



A.S.No.458 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 25.06.2025

Pronounced on: 08.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.458 of 2024
& C.M.P.No.13822 of 2024

Shalini Suresh,
W/o.D.C.Suresh Babu,
Plot No.23, Sakthi Nagar,
Thazhambur Village,
Kancheepuram District – 600 130.

... Appellant/Defendant

/versus/

1. T.Sujaya Giri,
W/o.Lt.Col.T.Arunagiri

...1st Plaintiff/1st Respondent

2. Lt.Col.T.Arunagiri (Retd),
S/o.T.M.Naidu.

Both residing at Plot No.23, Sakthi Nagar,
Thazhambur Village,
Kancheepuram District 600 130.

...2nd Plaintiff/2nd Respondent

Appeal Suit has been filed under Section 96 of the Civil Procedure Code, against the judgment and decree made in O.S.No.198 of 2016 dated 25.04.2024 on the file of the Sessions Judge, Mahila Court, Chengalpattu.



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For Appellant : Mr.A.K.Sriram, Senior Counsel,
for M/s.A.S.Kailasam & Associates

For Respondents : Mr.Col.Dr.Edwin Jesudoss, for R1 & R2

J U D G M E N T

Appeal against the judgement and decree passed in the suit for cancellation of the registered settlement deed dated 24.03.2010, executed by the mother in favour of the daughter. Mother and father together jointly laid the suit in O.S.No.583 of 2020 on the file of the Sessions Judge, Mahila Court, Chengalpattu and succeeded. Hence, the unsuccessful daughter is before this Court as appellant.

2. Gist of the plaint:-

Alleging that the land measuring 2880 sq.ft at Thalambur village was purchased by the 2nd plaintiff on 27.09.1990. The defendant, who is the daughter of the plaintiffs, got married in the year 2005. The defendant was initially employed in the Company at Perambur. On shifting of the Company to the Perungudi area, she requested the plaintiffs to provide her with ½ ground of land in the suit property, which was near to her workplace. She also promised that if ½ ground of land was given to her, she would construct a house on it and the



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plaintiffs can be with her in the house without paying rent. Accepting her perusal and expecting that, by gifting $\frac{1}{2}$ ground of land to their daughter, she will take care of them in future during the old age, the 1st plaintiff donated 1200 sq.ft out of the 2880 sq.ft in the suit schedule property and executed a registered settlement deed in favour of the daughter on 24.03.2010. Meanwhile, in the year 2009, gave birth to a male child. After the child birth, the defendant was staying with her parents and the child was taken care by the plaintiff. The defendant put up construction on ground floor, 1st floor and 2nd floor in the suit property. The plaintiffs, along with the defendant and her children occupied the 1st floor of the suit property remaining portions were let out for tenants. The plaintiffs were taking care of the defendant and her children for about 3 $\frac{1}{2}$ years. Subsequently, the defendant's behaviour become indifferent. The defendant did not fulfil her obligation as a daughter and the plaintiffs were subjected to torture by the defendant and her husband. They used to abuse the plaintiffs in bad language and forced to go out of the house. The electricity supply to the portion occupied by the plaintiffs was disconnected at the instance of the defendant and her husband. The defendant and her husband moved to the 2nd floor of the building, leaving the parents in the 1st floor, without electricity.



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3. The plaintiffs gave Rs.1,66,000/- to the defendant as loan for construction of the house. The cheque issued by the defendant to discharge the loan was dishonoured and the second plaintiff had initiated proceedings under Section 138 of N.I Act., against the defendant and the case is pending.

4. The plaintiffs contend that the defendant, by fraudulent means cheated the parents and got the property settled in her favour. Thereafter, the defendant shown her true colour. It is case of clear pre-plan and malicious act of depriving the parents' property through deceit.

5. The suit filed for a declaration; (i) to declare the settlement deed 24.03.2010, executed by the 1st plaintiff in favour of the defendant, as void; and (ii) for injunction restraining the defendants, their men and agents from alienating or encumbering the suit schedule property in favour of third parties.

6. The defendant contested the suit stating that 1200 sq.ft of land was



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settled in her favour by the 1st plaintiff, who is mother of the defendant. Hence, the 2nd plaintiff (her father) is not a necessary party to the suit. After the settlement in 2010, the defendant availed a loan from L.I.C and constructed building on it. The 2nd plaintiff, who had a quarrel with his landlord at Perambur and he was asked to vacate. At that point of time, the defendant and her husband requested the plaintiffs to move to their house. It is not that on the promise to permit them to live in the house, the land was settled in her name or they came to her house to take care of the minor child.

7. The defendant further contended that the suit for declaration without possession is not maintainable. Further, it is alleged that the plaintiffs have come with unclean hands, therefore, not entitled to any relief. Based on the valid settlement, she had improved the land by putting up construction availing loan. The debt still remains undischarged. The plaintiffs, who are in occupation of the second floor of the building asked to vacate, after termination of the permission. Since they failed to vacate, the defendant has instituted the suit for delivery of possession in O.S.No.24 of 2015, on the file of the Additional Sub Judge, Chengalpattu.



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8. It is further contended that the plaintiffs have not paid any money either for the construction or for the use and occupation. The allegation that the power supply to their portion wantonly disconnected is denied.

9. Based on the pleadings, the trial Court has framed the following issues:-

"1. Whether the plaintiff is entitled to the relief of cancellation of Settlement deed dated 24.03.2010 by the 1st plaintiff in favour of the 1st defendant vide Doc.No.1942 of 2010 on the file of Sub Registrar Office, Thiruporur?

2. Whether the plaintiffs are entitled to the relief of injunction?

3. To what relief?"

10. To prove the case, the 2nd plaintiff who is the father of the defendant, had mounted the witness box. Examined as P.W.1 He marked four exhibits (Ex.A1 to Ex.A4). On the side of the defendant, she has been examined as D.W.1 and marked 8 Exhibits (Ex.B1 to Ex.B8).

11. The trial Court, cancelled the settlement deed dated 24.03.2010,

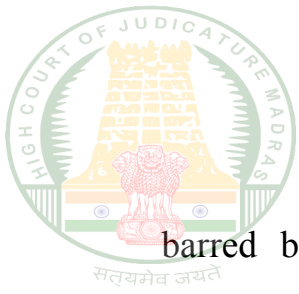


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executed by the 1st plaintiff in favour of the defendant and granted injunction restraining the defendant, her men and agents from in any manner alienating or encumbering the suit schedule property in favour of third parties.

12. Being aggrieved, the defendant has preferred the appeal, contending that the trial Court failed to consider the evidence in its proper prospective. There was no evidence to show that the parents were not properly taken care by the defendant. To cancel a validly registered settlement deed under the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007, the plaintiffs ought to have approached the Tribunal Appropriate Authority. Hence, civil suit for cancellation of the settlement deed on the grounds stated in the plaint is not maintainable.

13. The settlement deed is marked as Ex.A1 does not contain any clause reserving the right of cancellation or obligation on the part of the settlee to maintain the settlor. While so, the trial Court erred in arriving at conclusion that the plaintiffs are entitled for cancellation of settlement deed under the provisions of Senior Citizens Act. Particularly when the defendant has contended that the suit is



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barred by limitation and does not attract the ingredients of Section 23 of Maintenance and Welfare of Parents and Senior Citizen Act, 2007, the trial Court ought to have rejected the plaint in the ground of limitation as well as jurisdiction.

Point for determination:-

Whether the plaintiffs are entitled to maintain a suit for cancellation of the settlement deed dated 24.03.2010 executed in favour of the defendant for the reasons stated in the plaint?

14. Maintenance and Welfare of Parents and Senior Citizen Act, 2007, is enacted with a vision to protect the rights and interests of senior citizens and to enable them to lead a life with dignity and respect. Section 23 of the Act, gives right to senior citizen to approach the Tribunal to declare any transfer of property, by way of gift or otherwise, as void under certain circumstances.

15. The pre-requisite to exercise the right under Section 23 of the Act are as follows:-

“(a) Transfer must have been made subject to condition



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that transferee shall provide basic amenities and basic physical needs to transferor.

(b). The transferee refuses or fails to provide such amenities and physical needs to transferor."

16. In the present case, the settlement deed, which is sought to be cancelled is marked as Ex.A.1. The recitals of the settlement deed reads as follows:-

"WHEREAS the Settlor has only one daughter and as the Settlor due to Natural Love and Affection wish to settle the property acquired by her on her own income and savings in favour of her daughter in the manner she wishes."

17. The property settled comprises 1200 sq.ft out of 2880 sq.ft of vacate land, morefully described in the schedule. Nowhere in the settlement deed, there is a condition that the settlee is obliged to take care of the settlor. Even in the plaint, there is no specific averment that the property was settled in favour of the defendant with the expectation that she will take care of the plaintiffs. The only reference made is that the defendant, being the only daughter staying in the Country and the son is settled abroad, they expected she will able to look after the



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plaintiffs in their old age.

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18. The case centres around, *Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007*, which reads as under:-

"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. (emphasis added:)

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



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*on his behalf by any of the organisation referred to in
Explanation to sub-section (1) of section 5.”*

19. To invoke the relief under Section 23 of the Act, there must be a transfer of property in the form of gift or settlement without consideration by a senior citizen and such transfer must have been subject to the condition that the transferee shall provide the basic amenities and physical needs to the transferor and such transferee must refuse or fail to provide such amenities and physical needs. If these conditions are satisfied then the said transfer is deemed to have been made by fraud or coercion or undue influence and shall at the option of the transferor be declared void by the Tribunal.

20. In *Sudesh Chhikara vs. Ramti Devi* reported in **2022 SCC Online SC 1684**, the Hon'ble Supreme Court of India has once again reiterated that, effecting transfer subject to condition of providing basic amenities and basic physical needs to the transferor (senior citizen) is *sine qua non* for applicability of Sub-Section (1) of Section 23.

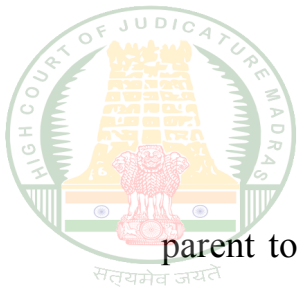
21. Admittedly, what was settled to the defendant is a vacant portion



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of land measuring 1200 sq.ft. The construction on the vacant land was put up by the defendant and her husband by availing loan from L.I.C. The suit property is subject to mortgage and the loan dues is paid is paid by the defendant. The plaintiffs, who are parents of the defendant, have retained the remaining portion of the land i.e., 1680 sq.ft (2880 – 1200 sq.ft) situated on the western side of the property. It is also not the case of the plaintiffs that they are without any source of income or left uncared. The 1st plaintiff is the retired Teacher and 2nd plaintiff is a retired Colonel from the Army. Their grievance is in nutshell, their daughter is no more depending on them, after her son grown up.

22. In the plaint, it is stated that her daughter was in need of their help when her child was a toddler, but now she does not want their help after her son has grown up and therefore, she is neglecting them. This reason stated in the plaint even it is true, it does not mean that the defendant had a pre-plan to cheat the plaintiffs and got the property by deceit. From the recitals of the settlement deed and the conduct of the parties, it is clear that the first plaintiff voluntarily settled 1200 sq.ft of vacant land in favour of her daughter for her to put up construction upon it by availing loan and reside. Incidentally the defendant had brought her

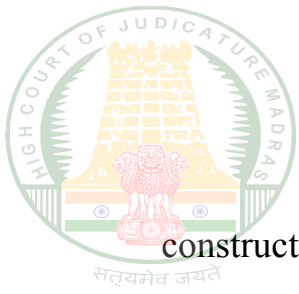


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parent to reside with her. By efflux of time, due to some misunderstanding, the present suit has been filed.

23. From the plaint and evidence of P.W.1, who is the 2nd plaintiff, it is also evident that the parties have money disputes and criminal prosecution been initiated for that purpose. In addition, a suit has been filed by the defendant against her parents and the same is pending O.S.No.24 of 2015.

24. No doubt, the Maintenance and Welfare of Parents and Senior Citizen Act, 2007, is meant to protect senior citizens and to undue any injustice if the property has been taken away by their children without given them proper care during their old age. However, the facts of the present case clearly show that when the vacant land measuring 1200 sq.ft was gifted to the defendant, there was neither any expectation on the part of the settlor (1st plaintiff) that the daughter will take care of her during the old age, nor was there any explicit clause in the settlement deed. Upon received ½ ground of land, the defendant had availed loan and put up construction as per approved building plan marked as Ex.B.2. She has availed loan of Rs.20,00,000/- from L.I.C Housing Finance as per Ex.B.3. After the



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construction was completed, the property tax been paid by her, which is reflected

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in Ex.B.4. The electricity connection and patta are also in the name of the defendant. It is not in dispute and the plaintiffs also admit that the superstructure was put up by the defendant. The plaintiffs grievance appears to be subsequent neglect by their daughter after her child grew up.

25. In the opinion of this Court, beneficial legislation to protect senior citizen cannot be misused merely because the settlor happens to be a Senior Citizen. Having voluntarily denoted the land and permitted the daughter to build up construction upon it, the plaintiffs cannot for flimsy reason, seek cancellation of the settlement deed. By such cancellation, the right of the defendant, who had put up superstructure on it by availing loan and by creating mortgage on the property will be put to financially sufferance and other legal consequences. Having gifted the property unconditionally and made the daughter to act upon it and invest on the property, Section 23(1) of Senior Citizen Act, cannot be invoked unless and until the 1st plaintiff pleads and prove that she had been deliberately neglected by her daughter. The 1st plaintiff who had donated the property had lend her name to file the suit. In fact, it is the 2nd plaintiff, who had been contesting the matter and he

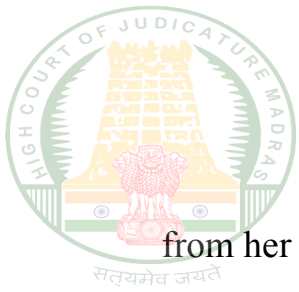


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alone had come to the Court to give evidence against his daughter. He is not the donor of the property so he have no locus to sustain the suit relying on Section 23(1) of Senior Citizen Act. When there is no direct evidence to hold that the settlor was promised care and facilities but wontedly deprived of it, Section 23(1) of Senior Citizen Act, cannot not be invoked.

26. A beneficial legislation should truly benefit persons in need. It cannot be used as a weapon to settle scores with kith and kin, merely because at later point of time, someone else becomes more favourable to them.

27. In the present case, what was gifted by the mother to the daughter is 1200 sq.ft of vacant land. The relief granted in the suit is cancellation of the gift of 1200 sq.ft and permanent injunction restraining the defendant from alienating the property in any manner. It is admitted case of the plaintiff that the superstructure on the land was constructed by the defendant by availing loan. By virtue of the impugned decree, the defendant is not only denied of the land which was settled in her favour in the year 2010 but also will be deprived of the usage of superstructure which she has put up by availing loan and repaying the loan interest



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from her own earnings.

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28. If the plaintiffs wants to cancel the settlement deed on the ground that the defendant failed to maintain the parents despite condition in the settlement deed to maintain them, the plaintiffs ought to have approached the competent authority as contemplated under Senior Citizenship Act. If they want to challenge the settlement deed on the ground of fraud then, the deeming clause of fraud will get attracted only under Senior Citizen Act. For that purpose, the settlement must carry a specific condition that the transferor expects care and physical needs. In the absence of such clause, a petition under Section 23 (1) of the Act will not be maintainable before Tribunal neither the suit before civil Court is maintainable without specific averment to nullify a registered deed.

29. In the present case, the plaintiffs have filed the suit to cancel a document executed six year ago, without specific plea or evidence to show that it was executed under fraud at the inception. Neither coercion nor undue influence has been pleaded. Furthermore, the defendant has acted upon the settlement deed and had invested in the land. Therefore, principle of promissory *estoppel* will also



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apply, besides limitation.

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30. If the decree is not interfered gifting a vacant land, the plaintiffs will now be gained not only the land but also have a restrained order on the superstructure constructed by the defendant. Surely, the legislature could not have visualised such a consequences when they enacted the Senior Citizen Act.

31. For the reasons stated above, this Court finds that the trial Court had not properly appreciate the facts of the case. A mere allegation that the settlee had failed to maintain the settlor is not sufficient to undo a solemn act. The exchange of notices, issued six years after the execution of the settlement deed and the contents found in the notices as well as in the plaint, clearly show that the trigger to file the suit was the decrease independency of the daughter on the parents after her child has grown up.

32. After settling the vacant land in favour of the defendant, the defendant has put up construction, allowed her parents to be with her for atleast 3 ½ years. Frictions in the relationship surfaced only after 2015. There is no element



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of fraud or deceit is found in the conduct of the defendant either at the inception or thereafter. In fact, the 2nd plaintiff has instituted criminal case against his son-in-law (the defendant's husband) for dishonour of cheques. Having instituted criminal proceedings against his own son-in-law, the 2nd plaintiff cannot expect the daughter must be at his beck and call, merely because his wife had settled ½ ground of land.

33. From the evidence on record, it is clear that it is the 2nd plaintiff who through the 1st plaintiff has engineered the present suit due to his misunderstanding with his son-in-law. This is not a genuine case of neglect of the parents by the daughter.

34. Hence, this Court finds that the judgment and decree passed in O.S.No.198 of 2016, dated 25.04.2024, on the file of the Sessions Judge, Mahila Court, Chengalpattu is liable to be set aside.

35. Accordingly, the *Appeal Suit No.458 of 2024 stands Allowed*. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.



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Index : Yes.
Speaking order/non speaking order
Neutral citation : Yes/No.
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To,

1. The Sessions Judge, Mahila Court, Chengalpattu.
2. The Section Officer, V.R. Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
Appeal Suit No.458 of 2024

08.07.2025