

W.P.(MD) No.11707 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2025

CORAM:

THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.P.(MD) No.11707 of 2024
and W.M.P(MD).No.10447 of 2024

S.Johnson

... Petitioner

-VS-

1.The District Collector,
Kanyakumari District,
at Nagercoil.

2.The Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.

3.Anith Beuglin

4.Nagarajan

5.R.Johnson

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent pertaining to its proceeding in Mu.Mu.C3/973733/2023 dated 20.12.2023 and quash the same and consequently direct the respondents to cancel the settlement deed executed by the petitioner in favour of the third respondent on 06.06.2019.



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For Petitioner : Mr.SC.Herold Singh

For Respondents : Mr.A.Kannan (For R1 & R2)
Additional Government Pleader
Mr.Aayiram K.Selvakumar (for R3)
No appearance (for R4 & R5)

ORDER

Challenging the order passed by the first respondent in his proceedings vide Mu.Mu.C3/973733/2023 dated 20.12.2023, the petitioner is before this Court.

2. The brief facts are as follows:

2.1 The petitioner is the owner of the property comprised in S.No. 417/1'B1A admeasuring 10 cents in Kaliyakavilai Village, Kanyakumari, having purchased the same under the registered sale deed dated 31.07.2017. He has been in possession and enjoyment of the same since the purchase and the revenue records have also been mutated in his name.

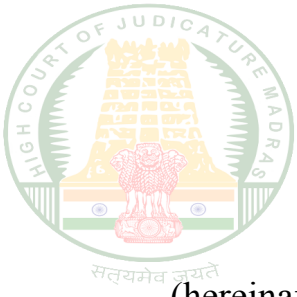


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2.2 The third respondent is the only daughter of the petitioner and she was married in the year 2011. Due to pressure from the fourth respondent demanding dowry and in consideration of the love and affection shown by his daughter, the petitioner had executed a settlement deed in favour of his daughter on 06.06.2019. In the settlement deed, the petitioner expressly stated that since his daughter is taking care of him and with the hope that she would continue to do so, the said settlement deed was executed. This clearly implies that the settlement deed was executed with the sole intention that the third respondent would take care of the petitioner.

2.3 Further, the third respondent assured the petitioner that she would neither dispossess him and his wife from the property nor dispose of the property during their lifetime. However, in complete contradiction to this assurance, the third respondent executed a settlement deed in favour of the fourth respondent, her husband, who in turn has sold the property to the fifth respondent. Therefore, the contention of the petitioner that there has been a breach of the conditions of the settlement deed. Consequently, the petitioner has approached the authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007



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(hereinafter referred to as 'Act' for brevity) seeking the cancellation of the settlement deed dated 06.06.2019 executed in favour of the third respondent. The second respondent, without properly appreciating the facts of the case, dismissed the application, against which, an appeal was preferred before the first respondent. The first respondent however also committed the similar error by observing that subsequent to the settlement deed dated 06.06.2019, another settlement deed has been executed in favour of the fourth respondent, who in turn executed the sale deed in favour of the fifth respondent. Therefore, the request for cancellation of settlement deed dated 06.06.2019 itself was held to be misconceived. The first respondent had also dismissed the appeal. Challenging the same, the petitioner is before this Court.

3. Heard the learned counsel on either side.

4. Section 23 of the Act, 2007, provides the circumstances, under which, a transfer of property would become void. Section 23(1) would read as follows:



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

1. Where any senior citizen who, after the commencement of this Act, has 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. “

5. Therefore, the Act can be invoked only when the transfer document contains a condition that the transferee shall take care of the transferor. The Hon'ble Supreme Court in the case of ***Sudesh Chhikara Vs., Ramti Devi and another***, after considering the scope of Section 23 of the Act, had observed as follows:



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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.

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. 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. “

6. Relying upon the above judgment in the case of ***Urmila Dixit Vs., Sunil***

Sharan Dixit and others, the Hon'ble Supreme Court has held as follows:



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“.....24. Before parting with the case at hand, we must clarify the observations made vide the impugned order qua the competency of the Tribunal to hand over possession of the property. In *S. Vanitha (supra)*, this Court observed that Tribunals under the Act may order eviction if it is necessary and expedient to ensure the protection of the senior citizen. Therefore, it cannot be said that the Tribunals constituted under the Act, while exercising jurisdiction under [Section 23](#), cannot order possession to be transferred. This would defeat the purpose and object of the Act, which is to provide speedy, simple and inexpensive remedies for the elderly.

25. Another observation of the High Court that must be clarified, is [Section 23](#) being a standalone provision of the Act. In our considered view, the relief available to senior citizens under [Section 23](#) is intrinsically linked with the statement of objects and reasons of the Act, that elderly citizens of our country, in some cases, are not being looked after. It is directly in furtherance of the objectives of the Act and empowers senior citizens to secure their rights promptly when they transfer a property subject to the condition of being maintained by the transferee.....”

7. In the light of the above legal pronouncement, order passed by the first respondent cannot be found fault with and accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes/No
Rmk



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P.T.ASHA, J.

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