BNSS Act, 2023. In case, the third respondent being deserted by the fourth respondent, it is needless to state that the petitioner should accommodate her in his house, where he resides.

10. Accordingly this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

28.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

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Pudukkottai District,
Pudukkottai.
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L.VICTORIA GOWRI, J.

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**ORDER IN
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