



W.P.(MD)No.20701 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.03.2024

Pronounced on : 25.06.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.20701 of 2021

and

W.M.P.(MD)No.17310 of 2021

Chitrakani

... Petitioner

Vs.

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Sattur,
Virudhunagar District.
3. The Sub Registrar,
Rajapalayam,
Virudhunagar District.
4. M.Ponnuchamy
5. P.Palpandi

... Respondents



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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 impugned order passed by the second respondent in Ni.Mu.A1/116/2021 dated 01.11.2021 and quash the same as illegal.

For Petitioner : Mr.R.J.Karthick
For R1 to R3 : Mr.P.Thambidurai
Government Advocate
For R4 : Mr.A.Saravanan
For R5 : No appearance

ORDER

The Writ Petition is directed against the order dated 01.11.2021 passed by the second respondent, setting aside the gift settlement deed dated 17.07.2013 executed by the fourth respondent in favour of the writ petitioner and the fifth respondent.

2. Admittedly, the writ petitioner and the fifth respondent are the sons of the fourth respondent.

3. The fourth respondent has executed a gift settlement deed dated 17.07.2013 vide document No.2771/2013 in favour of his sons-writ



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petitioner and fifth respondent in respect of agricultural lands in Survey Nos.529/1, 536/3 and 538/2 measuring 1.66 acres in Venganallur Village, Rajapalayam Taluk, Virudhunagar District. The fourth respondent has then filed a petition before the first respondent invoking Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter called as 'the said Act') alleging that the writ petitioner and the fifth respondent under the guise of maintaining have swindled the agricultural property and that they have failed to maintain the fourth respondent. The second respondent, after enquiry, has passed the impugned order dated 01.11.2021 cancelling the gift settlement deed dated 17.07.2013. Aggrieved by the impugned order, the present writ petition came to be filed.

4. It is evident from the records that there existed some disputes between the fourth respondent and his wife and that the writ petitioner is with his mother and whereas, the fifth respondent and his sister Senthamarai are with the fourth respondent. It is not in dispute that on the complaints lodged by both the sides, FIRs came to be registered against both the parties.



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5. The main contention of the writ petitioner is that the second respondent has not conducted proper enquiry, that the writ petitioner was not given reasonable opportunity of being heard, that the second respondent has proceeded in a hurried manner without following the rules prescribed under the said Act of 2007 and Rules of 2009 and that since the second respondent has passed the impugned order in violation of principles of natural justice, the same cannot legally be sustained.

6. As rightly contended by the learned counsel appearing for the fourth respondent and the learned Government Advocate appearing for the respondents 1 to 3, the second respondent has issued notice to all the parties after the receipt of the complaint of the fourth respondent, that all the parties including the writ petitioner have entered into appearance before the second respondent, that the second respondent has recorded the statement of the parties and after giving sufficient opportunities, has passed the impugned order and that therefore the objection of the writ petitioner's side cannot be entertained.

7. It is pertinent to note that the writ petitioner has specifically admitted that the writ petitioner has entered into appearance in pursuance



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of the notice given by the second respondent and had taken part in the enquiry.

8. As rightly contended by the learned Government Advocate appearing for the respondents 1 to 3, though the fourth respondent has given a complaint before the first respondent on 08.02.2021, the second respondent, after conducting enquiry, has passed the impugned order only on 01.11.2021 and that the writ petitioner has not raised any objections that he was not given proper opportunity to putforth his defence, before passing the impugned order. Hence, the above contention of the writ petitioner, which is devoid of substance, is liable for rejection.

9. Now turning to the main contention of the writ petitioner that the impugned document does not contain any condition as required under Section 23(1) of the said Act, that the fourth respondent has neither pleaded nor shown that the gift settlement deed does contain condition that the transferees would provide the basic amenities and basic physical needs to the transferor and that the said condition was not complied with by the writ petitioner.



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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 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.”



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11. 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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12. The learned counsel appearing for the fourth respondent would rely on two decisions of a learned Judge of this Court, one in the case of ***Mohamed Dayan Vs. The District Collector, Tiruppur District and others*** reported in ***2023-2-Writ L.R. 313*** and another in the case of ***Gandhimathi Vs. The Sub Divisional Magistrate/Revenue Divisional Officer, Salem and others*** reported in ***CDJ 2024 MHC 787***. In ***Mohamed Dayan's*** case, the learned Judge, after referring to the judgment of the Hon'ble Supreme Court in ***Sudesh Chhikara's*** case above referred and also the Three Judges Bench of the Hon'ble Supreme Court in the case of ***S.Vanitha Vs. Deputy Commissioner, Bengaluru Urban and District and others*** reported in ***(2021) 15 SCC 730***, has observed that since ***Sudesh Chhikara's*** case decided by the Two Judges Bench of the Hon'ble Supreme Court, he was following ***S.Vanitha's*** case and the relevant passages are extracted hereunder:-

“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



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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-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



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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 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



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the petitioner is of no avail as far as the present facts and circumstances of the case on hand is concerned.”

13. No doubt, when a judgment rendered by the Three Judges Bench of the Hon'ble Supreme Court is available, the same has to be preferred than the judgment pronounced by a Bench of Two Judges. With great respect to the learned Brother Judge, the Hon'ble Supreme Court in ***Vanitha's*** case has nowhere given any finding nor expressed their view contrary to the decision rendered by the Hon'ble Supreme Court in ***Sudesh Chhikara's*** case.

14. In ***Vanitha's*** case, the Hon'ble Supreme Court, while considering the scope of provisions of the Protection of Women from Domestic Violence Act and the said Act, has made a distinction between Sub-section (1) and Sub-section (2) of Section 23 of the said Act and the relevant passages are extracted hereunder:-

“16. Sub-section (1) of Section 23 covers a situation where property has been transferred after the enactment of the legislation by a senior citizen (by gift or otherwise) subject to the condition that the transferee must provide the basic amenities and physical needs to the transferor. In



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other words, Sub-section (1) deals with a situation where the transfer of the property is accompanied by a specific condition to provide for the maintenance and needs of a senior citizen. In such an event, if the transferee fails to provide the maintenance and physical needs, the transfer of the property is deemed to have been vitiated by fraud, coercion or under undue influence. Sub-section 1, in other words, creates a deeming fiction of the law where the transfer of the property is subject to a condition and the condition of providing for maintenance and the basic needs of a senior citizen is not fulfilled by the person upon whom the obligation is imposed. Then, at the option of the transferor, the transfer can be declared as void by the Tribunal. On the other hand, Sub-section (2) of Section 23 envisages a situation where a senior citizen has a right to receive maintenance out of an estate. Where such a right exists, the right of maintenance can be enforced where the estate or a portion of it, is transferred against a transferor who has notice of the right; or if the transfer is gratuitous. The right however cannot be enforced against a transferee for consideration and without notice of the right. Now, Sub-section (1) of Section 23 envisages a situation where the transfer of property is by the senior citizen. This is evident from the language of sub-Section (1) namely “where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his



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property...”. On the other hand, sub-Section (2) of Section 23 does not confine itself to a transfer by a senior citizen, unlike sub-Section (1). SubSection (2) uses the expression “such estate or part thereof is transferred”. Where a senior citizen has a right to receive maintenance out of the estate and any part of it is transferred, sub-section 2 permits the enforcement of the right to receive maintenance out of the estate against a transferee with notice or against a gratuitous transferee. Sub-Section (2), in other words, may cover a situation where the transfer of the estate (in which a senior citizen has a right to maintenance) is by a third party, in which event, the provision provides the right to enforce the claim of maintenance against such transferee (other than those transferees for consideration or without notice of the pre-existing right). Arguably, the language of sub-section (2) is broad enough to also cover a situation where the transfer is by the senior citizen, in which event the transferee with notice of the right; or a gratuitous transferee, can be made subject to the enforcement of the right against the transferred estate. Another distinction between sub-Section (1) and sub-Section (2) of Section 23 must also be noticed. Under sub-Section (1), where a transfer has been made by a senior citizen subject to the condition that the transferee will provided for basic amenities or physical needs of the transferor and if there is a failure of the transferee to fulfil



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the condition, two consequences follow: (i) the transfer of property shall be deemed to have been made by fraud or coercion or under undue influence; and (ii) the transfer shall, at the option of the transferor, be declared to be void by the Tribunal. The deeming consequence which is provided for in sub-Section (1) is not incorporated in sub-Section (2). Sub-Section (2), in contradistinction, stipulates that the right to receive maintenance can be enforced against a gratuitous transferee or a transferee with notice of the pre-existing right of a citizen to receive maintenance out of an estate notwithstanding who is the transferee of the estate. In keeping with the salutary public purpose underlying the enactment of the legislation, the expression „transfer" would include not only the absolute transfer of property but also transfer of a right or interest in the property. This would also be in consonance with the provisions of Section 2(f) which defines the expression property to include “rights or interests in such property”. The expression “transfer” not having been defined specifically by the legislation, it must receive an interpretation which would advance the beneficent object and purpose of its provisions. Sub-section (2) of section 23 speaks of the enforcement of the “right to receive maintenance” which is more comprehensive in its nature, than merely enforcing an order for maintenance passed under Section 9 of the Act.



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17. The substance of sub-Section (2) of section 23, as submitted by the Second and Third respondents, is that the Tribunal had the jurisdiction to pass an order directing the eviction of the appellant who is their daughter-in-law. According to the submission, the power to order eviction is implicit in the provision guaranteeing a “right to receive maintenance out of an estate” and the enforcement of that right. In supporting the submission, they have referred to the view which has been taken by several High Courts, indicating that the Tribunal may order the eviction of a child or a relative from the property of a senior citizen, where there has been a breach of the obligation to maintain the senior citizen. The Tribunal under the Senior Citizens Act 2007 may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent. Eviction, in other words would be an incident of the enforcement of the right to maintenance and protection. ...”

15. In the above decision, the Hon'ble Apex Court has mainly dealt with Sub-section (2) of Section 23 of the said Act and whereas, we are concerned with Section 23(1) of the said Act in the case on hand.



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16. It is pertinent to mention that the learned Judge of this Court has expressed his view that “Love and Affection” has to be construed as the consideration for executing the Gift or Settlement Deed and 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. But the Hon'ble Supreme Court in *Sudesh Chhikara's* case has observed that when a senior citizen parts with his or her property by executing a gift deed in favour of his or her near and dear ones out of love and affection without any expectation in return, their failure to look after the senior citizen cannot be brought under Section 23 (1) of the said Act.

17. In the present case, the gift settlement deed now under challenge does not contain any condition that the writ petitioner and the fifth respondent have to provide the basic amenities and basic physical needs to the fourth respondent. As already pointed out, the fourth respondent has not even pleaded that the gift settlement deed was executed subject to a condition that the transferees would provide the basic amenities and basic



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physical needs to the transferor 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 has no hesitation to hold that the impugned order, which is legally unsustainable, is liable to be set aside.

18. In the result, this Writ Petition stands allowed and the impugned order passed by the second respondent dated 01.11.2021 is hereby quashed. Consequently, connected Miscellaneous Petition is closed. No costs.

25.06.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

Note : Issue order copy on 12.07.2024



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K.MURALI SHANKAR,J.

csn

To

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Sattur,
Virudhunagar District.
3. The Sub Registrar,
Rajapalayam,
Virudhunagar District.

Pre-Delivery Order made in
W.P.(MD)No.20701 of 2021
and
W.M.P.(MD)No.17310 of 2021

Dated : 25.06.2024