



W.P(MD)No.19141 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.03.2024

Delivered on : 06.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.19141 of 2021

and

W.M.P.(MD)No.15901 of 2021

Bala Ganapathi

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Paramakudi.

2.Pushpam

... 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 first respondent in proceedings No.Pa.Mu.(A4) 4950/2019, dated 06.05.2020 and quash the same as illegal.

For Petitioner : Mr.J.Madhu

For Respondents : Mrs.K.Christy Theboral,
Additional Government Pleader, for R1.

: No Appearance, for R2.



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ORDER

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This Writ Petition is directed against the order, dated 06.05.2020 passed by the first respondent cancelling the gift settlement deed, dated 09.06.2016 under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

2. Admittedly, the petitioner is the son of the second respondent. The second respondent has executed a gift settlement deed, dated 16.10.2016 vide document No.2058/2016 before the Sub Registrar Office, Manamadurai.

3. It is not in dispute that the second respondent has filed a civil suit in O.S.No.63 of 2017 against the petitioner claiming the relief of cancelling the gift settlement deed, dated 17.10.2016, alleged to have been taken by the petitioner fraudulently from the second respondent and the same is pending before the Sub Court, Paramakudi. Pending suit, the second respondent, by alleging that one Boominathan has purchased the property from the petitioner, has impleaded the said Boominathan as third defendant in addition to the Sub Registrar, Manamadurai, who was arrayed as second defendant.



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4. The petitioner herein has filed his written statement and is contesting the suit. It is also not in dispute that the trial of the suit in O.S.No.63 of 2017 has already been commenced and is pending for defendant side evidence.

5. Pending the above suit in O.S.No.63 of 2017, the second respondent has filed a complaint before the first respondent to cancel the gift settlement deed, dated 17.10.2016 alleging that the same was obtained by the petitioner fraudulently. The first respondent, after hearing both the parties has passed the impugned order, dated 06.05.2020, declaring that the gift settlement deed, dated 17.10.2016 is void, invoking Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

6. Before entering into further discussion, it is necessary to refer Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

“23. Transfer of property to be void in certain circumstances.



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(1) *Where any senior citizen who, after the commencement of this Act, has transferred 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.*

(2) *Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.*

(3) *If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.”*

7. At this juncture, it is necessary to refer the decision of Hon'ble Supreme Court in the case of ***Sudesh Chhikara Vs. Ramti Devi and another*** reported in ***2022 SCC Online SC 1684***, and the relevant portions are extracted hereunder :



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“ 12. Sub-section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression “by way of gift or otherwise”. For attracting sub-section (1) of Section 23, the following two conditions must be fulfilled:

a. The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and

b. the transferee refuses or fails to provide such amenities and physical needs to the transferor.

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 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.

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.

8. The above decision is squarely applicable to the case on hand. As rightly contended by the learned counsel for the petitioner, the second respondent has not imposed any condition, directing the petitioner to take care of her and her husband till their life time.

9. No doubt, the second respondent in the settlement deed now under challenge has expressed her belief that the petitioner would take care of her and her husband as before, till their life time. But, it is



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pertinent to note that the settlement deed does not stipulate any condition against the petitioner. Section 22 of the said Act covers only transactions wherein the property is conditionally transferred by the parents.

10. As already pointed out, the settlement deed now under dispute is not subjected to any condition; that the petitioner shall provide the basic amenities and basic physical needs to the second respondent. In the absence of any such condition or stipulation in the settlement deed, the question of invoking the power provided to the second respondent under Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act 2007 does not arise at all.

11. More importantly, as already pointed out, the second respondent has already filed a civil suit before the competent civil Court challenging the settlement deed alleging that the same was obtained by her son fraudulently and that the same is pending in part-heard stage. The learned counsel for the petitioner has relied on the judgment of full Bench of this Court in the case of ***Sasikala Vs. The Revenue Divisional Officer cum Sub Collector, Sivagangai District and another [W.P. (MD)Nos.6889 of 2015 and batch of cases***, dated 02.09.2022, wherein



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the writ petition in W.P.(MD)No.6889 of 2015 with a similar dispute as that of the present case was ordered to be delinked as the question referred to the full Bench is different from the issue involved in the said writ petition.

12. As rightly contended by the learned counsel for the petitioner, the first respondent after referring to the case of both the parties, has passed a cryptic and non-speaking order; that since the petitioner has not provided the basic amenities and basic physical needs to the second respondent and also refused to provide the same, the document has to be declared as void.

13. It is pertinent to note that the second respondent in her petition before the first respondent has specifically stated that her son has expressed his readiness to maintain her till her lifetime, but she was not interested as her daughters are protecting them. When the second respondent herself has stated that her son was ready and willing to maintain her, as rightly contended by the learned counsel for the petitioner, this Court is also at loss to understand as to how the first respondent has come to a decision that the petitioner has refused to



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provide the basic amenities and basic physical needs to the second respondent. Whatever it is, since the settlement deed does not contain any condition or stipulation above referred, this Court has no hesitation to hold that Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act 2007 cannot be made applicable. Consequently, this Court concludes that the impugned order cannot legally be sustained and as such, the same is liable to be set aside.

14. In the result, the Writ Petition is allowed and the impugned order passed by the first respondent in proceedings No.Pa.Mu. (A4) 4950/2019, dated 06.05.2020, is quashed. Consequently, connected Miscellaneous Petition is closed. No costs.

06.06.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das

To

The Revenue Divisional Officer,
Paramakudi.



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K.MURALI SHANKAR, J

DAS

Pre-delivery order made in
W.P(MD)No.19141 of 2021
and
W.M.P.(MD)No.15901 of 2021

Dated : 06.06.2024