



W.P.(MD)No.20654 of 2021

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Reserved on : 12.07.2024

Pronounced on : 02.08.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.20654 of 2021

and

W.M.P.(MD)No.17274 of 2021

S.Vasanthakumar

... Petitioner

Vs.

1. Meenakshi

2. The Revenue Divisional Officer cum
Senior Citizen Maintenance and
Welfare original Tribunal,
Madurai.

3. The District Magistrate cum
Senior Citizen Maintenance and
Welfare Appellate Tribunal,
Madurai.

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the third respondent in ந.க.எண்.சி5/48788/2021 dated 12.10.2021 and quash the same.



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For Petitioner : Mr.S.Venkatasubramaniyan
For R1 : Mr.R.J.Karthick
For R2 & R3 : Mr.V.Om Prakash
Government Advocate

ORDER

The Writ Petition is directed against the order dated 12.10.2021 passed by the third respondent, confirming the order of the second respondent dated 12.09.2019.

2. Admittedly, the writ petitioner is the son of the first respondent.

3. The first respondent has executed two gift settlement deeds dated 01.12.2016 in favour of her two sons (writ petitioner and his brother Pandian) vide document Nos.12278 of 2016 and 12279 of 2016 on the file of the Avadi Sub Registrar Office, Tiruvallur District. The first respondent has then filed a petition before the second respondent seeking to cancel the gift settlement deeds dated 01.12.2016 executed by her in favour of the writ petitioner and her another son Pandian invoking the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007



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(hereinafter called as 'the said Act'). The writ petitioner has raised objections. The second respondent, after enquiry, has passed an order dated 12.09.2019 cancelling the two gift settlement deeds dated 01.12.2016 in document Nos.12278 of 2016 and 12279 of 2016 executed in favour of the writ petitioner and his brother Pandian under Section 23(1) of the said Act. Aggrieved by the said order of the second respondent, the writ petitioner has preferred an appeal before the third respondent under Section 16 of the said Act and the third respondent has passed the impugned order dated 12.10.2021 dismissing the appeal and thereby confirming the order passed by the second respondent. Challenging the order of the third respondent, the above writ petition came to be filed.

4. It is the specific case of the first respondent that the property in Punja Survey No.42/1B1A/1A2 measuring to an extent of 6 cents in No.3, Paruthipattu Village, Avadi Revenue Taluk, Tiruvallur District belonged to the first respondent vide sale deed dated 29.04.1981, that the first respondent has put up tiled house and obtained electricity connection, that the first respondent had two sons and two daughters, that the first



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respondent's sons Vasanthakumar (writ petitioner herein) and Pandian had taken her to Registrar office and obtained two gift settlement deeds from her under undue influence, that the first respondent's sons have not even provided the basic needs and failed to maintain her, that the writ petitioner has borrowed more than Rs.10 lakhs for his business purpose and out of which, he paid Rs.2,50,000/- only and refused to pay the balance amount, that the writ petitioner and the said Pandian have driven the first respondent out of dwelling house, that the first respondent was compelled to reside with her daughter in Madurai and that therefore, the first respondent was constrained to file the petition before the second respondent invoking the provisions of the said Act.

5. It is the specific contention of the writ petitioner that his mother-first respondent had executed gift settlement deeds in favour of the writ petitioner and in favour of his brother Pandian out of natural affection and attachment to them, that there was no condition stipulated in the gift settlement deeds, that there was a recital in the document that the said document cannot be changed or revoked, that the complaint came to be lodged by the first respondent at the instigation of the writ petitioner's



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sisters and that the writ petitioner, since the execution of the gift settlement deed, has been in possession and enjoyment of the said property.

6. It is not in dispute that the first respondent has earlier filed a petition before the second respondent but the second respondent dismissed the petition on the ground of jurisdiction as the documents came to be executed on the file of Avadi Sub Registrar Office, that the first respondent has preferred an appeal before the third respondent and the third respondent has passed an order dated 26.12.2018 setting aside the order passed by the second respondent and directed the second respondent to proceed with the enquiry and pass orders in accordance with law and that thereafter the second respondent, after enquiry, has passed the order dated 12.09.2019 and challenging the same, the appeal came to be filed before the third respondent.

7. At the outset, the learned counsel appearing for the first respondent as well as the learned Government Advocate appearing for the respondents 2 and 3 would submit that the third respondent has no



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jurisdiction to try the appeal filed by the writ petitioner as he was not having any right of appeal under the provisions of the said Act.

8. It is pertinent to note that Section 16 of the said Act contemplates for filing of the appeal only by senior citizen or parent, who is aggrieved by an order of the Tribunal. At this juncture, it is necessary to refer the judgment of the Hon'ble Division Bench of this Court in the case of ***K.Raju Vs. Union of India and others*** reported in ***2021 (2) CTC 129***, wherein, the Hon'ble Division Bench has observed,

“9. When the clear words of a statute do not permit any other meaning or interpretation, particularly when it pertains to a right of appeal, additional words cannot be read into the provision to discover a right in favour of a class of persons excluded by necessary implication in the appellate provision. When the words used in Section 16 of the Act are “Any senior citizen or a parent ... aggrieved by order of a Tribunal may ... prefer an appeal...” and the other words govern the time or describe the senior citizens or the parent in the alternative, there is no room to imagine that others aggrieved by an order of the tribunal may also prefer an appeal on the ground that the scales must be balanced between the two sides.”



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9. In the case on hand, as already pointed out, the second respondent Tribunal has passed orders in favour of the first respondent-mother. Though the writ petitioner was aggrieved by the order of the Tribunal, he cannot be considered as an aggrieved person as contemplated under Section 16 of the said Act. Applying the plain meaning of Section 16 of the said Act and also the dictum of the Hon'ble Division Bench of this Court, this Court has no hesitation to hold that the appeal filed before the third respondent cannot legally be entertained and as such, the order passed in the appeal, without jurisdiction, cannot be sustained. As already pointed out, the order of the second respondent has been confirmed by the third respondent in the appeal and that since the order passed by the third respondent, which is without jurisdiction, is nullity, the order of the second respondent remains in force. Hence, the above writ petition can only be taken as one, which was filed challenging the order of the second respondent.

10. Before entering into further discussion, it is necessary to refer Section 23 of the said Act,

“23. Transfer of property to be void in certain circumstances. - (1) Where any senior citizen who, after



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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.”

11. No doubt, Section 23 refers about fraud, coercion and undue influence but does not say that the Tribunal has to decide about the fraud



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or coercion or undue influence pleaded by the applicant. Section 23 contemplates that transfer of property made by a senior citizen subject to the condition that he must be given the basic amenities and basic physical needs and in case of refusal to comply with the said condition then that transfer shall be deemed to have been made by fraud or coercion or undue influence. To put it in other way, the above section treats the transfer of the property acted upon in particular manner to be deemed to have been made by fraud or coercion or undue influence. But it is pertinent to note that the concept of fraud or coercion as contemplated in Section 23 of the said Act to be the ground to declare the instrument void is limited to the breach of condition.

12. As rightly contended by the learned counsel appearing for the writ petitioner, since the above section provides for the condition that the transferee shall provide basic amenities and physical needs to the first respondent to be abided by him and in the event such condition is not abided by, it would constitute a ground to declare that the instrument of gift to be void and that the concept of fraud or coercion contemplated in Section 23 of the said Act is referable to the breach of such condition only.



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13. A Division Bench of Karnataka High Court in the case of ***Sri Jayashankar Vs. The Assistant Commissioner and others*** in ***W.A.No.339 of 2023 dated 24.04.2024***, while considering a similar plea, has observed as follows:-

“6.1 The words 'fraud and coercion' mentioned in the Section could not be enlarged to the normal concept of 'fraud' or 'coercion' in civil law. In order to establish 'fraud' or 'coercion' a foundation of established facts is needed to conclude about 'fraud' as understood in common legal parlance, establishing a fraud or fraudulent conduct by any person would indispensably require leading of evidence to prove the facts of fraud. For the purpose of Section 23(1), fraud is that the transfer is effected and the condition therein about providing basic amenities and physical needs to the transferor by the transferee, is not observed and abided by the transferee.

6.2 The group of words 'since the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence' creates a deeming fiction. The deeming fiction is referable to and is delimited to the breach of condition as above on the basis of which, the transfer has been made. It is in this limited sense that



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'fraud' or 'coercion' or 'undue influence' mentioned in this Section has to be understood and applied.

6.3 The Tribunal exercising powers under Section 23(1) of the Act is not a civil court, nor the powers exercised by the Tribunal under the said provision are the powers of civil court. They are the powers in the context of the provisions of the Act which have their own purpose and object, which is to provide more effective recourse in law for maintenance and welfare of parents and senior citizens and to guarantee and recognize for them their rights.

6.4 In the above view, it will not be permissible in law for the Tribunal, while exercising powers under Section 23(1) of the Act, to pronounce upon generally that the transfer of the property by way of gift or otherwise was fraudulent or that the transferor was guilty of fraud or coercion in the general sense of the term. The rights and obligations arising for the parties in the context of commission of fraud as is to be applied in general law, are the civil disputes. It is not open for the Tribunal functioning under the Act to pronounce upon such fraud having committed in effecting the transfer.

6.5 In view of the above position obtaining, this Court is of the view that the Tribunal misdirected itself in



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law in making the observations in paragraph 13 of its order by suggesting that the gift deed was fraudulently obtained from the complainant. The aspects mentioned by the Tribunal in that regard are to be proved by leading of evidence. It was not permissible for the Tribunal to arrive at a different finding in that regard. Even otherwise, recording of such finding was beyond the powers and jurisdiction of the Tribunal.”

14. As already pointed out, the first respondent has pleaded that the gift settlement deed was obtained from her under undue influence. It is pertinent to note that the third respondent is not having any power or jurisdiction to consider the normal concept of fraud or coercion or undue influence applicable in civil laws. The plea of fraud or coercion or undue influence ought to be pleaded with necessary particulars and ought to be proved by leading evidence and that can only be done before the competent civil Court. In the present case, though the first respondent has pleaded undue influence, the second respondent as well as the third respondent without any discussion, by only referring to the statement of the parties, have passed non-speaking orders cancelling the gift settlement deed.



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15. The learned counsel appearing for the writ petitioner would mainly contend that the impugned document does not contain any condition as required under Section 23 of the said Act, that the first respondent has neither pleaded nor shown that the gift settlement deed does contain condition that the transferee would provide the basic amenities and basic physical needs to the first respondent and that the said condition was not complied with by the writ petitioner.

16. A Full Bench of Kerala High Court in the case of ***Subhashini Vs. The District Collector, Kozhikode and others*** reported in ***AIR OnLine 2020 KER 674***, while answering the reference, has dealt with the scope of Section 23 of the said Act elaborately and has come to a conclusion that the condition as required under Section 23(1) for provision of basic amenities and basic physical needs to a senior citizen has to be expressly stated in the document of transfer, which transfer can only be one by way of gift or which partakes the character of gift or a similar gratuitous transfer and it is a jurisdictional fact, which the Tribunal will have to look into before invoking Section 23(1) and proceeding on a summary enquiry.



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17. The learned counsel appearing for the writ petitioner would rely on the decision of the Hon'ble Supreme Court in the case of ***Sudesh Chhikara Vs. Ramti Devi*** reported in ***2022 SCC OnLine SC 1684***, wherein also, the Respondent no.1-mother had executed a release deed in favour of her daughters including the appellant, that subsequently, the Respondent no.1-mother had filed a petition under Section 23 of the said Act alleging that after executing the release deed, her son and daughters were not maintaining her, that the Maintenance Tribunal has come to a decision that the release deed dated 14.11.2008 was null and void, that the said order came to be challenged before the High Court and the High Court has confirmed the order passed by the Maintenance Tribunal and that when the matter was taken up before the Hon'ble Supreme Court, the Hon'ble Apex Court has held as follows:-

“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



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

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.

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)



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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.

15. We have perused the counter affidavit filed by respondent no.1. Even in the counter, it is not pleaded that the release was subject to such a condition. It is merely pleaded that the appellant had no intention to take care of her mother. Thus, the order of the Maintenance Tribunal cannot be sustained as the twin conditions incorporated in sub-Section (1) of Section 23 were not satisfied. Unfortunately, the High Court has not adverted to the merits of the case at all.”



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18. The above decisions are squarely applicable to the case on hand.

19. Section 23 of the said Act contemplates that the transfer must have been made subject to the condition that the transferee would provide the basic amenities and basic physical needs to the transferor. In the present case, the first respondent has not even pleaded that the gift settlement deed was executed subject to a condition that the writ petitioner would provide the basic amenities and basic physical needs to her and that the writ petitioner has failed to comply with the said condition. In the absence of any such condition, applying the dictum of the Hon'ble Supreme Court in ***Sudesh Chhikara's*** case above referred, the question of invoking Section 23 of the said Act does not arise at all. Consequently, this Court concludes that the impugned order cannot legally be sustained and the same is liable to be quashed.

20. At this juncture, the learned counsel appearing for the first respondent would submit that after cancellation of the gift settlement deed by the second respondent, the first respondent sold the property to one Naveen Kumar, S/o.Natarajan on 31.10.2019 for a valuable consideration



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of Rs.21,12,500/- and out of the said amount, she has been maintaining herself and that the said factum of the alienation and the third party interest had already been brought to the knowledge of the writ petitioner during the pendency of the proceedings before the third respondent but the writ petitioner for the best reasons known to him has not chosen to implead the said Naveen Kumar, who is the owner of the property as on today.

21. The learned counsel appearing for the writ petitioner would submit that the writ petitioner has immediately filed an appeal before the third respondent on 18.10.2019 itself and during the pendency of the appeal, the first respondent has purposely and wantonly executed a sale deed in favour of her daughter's son Naveen Kumar with sole intention to cause hardship to the writ petitioner and that since the very cancellation of the gift settlement deed made by the second respondent is legally invalid, the first respondent has absolutely no right to sell the property in dispute to anybody.

22. It is pertinent to note that even according to the first respondent, she had executed sale deed in favour of her daughter's son Naveen Kumar



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on 31.10.2019 during the pendency of the appeal before the third respondent. As rightly contended by the learned counsel appearing for the writ petitioner, since the very cancellation of the gift settlement deed made by the second respondent cannot legally be sustained, the first respondent has absolutely no right or title in the property in dispute so as to enable her to execute a sale deed and as such, the objection for non-impleadment of the alleged purchaser cannot be entertained.

23. In the result, this Writ Petition stands allowed and the impugned order passed by the third respondent dated 12.10.2021 and the order passed by the second respondent dated 12.09.2019 are hereby quashed. The first respondent is at liberty to approach the competent civil Court for challenging the settlement deed, if so advised. Consequently, connected Miscellaneous Petition is closed. No costs.

02.08.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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K.MURALI SHANKAR,J.

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To

1. The Revenue Divisional Officer cum
Senior Citizen Maintenance and
Welfare original Tribunal,
Madurai.
2. The District Magistrate cum
Senior Citizen Maintenance and
Welfare Appellate Tribunal,
Madurai.

Pre-Delivery Order made in
W.P.(MD)No.20654 of 2021
and
W.M.P.(MD)No.17274 of 2021

Dated : 02.08.2024