



W.P(MD)No.19561 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.02.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.19561 of 2020

and

W.M.P(MD)Nos.16290 & 16292 of 2020

Theras Sugariga

... Petitioner

Vs.

- 1.The District Collector,
Sivagangai,
Sivagangai District.
- 2.The Revenue Divisional Officer,
Devakottai,
Sivagangai District.
- 3.The Sub Registrar,
Devakottai,
Sivagangai District.
- 4.Anthony
- 5.Anthoniammal Rose
- 6.Suseela Theras



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7.Jayanthi

8.Elizabeth Rani

9.Josephin Jeeva Mary

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the District Collector , Sivagangai in Pa.Mu.P1/10062/2020 dated 12.11.2020, quash the same and consequently direct the third respondent to restore the gift settlement deed dated 29.11.2019 (Document No. 4028/2019) in respect of the properties in S.No.447/2 - 1.97.0 hectares and S.No.447/4 - 0.11.40 ares of Narasimmapuram village, Devakkoattai Taluk, Sivagangai District.

For Petitioner : Mr.P.Vadivel

For Respondents : Mr.M.Lingadurai
Special Government Pleader
for R.1 to R.3

Mr.J.Karmegakannan for R.4

Mr.R.Paranjothi for R.5 to R.9

ORDER

Heard both sides.



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2.The writ petitioner is none other than the granddaughter of the fourth respondent. The fourth respondent executed settlement deed dated 29.11.2019 (Document No.4028 of 2019 on the file of Sub Registrar, Devakottai) settling the petition mentioned property in favour of the petitioner. Subsequently, the fourth respondent filed petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 for cancelling the said document. The Maintenance Tribunal (Revenue Divisional Officer, Devakottai) dismissed the petition vide proceedings dated 09.03.2020. Aggrieved by the same, the fourth respondent filed an appeal under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the District Collector, Sivagangai. The appellate authority vide proceedings dated 12.11.2020 allowed the appeal and set aside the settlement deed dated 29.11.2019. Challenging the same, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and



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called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The learned Special Government Pleader as well as the learned counsel appearing for the respondents 5 to 9 submitted that the impugned order does not call for interference. The learned counsel appearing for the respondents 5 to 9 would add that civil suit is pending between the parties and that the petitioner can as well pursue her remedy in the pending suit. It is further stated that after passing of the impugned order, the fourth respondent had executed settlement deeds in favour of his daughters and that they are subject matter of another writ petition.

5.The learned counsel appearing for the fourth respondent submitted that the daughters also failed to take care of him and that the fourth respondent has filed W.P(MD)No.23946 of 2022 in that regard.

6.I carefully considered the rival contentions and went through the materials on record. Copy of the settlement deed executed by the fourth respondent in favour of the petitioner has been enclosed in the typed set of papers. It does not contain any condition as envisaged under Section



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23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. It states that it contains a clause that the executant will not revoke the same. It is obvious from a reading of a document that an absolute settlement deed had been executed in favour of the petitioner. The question that calls for consideration is whether such a deed can be cancelled by invoking power under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 . The issue is no longer res integra. The Hon'ble Supreme Court of India in a decision reported in **2022 SCC OnLine SC 1684 (Sudesh Chhikara Vs. Ramti Devi & another)** had held as follows:

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



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15. 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.”

This judgment had been followed by me in a number of cases. Since the fourth respondent had executed an absolute sale deed without stipulating any condition on the petitioner as contemplated by Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007,



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Maintenance Tribunal would not have the jurisdiction to cancel such a document. That is why, the Revenue Divisional Officer, Devakottai rightly rejected the petition submitted by the fourth respondent. The appellate authority / District Collector, Sivagangai did not bear this aspect of the matter in mind. Respectfully applying the ratio laid down in *Sudesh Chhikara Vs. Ramti Devi & another*, the impugned order is set aside.

7.This writ petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

14.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To

- 1.The District Collector,
Sivagangai,
Sivagangai District.
- 2.The Revenue Divisional Officer,
Devakottai,
Sivagangai District.

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3.The Sub Registrar,
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