



W.P(MD)No.27051 of 2023

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 10.07.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.27051 of 2023

and

W.M.P.(MD)Nos.23227, 23230 and 23231 of 2023

S.Paramasivan

... Petitioner

Vs.

- 1.The Sub Collector Cum  
Sub Divisional Magistrate,  
Thoothukudi,  
Thoothukudi District.
- 2.The Appellate Tribunal / District Collector,  
Thoothukudi District.
- 3.The Sub Registrar,  
Murapanadu Sub Registrar Office,  
Thoothukudi District.
- 4.The Tahsildar,  
Srivaikuntam Taluk,  
Thoothukudi District.
- 5.Sivanu

... Respondents

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the impugned order of the 1st respondent in Muu.Mu.(Aa.1)/1643/2022 dated



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21.08.2023 and consequential impugned order of the 2nd respondent in Muu.Mu.(C1)/e-1365218/2023 dated 06.10.2023 and quash the same as illegal and consequently directing the 3rd respondent to restore the Document No.808 of 2021 (Settlement deed) dated 08.03.2021 on file in the name of the petitioner and directing the 4th respondent to restore the Patta No.2108, Alandha Village, Srivaikuntam Taluk in the name of the petitioner.

For Petitioner : Mr.V.Thirumal

For Respondents : Mr.G.V.Vairam Santhosh,  
Addl. Government Pleader for R1 to R4.  
Mr.G.Karuppasamy Pandian for R5.

### **ORDER**

Heard both sides.

2.The petitioner is the son of the fifth respondent. The fifth respondent is aged about 84 years. The fifth respondent had executed a settlement deed dated 08.03.2021 (Document No.808/2021) in favour of the petitioner herein. Seeking cancellation of the same, he moved the Maintenance Tribunal. The Maintenance Tribunal vide order dated 21.08.2023 cancelled the settlement deed. Challenging the same, the petitioner moved the District Collector, Thoothukudi. The District Collector, Thoothukudi vide order dated 06.10.2023 rightly declined to interfere by holding that only a senior citizen and parent can



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file an appeal under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

3.The question that calls for consideration is whether the impugned order passed by the Maintenance Tribunal can be sustained. To answer to this question, one needs to pose only one query. Whether the settlement deed executed by the fifth respondent in favour of the petitioner contains any condition as envisaged under Section 23 of the Act.

4.I went through the contents of the settlement deed. It does not contain any condition. It reads that the fifth respondent had executed the settlement deed out of love and affection.

5.The learned counsel for the fifth respondent submits that the fifth respondent has been defrauded and that the petitioner had taken advantage of his father's old age and obtained the settlement deed.

6.If according to the fifth respondent, the execution of the settlement deed is vitiated by fraud or coercion, then his remedy is to go only before the jurisdictional Civil Court. The revenue authority or the Maintenance Tribunal will not be competent to decide the said issue.



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7.The Hon'ble Supreme Court in the decision reported in **2022 SCC**

**Online 1684 (Sudesh Chhikara Vs. Ramti Devi)** 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.*

*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.”*



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8.I am conscious that a learned Judge of this Court had taken a contra view. But I am inclined to rather follow the dictum laid down by the Hon'ble Supreme Court and the Hon'ble Division Bench of this Court rendered in W.A.(MD)No.809 of 2023 (R.Sekkappan Vs. S.Kannappan and Others), dated 12.06.2023.

9.Inasmuch as, the settlement deed executed by the fifth respondent does not contain any condition as envisaged under Section 23(1) of the Act, I hold that the Maintenance Tribunal erred in passing the impugned order. The impugned order passed by the first respondent is set aside and the writ petition is allowed. The fifth respondent has the liberty to move the jurisdictional Civil Court for cancelling the subject document. He can move the very same Maintenance Tribunal for enforcing his maintenance claim against the petitioner herein. If any such maintenance claim is raised by the fifth respondent herein, the Maintenance Tribunal is obliged to dispose of the same within two months thereafter. Since the fifth respondent had gone before the Maintenance Tribunal and subsequently, the Writ Court was seized of the matter, if the fifth respective files any civil suit within eight weeks from the date of receipt of a copy of this order, limitation will not raised as a ground by



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the petitioner herein. Since the order of the Maintenance Tribunal has been set aside, the *status quo ante* shall be restored.

10.The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No  
Index : Yes / No  
Internet : Yes/ No  
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**G.R.SWAMINATHAN, J.**

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