



W.P.(MD).No.17531 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.17531 of 2022

and

W.M.P.(MD)Nos.12759, 12761, 12762 of 2022 and 18441 of 2024

Thirumurugan

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Aruppukottai,
Virudhunagar District.

2.The Commissioner,
Aruppukottai Municipality,
Aruppukottai,
Virudhunagar District.

3.The Sub Registrar,
Aruppukottai,
Virudhunagar District.

4.Rathinam

... 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 of the 1st respondent in proceedings No.Moo.Mu.A5/9314/2021 dated 26.04.2022 cancelling the settlement deed in document No.4008/2013 and quash the same.



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For Petitioner : Mr.A.Srinivasan
For R-1 & R-3 : Mr.D.S.Neduncheliyan,
Government Advocate
For R-2 : Mr.N.Dilip Kumar,
For R-4 : Mr.Anto Prince

ORDER

Challenging the order of the 1st respondent dated 26.04.2022 this writ petition is filed.

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

3.The petitioner is the son of the 4th respondent. The 4th respondent and her husband late.Thiru. Somasundaram were blessed with four children, one female and three male, among which the petitioner is the third son. The petitioner's father passed away on 01.07.2013. On 03.09.2013, the 4th respondent executed a settlement deed bearing document No.4008 of 2013 of Aruppukottai Sub Registry dated 03.09.2013, thereby, settling two items of house properties in favour of the petitioner as well as his son. While being so, the 4th respondent made an application under Section 5 of the



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Maintenance and Welfare of the Parents and Senior Citizens Act, 2007, before the 1st respondent and the 1st respondent without going into the question of maintenance proceeded to cancel the settlement deed bearing document No.4008 of 2013 of Aruppukottai Sub Registry, executed by the 4th respondent in favour of the petitioner. Challenging the same, this writ petition came to be filed.

4.The learned counsel for the petitioner submitted that the petitioner had always been ready to pay an amount of Rs.5,000/- (Rupees Five Thousand only) as maintenance to the 4th respondent and in fact he had made payments through money order which was duly refused by the 4th respondent to be received. Hence, the claim of the 4th respondent that she was not maintained by the petitioner is baseless.

5.Per contra, the learned counsel for the 4th respondent submitted that the claim of the petitioner that he is always ready to maintain the 4th respondent is not true, never ever he had promptly maintained his mother. However, within 2 months from the date of death of their father, she had executed a settlement deed voluntarily out of her love and affection settling



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both the existing house properties in favour of the petitioner and his son. Within weeks of execution of the same, the 4th respondent was thrown to the streets without being maintained and providing proper livelihood and she is virtually suffering in penury and currently residing in a rented premises. In view of the same, the learned counsel for the 4th respondent submitted that the impugned order need not be interfered.

6.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



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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.”

7.Following the said judgment, the Division Bench of this Court to which I am a part (Hon'ble Mrs.Justice.L.Victoria Gowri) in W.A.(MD)No.809 of 2023 dated 12.06.2023, has already held that any settlement deed executed by a senior citizen in favour of his / her children in the absence of a specific condition for providing maintenance to the transferer could not be cancelled by the authorities concerned who are acting upon on an application under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The said proposition has been confirmed by the Hon'ble full bench of this Court in the case of **Sasikala and others .vs. Revenue Divisional Officer, dated 02.09.2022** 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



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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 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



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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 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



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

8.Hence, the 1st respondent ought not to have cancelled the settlement deed bearing document No.4008 of 2013, Aruppukottai Sub Registry, in the absence of any specific condition made by the transferer that she should be maintained during her life time. However, Section 2 (b) of the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007, defines the word maintenance and the same is extracted as follows:



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“2(b) **“maintenance”** includes provision for food, clothing, residence and medical attendance and treatment;”

9.The word maintenance not only provides for an amount to be paid as maintenance but the same includes food, clothing, residence and medical attendance including treatment. In the instant case, it is too shocking to understand that the petitioner son having enjoyed the benefit of the settlement deed executed by the helpless senior citizen mother in favour of him had thrown her virtually to the streets and it is pitiable and this Court records the callousness of the 1st respondent for not having directed the petitioner to pay a decent amount as maintenance to the mother. That apart, the definition for the word maintenance clearly indicates that it includes not only a decent amount as maintenance but includes food, clothing, residence and medical attendance including treatment. In the *lis* in hand, the property which has been settled by the mother in favour the petitioner are two plum house sites.

10.In view of the same, I am duty bound to record that the right of the mother to get maintenance under Section 2(b) maintenance and Welfare of Parents and Senior Citizens Act, 2007, would include her right to reside in



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the property belonging to the petitioner during her lifetime. That apart, the said act is a welfare measure to provide for more effective provisions for the Maintenance and Welfare of Parents and Senior Citizens as guaranteed and recognized under the Constitution and the same is a Welfare Act. The right which flows from the welfare act is intended by the lawmakers to fully protect the senior citizen till their last breath. In the instant case, the petitioner is to be appreciated for the fact that he is living along with his children in one of the houses settled by his own mother and that he is using the other house for his luxury or for his advantage to which also he is the owner. It is brought to the notice of this Court that apart from the two houses executed by the 4th respondent in favour of the petitioner there are two more houses settled by the father in favour of the son and grand sons.

11.In view of the same, this Court hereby direct the petitioner to permit the 4th respondent to reside in the house situated in New No.18, Old No.88, South Rathina Sabapathypuram street, Thirunagaram, Aruppukottai-626 101, till her life time and the 4th respondent's sons, S.Venkataselapathy, S/o.Late.Somasundaram, 87, South Rathina Sabapathypuram street, Thirunagaram, Aruppukottai-626 101 and S.Thillai Natarajan, S/o.Late.Somasundaram, 87, South Rathina Sabapathypuram



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street, Thirunagaram, Aruppukottai-626 101 are suo-motu impleaded as the respondents 5 and 6. Registry is directed to carry out the necessary amendments in the cause title. The petitioner and each of the respondents 5 and 6 are directed to pay Rs.3,335/- (Rupees Three Thousand Three Hundred and Thirty Five only) as maintenance to the mother till she breaths last and the same shall be credited every month in the account details which is mentioned as follows:

Name: S.Rathinam,

Account No.038100050321378, Tamil Nadu Merchantile Bank,

IFSC code: TMBL0000038

MICR Code: 626060202.

12.Accordingly, this writ petition is 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

- 1.The Revenue Divisional Officer,
Aruppukottai,
Virudhunagar District.
- 2.The Commissioner,
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- 3.The Sub Registrar,
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L.VICTORIA GOWRI, J.

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