



W.P.(MD)No.5187 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.11.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

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D.Maheshkumar

... Petitioner

/Vs./

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The District Revenue Officer,
Tirunelveli District,
Tirunelveli.

3.The Revenue Divisional Officer,
Tenkasi, Tirunelveli District.

4.D.Gandhimathi

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent in Na.Ka.No.K4/39205/2017 dated 19.01.2018 and quash the same and further direct the 2nd Respondent to take an appeal filed by the petitioner on this file.



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For Petitioner : Mr.T.Selvan
For Respondents : Mr.S.Shanmugavel (R1 to R3)
Special Government Pleader

ORDER

This writ petition has been filed challenging the order dated 19.01.2018 passed by the second respondent, thereby dismissed the appeal filed by the petitioner as against the order passed by the third respondent thereby ordered declaring the settlement deed executed by the fourth respondent in favour of the petitioner in Document No.3348/2015, as void by order dated 21.06.2017.

2. Heard the learned counsel on either side and perused the materials placed before this Court.

3. The petitioner is the son of the fourth respondent. The fourth respondent owned the property comprised in S.No.255/1, measuring to an extent of 4.37 cents situated at Rail Nagar, Tenkasi. The fourth respondent had constructed 3 houses on the remaining places of her land. While being so, in the year 2015, on the assurance given by the petitioner



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that he shall maintain the fourth respondent till her lifetime, she had executed the settlement deed in favour of the petitioner on 23.09.2015 registered vide document number 3348/2015. However, after execution of the settlement deed dated 23.09.2015, the petitioner failed to maintain the fourth respondent and as such, she was constrained to file a compliant under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, before the third respondent.

4. On receipt of the said complaint, the third respondent issued a notice to the petitioner and conducted a detailed enquiry. After full fledged enquiry, the third respondent allowed the complaint lodged by the fourth respondent by declaring that the settlement deed executed in favour of the petitioner in respect of the subject property is void. Aggrieved by the same, the petitioner preferred an appeal before the second respondent under Section 16(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. However, it was dismissed as not maintainable. It is relevant to extract provision under Section 16(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 hereunder:-



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“16. Appeals

1. Any senior citizen or a parent, as the case may be, aggrieved by an order of a Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal:

Provided further that the Appellate Tribunal may, entertain the appeal alter the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.”

5. Accordingly, a Senior Citizen or a Parent being the aggrieved person may file an appeal before the second respondent under Section 16(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Whereas, the petitioner is not an aggrieved party and as such, he cannot maintain the appeal before the second respondent.

6. The learned counsel appearing for the petitioner would submit that the complaint itself is not maintainable under Section 23 of the



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Maintenance and Welfare of Parents and Senior Citizens Act, 2007, since the settlement deed dated 23.09.2015 registered vide Document Number 3348/2015 does not contain any specific Clause that the petitioner must maintain the fourth respondent on the execution of the settlement deed, failing which the settlement deed shall have to be cancelled.

7. In support of his contentions, the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in *Sudesh Chhikara vs. Ramti Devi and Another* reported in **2022 SCC OnLine SC 1684**. He also pointed out that this Court followed the judgment of the Hon'ble Supreme Court of India in the case of *S. Vanitha vs. the Deputy Commissioner* reported in **(2021) 15 SCC 730** holding that the Section 23 of the Act does not contemplate the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor should form part as a recital in the deed of transfer. This condition can be either express or implied. If there is no express recital in the deed, the Tribunal has to look around to find out the intention of the transferor.



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8. However, the other learned Single Judge of this Court followed the judgment of the Hon'ble Supreme Court of India in ***Sudesh Chhikara vs. Ramti Devi and Another reported in 2022 SCC OnLine SC 1684*** and held that the settlement deed should contain specific condition in order to attract the complaint under Section 23 of the Act. The said judgment also followed by the Hon'ble Division Bench of this Court in several judgments.

9. This Court already relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***S.Vanitha vs. the Deputy Commissioner*** reported in ***(2021) 15 SCC 730*** and held in the case of ***Mohamed Dayan vs. The District Collector, Tiruppur District*** reported in ***2023 SCC OnLine Mad 6079 (W.P. No. 28190 of 2022 dated 8.09.2023)***. The said judgment was followed and this Court held in several cases. Section 23 of the Act does not contemplate the condition that the transferee shall provide basic amenities and physical needs to the transferor should form part as a recital in the deed of transferor.



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10. This Court already dealt with the present issue in several writ petitions including the case of ***Mohamed Dayan Vs. District Collector.***, order dated **08.09.2023** in ***W.P.No.28190 of 2022***, in which this Court, after discussing various judgements of the Hon'ble Supreme Court of India and various judgements of High Court, held as follows:-

“33. Close reading of the principles considered by the various High Courts and the Supreme Court, there is no ambiguity with reference to the purpose and object sought to be achieved under the provisions of the Senior Citizen Act. Section 4(2) of the Act, unambiguously stipulates that the obligation of the children or the relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

34. In the context of the adoption of the phrase “lead a normal life” Rule 20(2)(i) of the Maintenance of Senior Citizen Rules, enumerates that “it shall be the duty of the District Collector to ensure that life and property of senior citizens of the District are protected and they are able to live with security and dignity”. Therefore, normal life includes security and dignity. Thus the normal life as indicated under Section 4(2) of the Act, is not mere life, but a life with security and dignity. In the context of Article 21 of the Constitution of India, life includes decent medical facility, food, shelter with dignity and security. All such combined necessities of human life is falling under the term “Normal Life” emboldened



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under Section 4(2) of the Senior Citizen Act. Therefore, simply providing food and shelter would be insufficient. But life includes providing of decent medical facilities, food, shelter and other requirements with dignity in commensuration with the status of the family and taking into consideration of the living style of the senior citizen throughout.

35. Therefore, the children defending their case merely on the ground that they are willing to provide food and shelter; cannot be taken as a ground for the purpose of sustaining the Settlement Deed executed by the senior citizen. The requirement of the provisions are to be complied in its real spirit and in the event of an iota of doubt, the Authority Competent is empowered to cancel the Settlement Deed or Gift Deed, as the case may be, in order to protect the normal life of senior citizen.

36. Section 4(3) denotes, the obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parents may lead a normal life. Therefore, it is an obligation on the part of the children to maintain his or her parents and ensure the parents to lead a normal life. In the event of complaint, the Authorities Competent are expected to ensure that the senior citizen and their life and dignity are protected. The above provision is to be read in conjunction with the Rules framed under the Act.

37. Rule 20 of the Maintenance of Senior Citizen



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Rules, provide duties and powers of the District Collector. The District Collector is casted upon the duty to ensure that the life and property of citizens of the District are protected and other people to live with security and dignity. Therefore, it is the statutory duty on the part of the District Collector to protect the safety and security of senior citizens in his District. Thus the complaint filed by the senior citizen, cannot be treated lightly. Such complaints are to be enquired into in a pragmatic manner, so as to understand the real grievances of the senior citizen and accordingly, all appropriate actions are to be initiated to provide safety, security and to protect the dignity of the senior citizen.

38. The Kerala High Court observed in the case of Radhamani and Others (cited supra), Section 23(1) of the Senior Citizen Act, cannot be interpreted to the disadvantage of the senior citizen. Section 23(1) of the Act contemplates that “Where any senior citizen who, after the commencement of this Act, has 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”. The phrase “ subject to the condition that the transferee shall provide the basic amenities” does not mean that the Gift or Settlement Deed



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should contain any such condition expressly. “Subject to the condition” as employed in Section 23(1), is to be holistically understood with reference to the subsequent phrase i.e., “deemed to have been made by fraud or coercion or undue influence”. Both the phrases would amplify that the deeming clause should be considered so as to form an opinion that the phrase “subject to condition” amounts to an implied condition to maintain the senior citizen and any violation would be sufficient for the purpose of invoking Section 23(1) of the Act, to cancel the Gift or Settlement Deed executed by the senior citizen.

39. To elaborate, the phrase “subject to condition” employed under Section 23(1) of the Act, is to be understood with reference to the love and affection by the senior citizen towards the person in favour of whom such Gift or Settlement Deed has been executed.

40. “Love and Affection” is an implied condition in the context of Section 23(1) of the Act, and therefore, there need not be any express condition in the Settlement Deed for the purpose of maintaining the senior citizen. Refusal of maintenance after executing the Settlement Deed or Gift Deed, is the ground for invoking the deemed ground of fraud or coercion or undue influence. When the deeming clause has been incorporated under the provisions of Section 23(1) of the Act, ‘Love and Affection’ to be construed as the consideration for executing the Gift or Settlement Deed. Thus the condition need not be expressly made in the document



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and the love and affection, which resulted in execution of the Deed by the senior citizen is to be construed as a condition for the purpose of invoking the deeming clause for declaring the document as fraud or coercion or undue influence.

41. The entire purpose and object of the Senior Citizens Act, is to consider the human conduct towards them. When the human conduct is indifferent towards senior citizen and their security and dignity are not protected, then the provisions of the Act, is to be pressed into service to safeguard the security and dignity of senior citizen. Therefore, the purposive interpretation of the provisions are of paramount importance and Section 23 of the Act, cannot be mis-utilised for the purpose of rejecting the complaint filed by the senior citizen on the ground that there is no express condition for maintaining the senior citizen. Even in the absence of any express condition in the document, “Love and Affection” being the consideration for execution of Gift or Settlement Deed, such love and affection becomes a deeming consideration and any violation is a ground to invoke Section 23(1) of the Act. Thus there is no infirmity in respect of the order passed by the second respondent in the present case.

42. The human conduct in the context of the senior citizen Act, is to be understood considering the relationship between the senior citizen and the beneficiaries of the Gift or Settlement Deed. Mostly the parents are executing the document in favour of their children. Since they may not be in a position to maintain the property at their old-age and more-



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so, they are intending to visibly express their love and affection towards their children by settling their properties. In some cases, the parents during their old-age are settling their property in order to avoid conflict between their children and to ensure that all children get equal share. If at all the parents decide to settle the property in favour of a son or daughter, then they are doing so, only with love and affection and with a fond hope that they will be taken care of by the son or daughter during their old-age. Thus love and affection, being the consideration and implied condition, within the meaning of Section 23(1) of the Act. The subsequent non-maintenance of senior citizen would attract Section 23(1) of the Act and the Authorities in such circumstances are empowered to declare the document as null and void.

43. Therefore, Section 23 is referable as a conduct of the transferee prior to and after execution of the Deed of Gift or Settlement, as the case may be. For all purposes, Section 23 is to be understood taking note of the conduct of the transferee and not with reference to the specific stipulation of condition in the Deed of Gift or Settlement.

44. In respect of the judgment relied on by the petitioner in the case of Sudesh Chhikara vs. Ramti Devi and Another (cited supra), the Three Judges Bench of the Hon'ble Supreme Court of India in the case of S.Vanitha vs. Deputy Commissioner, Bengaluru Urban and District and Others (cited supra) is to be followed. There are several judgments to establish that the purpose and object of the Senior Citizens



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Act, is to be complied with in its letter and spirit in order to protect the life, security and dignity of senior citizens. Thus the judgment relied on by the petitioner is of no avail as far as the present facts and circumstances of the case on hand is concerned.” The above case is squarely applicable to the case on hand.”

11. Therefore, though there is no specific condition in the settlement deed to show that the petitioner shall maintain the fourth respondent, the complaint is very much maintainable under Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

12. In view of the above, this Court finds no infirmity or illegality in the order passed by the second and third respondents. Accordingly, this Writ Petition is dismissed. However, the petitioner shall hand over the vacant possession of the subject properties in favour of the fourth respondent within a period of four weeks from the date of receipt of a copy of this order. No costs.

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G.K.ILANTHIRAIYAN, J.

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TO:

- 1.The District Collector,
Tirunelveli District,
Tirunelveli.
- 2.The District Revenue Officer,
Tirunelveli District,
Tirunelveli.
- 3.The Revenue Divisional Officer,
Tenkasi, Tirunelveli District.

Order made in
W.P.(MD)No.5187 of 2018

Dated:
08.11.2024