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WP.No.4540 of 2022

In the High Court of Judicature at Madras

Reserved on <b>17.6.2025</b>	Delivered on : <b>19.6.2025</b>
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.4540 of 2022 &  
& WMP.Nos.4677 & 4679 of 2022

Karuppan

Vs

...Petitioner

1.The District Magistrate-cum-District Collector, Appellate Tribunal under the Maintenance of Parents & Senior Citizens Act, Office of the District Collector, Kallakurichi.

2.The Sub-Collector-cum-First Class Executive Magistrate, Kallakurichi.

3.The Sub-Registrar, Kallakurichi Sub-Registrar Office, Kallakurichi-606202.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in Na.Ka.A5/728/2019 dated 15.2.2019 on the file of the 2nd



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respondent, quash the same as illegal, incompetent and without jurisdiction and further direct the 3rd respondent to delete the entries pertaining to the cancellation of the settlement deed dated 06.2.1997.

For Petitioner : Mrs.V.Srimathi for  
Mr.Vishnu  
For R1 & R2 : Mr.G.Velu, AGP

### ORDER

In this writ petition, the petitioner assails the proceedings of the second respondent dated 15.2.2019 cancelling the settlement deed dated 06.2.1997 executed in his favour by his father in exercise of power and jurisdiction conferred under Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, the Act) and for a direction to the third respondent to delete the entry pertaining to the cancellation of the said settlement deed.

2. Heard the learned counsel appearing on behalf of the petitioner and the learned Additional Government Pleader appearing for respondents 1 and 2.

3. The case of the petitioner is as follows :



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(i) The father of the petitioner executed a settlement deed dated 06.2.1997 in his favour in respect of certain properties containing various survey numbers in Mattiyakurichi Village, Kallakurichi District and it was registered as doc.No.48 of 1997 on the file of the Joint-1 Sub-Registrar, Kallakurichi. At a later point of time, the father of the petitioner passed away and thereafter, the mother of the petitioner approached the second respondent in terms of the Act seeking cancellation of the said settlement deed on the ground that she was not being taken care by the petitioner. The second respondent, by the impugned order, allowed the application filed by the mother of the petitioner. Aggrieved by that, the petitioner filed an appeal before the first respondent.

(ii) It is relevant to point out that the mother of the petitioner died during November 2019.

(iii) However, by virtue of the order passed by the Hon'ble First Bench of this Court in the case of ***K.Raju Vs. Union of India & others [W.P.No.29988 of 2019 dated 19.2.2021]*** wherein it has been held that an appeal can be filed only at the instance of a senior citizen and that therefore, the appeal filed by the petitioner has become infructuous, the impugned proceedings of the second



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respondent dated 15.2.2019 has been put to challenge in this writ petition.

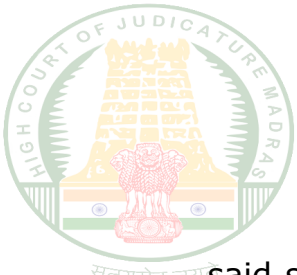
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4. The Revenue Divisional Officer-cum-Sub Divisional Magistrate, Kallakurichi filed a counter for herself and on behalf of the first respondent wherein she took the following stand :

(i) The petitioner did not take care of his parents and hence, the said settlement deed executed in favour of the petitioner by his father was liable to be cancelled in exercise of powers under Section 23(1) of the Act. An inquiry was conducted in this regard and an opportunity was given to the petitioner and only thereafter, the impugned order was passed. Thus, the Revenue Divisional Officer, Kallakurichi supported the impugned proceedings dated 15.2.2019 and sought for dismissal of this writ petition.

5. The learned counsel appearing on behalf of the petitioner made the following submissions :

In the said settlement deed dated 06.2.1997, the father of the petitioner settled certain properties absolutely in favour of the petitioner and that he had not reserved any right to cancel/revoke the



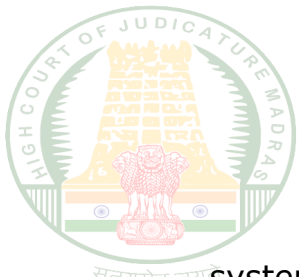
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said settlement deed in future. That apart, the said settlement deed is now sought to be cancelled based on the application submitted by the mother of the petitioner on the ground that she was not taken care by the petitioner. The second respondent ought not to have acted upon the application submitted by the mother of the petitioner since she was not the executant of the said settlement deed dated 06.2.1997.

6. On the contrary, the learned Additional Government Pleader appearing for respondents 1 and 2 submitted that if the settlee does not take care of the parents and deprives them of love and affection, that, by itself, is a ground to cancel the said settlement deed. To substantiate this submission, he relied upon a judgment of the Division Bench of this Court in the case of ***S.Mala Vs. District Arbitrator & District Collector, Nagapattinam District, Nagapattinam & Others [reported in 2025 (2) CTC 373]***.

7. The obligation to care for the aged and elderly was once seen as a moral duty. The traditional joint family systems that once bore sway provided institutional support to maintain its members from the eldest to the youngest. With the collapse of the traditional joint family



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systems and the emergence of nuclear families, the elderly have suddenly found themselves without support. Realizing that the time had come to provide for a legal backing to support the aged and the elderly, the State of Himachal Pradesh enacted the Himachal Pradesh Maintenance of Parents and Dependants Act, 2001. The statement of objects and reasons of this Enactment reads as follows:

*"WHEREAS, tendency to neglect the aged and & parents and dependants is increasing day by day and there is apparent need to compel the young generation to perform their moral obligation which they owe to the society in respect of their families and aged and infirm parents, so that they are not left beggared and destituted on the scrapheap of society and thereby driven to life of vagrancy for their subsistence"*

8. Taking a cue from the Himachal Pradesh law, the Government of India introduced the Maintenance and Welfare of Parents and Senior Citizens Bill in the Lok Sabha on 20<sup>th</sup> May 2007. The Bill was referred to a Standing Committee, which observed that the provisions of the proposed law were heavily drawn from the Himachal Pradesh Maintenance of Parents and Dependants Act, 2001. It was further observed as follows :



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*"The Committee have further been informed that with their dwindling financial resources and weakening health, parents are often being perceived as burden, even while living within the family. Many older persons are now living with spouse and without children, while many persons, specially widowed women are forced to spend their twilight years alone. This clearly reveals that ageing has become a major social challenge and financial support, care and treatment are required for the older persons. Unfortunately, the time has come when the moral obligation of children to look after their parents in their old age has to be backed by a legal obligation."*

9. The Bill was eventually enacted into law on 29<sup>th</sup> December, 2007. To further its objectives, Section 7 of the Act contemplates the establishment of Maintenance Tribunals to entertain

(a) applications for maintenance under Section 5 or

(b) applications under Section 23 for declaring a transfer to be void in certain circumstances.

10. Section 23 of the Act, with which, we are now concerned, reads 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 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. From a plain reading of the relevant provision, the following are the ingredients to invoke the relief contemplated under Section 23 of the Act:

*"i. There must be a transfer of property in the form of gift or otherwise by a senior citizen who is defined in Section 2(h) ie., a person aged 60 years and above;*

*ii. Such transfer must have been effected on condition that the transferee shall provide the basic amenities and basic physical needs to the transferor;*

*iii. The transferee thereafter refuses or fails to provide such amenities and physical needs."*

12. The aforesaid cumulative conditions constitute the jurisdictional facts for the exercise of power under Section 23 of the Act. It is only when all these conditions are cumulatively satisfied that the further two statutory consequences follow:

*(a) The transfer is deemed to have been made by "fraud", "coercion" or "undue influence"; and*

*(b) The transfer may be declared void by the Tribunal at the option of the transferor.*



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13. The question as to whether the condition requiring the transferee to provide the basic amenities and basic physical needs to the transferor ought to be mandatorily incorporated in the document of transfer has been the subject matter of consideration in various decisions. Before examining them, it is first necessary to set out the definition of the word '**gift**' as contained in Chapter VII, Section 122 of the Transfer of Property Act, 1882, which runs as follows:

*" 'Gift' is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person called the donor to another, called the donee and accepted by or on behalf of the donee."*

14. It will be evident from the above definition of the word '**gift**' that it is a gratuitous transfer of property ie., transfer made voluntarily without consideration. Many a time, a gift is said to have been made in consideration for love and affection. This understanding may not reflect the correct understanding of the concept of a gift. In the case of **Sonia Bhatia Vs. State of U.P. [reported in AIR 1981 SC 1274]**, the Supreme Court has pointed out as follows :

*"Thus, Section 122 of the Transfer of Property Act clearly postulates that a gift must*



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have two essential characteristics-

(1) that it must be made voluntarily, and

(2) that it should be without consideration.

This is apart from the other ingredients like acceptance, etc. Against the background of these facts and the undisputed position of law, the words, 'transfer for adequate consideration' used in Clause (b) of the proviso clearly and expressly exclude a transaction which is in the nature of a gift and which is without consideration. Love and affection, etc., may be motive for making a gift, but is not a consideration in the legal sense of the term."

15. Thus, love and affection is not an aspect touching upon consideration. It is, at best, a motive for a gift. A gift may be either unconditional or conditional. A conditional gift is governed by Section 126 of the Transfer of Property Act. A condition may be either a condition precedent or a condition subsequent. In the case of ***Philip John Plasket Thomas Vs. CIT [reported in AIR 1964 SC 587]***, the Supreme Court had ventured to observe as follows :

*"A gift may be made subject to conditions, either precedent or subsequent. A condition precedent is one to be performed before the gift takes effect; a condition subsequent is one to be*



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performed after the gift had taken effect, and, if the condition is unfulfilled, it will put an end to the gift."

16. This decision was followed in the case of **Subbegowda Vs. Thimmegowda [reported in 2004 (9) SCC 734]** wherein the Supreme Court held as follows :

*"For the interpreter of documents it is common knowledge that a transfer of property or a creation of interest therein may be accompanied by conditions, covenants or restraints. Condition may be condition precedent — a condition which must be performed before the grant or alienation takes effect to create an interest in property, or may be condition subsequent — a condition which has an effect of enlarging or defeating the interest already created or vested. In either case the condition will be annexed with the estate and would run with the same."*

17. Reverting to Section 23(1) of the Act, it is obvious that the nature of the gift contemplated therein is:

*(i) Conditional in character i.e., on condition that the transferee shall provide the basic amenities and basic physical needs to the*



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*transferor; and*

*(ii) Such a condition is not a condition precedent, but is a condition subsequent i.e., meant to operate subsequently where the transferee thereafter refuses or fails to provide such amenities and physical needs.*

18. The next question to be considered is as to whether the condition contemplated under Section 23(1) of the Act must be expressly incorporated into a document or such a requirement is to be inferred. This question was considered by the Full Bench of the Kerala High Court in the case of ***Subhashini Vs. District Collector*** [reported in 2020 (5) KLT 533] wherein it was held as follows:

*"We conclude by answering the reference, 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. It is the 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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19. In the case of **S.Vanitha Vs. Deputy Commissioner, Bengaluru Urban District [reported in 2021 (15) SCC 730]**, the Supreme Court construed Section 23(1) of the Act as follows:

*"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 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."*

20. From the above, it is evident that the Supreme Court has



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clearly construed Section 23(1) of the Act to mean that there must be a **"specific condition to provide for the maintenance and needs of a senior citizen."** The word **"specific"** is crucial and significant. In the case of **Maru Ram Vs. Union of India [reported in 1981 (1) SCC 107]**, the Supreme Court had observed thus :

*"The word 'specific' is defined in Murray's Oxford Dictionary as 'precise or exact in respect of fulfilment, conditions or terms; definite, explicit'."*

21. Thus, a specific condition cannot mean an implied condition for what is specific must be explicit and not implicit. In the case of **Sudesh Chhikara Vs. Ramti Devi [reported in 2022 SCC Online SC 1684]**, the Supreme Court had once again examined Section 23(1) of the Act and observed as follows:

*"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*



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*attached to a transfer, existence of such conditions must be established before the Tribunal.*

*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 22<sup>nd</sup> 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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22. The requirement of a specific condition in the document to invoke Section 23(1) of the Act was considered and reiterated by a learned Single Judge of this Court (**R.Subramanian,J**) in the case of **S.Selvaraj Simpson Vs. District Collector [W.P.No.32650 of 2022 dated 06.12.2022]** as follows:

*"Though the order challenged in the Writ Petition is one transferring proceedings to the jurisdictional Revenue Divisional Officer, a perusal of the document executed by the petitioner reveals that the petitioner cannot seek relief under the special enactment namely, Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Section 23 of the Act declares certain transfers as void. There are two essential pre-conditions namely, the document should have been executed after the coming into force of the Act and it should contain clause imposing an obligation on the settlee or transferee to maintain the settlor or transferor. Evidently, such clause is absent in the document in question therefore, the Authority under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 cannot entertain an application for cancellation of the document."*

23. This decision was approved by a Division Bench of this Court



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in the case of **R.Sekkappan Vs. S.Kannappan [reported in 2023 SCC Online Madras 8096]**. In the case of **D.Devi Vs. Inspector General of Registration [W.A.Nos.374 & 376 of 2020 dated 06.11.2023]**, another Division Bench of this Court had reiterated the same position as follows:

*"The third condition under Section 23 is that the transfer should be made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor. As discussed earlier, the Settlement Deed does not contain any indication that the transfer was made subject to such condition. In fact, there are clear indications to the contrary by expressly providing that the transferor does not have the right to cancel the settlement at any time and that any such cancellation would not be valid."*

24. The view that Section 23(1) of the Act requires an explicit condition to be incorporated into the document has been taken by

(i) **P.D Audikesavalu,J** in the case of **Rasheeda Begum Vs. District Collector [W.P.No.35700 of 2023 dated 26.2.2024]**,



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(ii) **N.Sathish Kumar,J** in the case of **Parvathy Vs. Revenue Divisional Officer, Palani, Dindigul District [W.P.(MD) No. 18729 of 2024 dated 27.8.2024],**

(iii) **G.R Swaminathan,J** in the case of **S.Sundarraaj Vs. District Collector, Madurai District [W.P.(MD) No.6078 of 2020 dated 05.1.2024],**

(iv) **S.Sounthar,J** in the case of **Sengoda Goundar Vs. District Collector [reported in 2024 SCC Online Madras 5854]** and

(v) **C.V.Karthikeyan,J** in the case of **Tamilselvan Vs. District Collector [W.P.No.34432 of 2024 dated 13.12.2024].**

25. The same view has been taken

(i) by a Division Bench of the High Court of Karnataka in the case of **Nanjappa Vs. State of Karnataka [W.A.No.573 of 2022 dated 17.3.2023],**

(ii) by our learned brother **Hemant Chandangoudar,J** (as a Judge of the Karnataka High Court) in the case of **Nagamma Vs. Anantharamayya [W.P.No.**



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**18496 of 2021 (GM-RES) dated 30.5.2024],**

(iii) by the Telangana High Court in the case of **Rohit Saurya Vs. State of Telngana [W.P.No.30278 of 2023 dated 08.4.2025],**

(iv) by a Division Bench of the Andhra Pradesh High Court in the case of **Ramalakshamma Vs. State of Andhra Pradesh [W.A.No.125 of 2025 dated 07.3.2025]** and

(v) by the Calcutta High Court in **Himangshu Mondal Vs. Sachirani Mondal [reported in 2023 SCC Online Cal. 695].**

26. It now remains to be seen as to whether the latest decision of the Supreme Court in the case of **Urmila Dixit Vs. Sunil Sharan Dixit [reported in 2025 INSC 20]** has altered the aforesaid legal position. A close look at this decision reveals the following facts:

*"The appellant herein is the mother of the respondent (son). The subject property was purchased by her on 23-1-1968. On 7-9-2019, **the appellant executed a gift deed in favour of the respondent wherein it has been stated that the donee (respondent) maintains the donor and makes provision for everything.***



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*This deed came to be registered on 9-9-2019. Allegedly, on the same day, **a vachanpatra/ promissory note is executed by the respondent wherein it has been stated that he will take care of the appellant till the end of her life and if he does not do so, the appellant will be at liberty to take back the gift deed.** The respondent, before this Court, has alleged this vachanpatra to be fabricated."*

The Court then adverted to the decision in **Sudesh Chhikara** and observed thus :

*"In Sudesh Chhikara Vs. Ramti Devi [2022 SCC OnLine SC 1684], this Court refused to grant the benefit of Section 23 in the absence of an averment that the transfer in question was subject to a condition for maintenance of the parents."*

On facts, the Supreme Court observed as under:

*"Adverting to the facts at hand, we find that there are two documents on record. One, a promissory note dated 7-9-2019 which records that the promisor (respondent) shall serve the appellant and her husband till the end of their life, and in the absence of him fulfilling such obligation, the subsequent deed can be taken back by the appellant. Second, the gift deed dated 7-9-2019 also records a similar condition i.e. the donee*



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*maintains the donor, and the former makes all necessary provisions for the peaceful life of the appellant donor. Both these documents were signed simultaneously."*

27. It is clear that there is nothing in the decision of the Supreme Court in **Urmila Dixit** to suggest that an application under Section 23 of the Act was maintainable even in the absence of an explicit requirement in the gift deed. On the contrary, the Supreme Court had found that the decision in **Sudesh Chhikara** had refused to grant the benefit of Section 23 of the Act in the absence of an averment that the transfer in question was subject to a condition for maintenance of the parents (See observations extracted above).

28. Notwithstanding these decisions, the attention of this Court was drawn to a decision of **S.M.Subramaniam,J** in the case of **Mohamed Dayan Vs. District Collector [W.P.No.28190 of 2022 dated 08.9.2023]** wherein the learned Single Judge observed as follows:

*"Subject to the condition" as employed in Section 23(1), is to be holistically understood with reference to the subsequent phrase i.e., "deemed*



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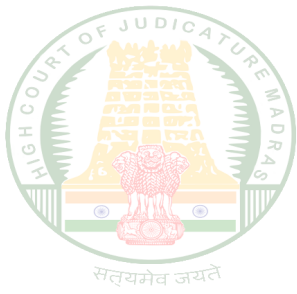


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*to have been made by fraud or coercion or undue influence". Both the phrases would amplify that the deeming clause should be considered so as to form an opinion that the phrase "subject to condition" amounts to an implied condition to maintain the senior citizen and any violation would be sufficient for the purpose of invoking Section 23(1) of the Act, to cancel the Gift or Settlement Deed executed by the senior citizen."*

29. With all due respect to the learned Single Judge, this Court is unable to understand as to how the expression "**subject to the condition**" can be read to mean an "**implied condition**". As pointed out earlier, the Supreme Court in the case of **S.Vanitha**, referred to Section 23(1) of the Act and held that there must be a "**specific condition**". The word "**specific**" implies something "**definite**" and "**explicit**" (vide **Maru Ram**). To say that a specific condition includes an implicit condition would amount to a contradiction in terms. The learned Judge, in the case of **Mohamed Dayan**, also observed as follows :

*"To elaborate, the phrase "subject to condition" employed under Section 23(1) of the Act, is to be understood with reference to the love and affection by the senior citizen towards the*



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*person in favour of whom such Gift or Settlement Deed has been executed.*

*40. "Love and Affection" is an implied condition in the context of Section 23(1) of the Act, and therefore, there need not be any express condition in the Settlement Deed for the purpose of maintaining the senior citizen."*

30. As pointed out earlier, the Supreme Court, in ***Sonia Bhatia***, held that love and affection may, at best, be a motive for the gift and not its consideration. Consequently, it is not known as to how love and affection can be a "***condition***" when Section 23(1) of the Act specifically says "***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.***"

31. In the case of ***Mohamed Dayan***, the learned Single Judge of this Court has virtually rewritten the provision by replacing words "***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***" with the



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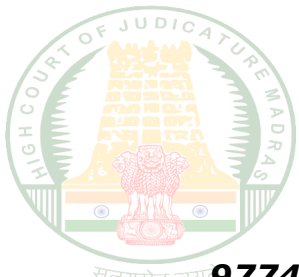
words "**love and affection.**" If this Court is to read Section 23(1) of the Act as was done in the case of **Mohamed Dayan**, it would have to be read as follows:

*"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 of **love and affection** and such transferee refuses or fails to provide **love and affection**, 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."*

32. It is well settled that Courts cannot rewrite a statutory provision when the words used by the legislature are plain and unambiguous.

33. The attention of this Court was also drawn to the three orders of **G.R.Swaminathan,J** in the following cases :

- (i) **Sankarappan Vs. Appellate Authority [W.P.(MD) No.27135 of 2023 dated 10.11.2023],**
- (ii) **S.Sundarraaj;** and
- (iii) **R.Madhiyalagan Vs. District Collector [W.P.(MD) No.**



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सत्यमेव जयते **9774 of 2023 dated 26.3.2024]**

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wherein the learned judge declined to follow the decision in **Mohamed Dayan** on the ground that it had ignored the decision of the earlier Division Bench.

34. This Court was, however, apprised of the two orders passed by a Division Bench of **S.M.Subramaniam and K.Rajasekar, JJ** in the case of **S.Mala** and in the case of **Easwaramoorthy Vs. Paranthaman [reported in 2025 SCC Online Mad 2483]**. In the case of **S.Mala**, the Division Bench referred to the decision of the Supreme Court in **S.Vanitha** and observed as follows:

*"The three-Judges Bench of the Supreme Court of India in S.Vanitha v. Deputy Commissioner, Bengaluru Urban District, elaborately considered the legislative scheme, rights of residence, safeguarding against domestic violence, etc. In para 24 of the judgment, the Supreme Court considered the distinction between Sub-Sections (1) and (2) of Section 23. The conditions stipulated expressly have been considered by the court, but the scope of interpretation, the beneficial construction and the need for the protection needs to be extended impliedly under the Senior Citizens Act, have not*



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*been examined into by the Supreme Court in S.Vanitha case. Therefore, the expressed provision made under Section 23(1) of the Act is one aspect of the matter and the scope of certain implied benefits conferred under Section 23 to the Senior Citizens is another aspect of the matter, which is to be considered by this Court in the context of the facts of each case." (emphasis supplied)*

35. From a reading of the underlined portions, this Court is at a loss to comprehend as to what exactly is sought to be conveyed by the Division Bench. The Supreme Court, in **Vanitha's case**, was clear that there must be a specific condition. How then can an express condition be construed to imply the existence of "**implied benefits**"? After extracting paragraph 14 of the decision of the Supreme Court in **Sudesh Chhikara**, the Division Bench, in the case of **S.Mala**, observed as follows :

*"The Hon'ble Supreme Court in the above case regarding the scope of Section 23(1) of the Act, made an observation that "on the contrary, very often, such transfers are made out of love and affection without any expectation in return". It would be sufficient to form an opinion that the Supreme Court considered the implied conditions*



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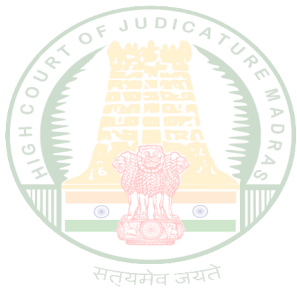
*in the said case. However, the Supreme Court further observed by stating that, if it is alleged that the conditions mentioned in Sub-Section (1) of Section 23 are attached to a transfer, the existence of such conditions must be established."*

36. In the decision of the Supreme Court in **Urmila Dixit**, the decision in **Sudesh Chhikara** was construed to mean the opposite of what is stated by the Division Bench. The learned Judges of the Supreme Court have observed as follows:

*"In Sudesh Chhikara Vs. Ramti Devi [Sudesh Chhikara v. Ramti Devi [2022 SCC OnLine SC 1684], this Court refused to grant the benefit of Section 23 in the absence of an averment that the transfer in question was subject to a condition for maintenance of the parents."*

37. Referring to the decision of the Supreme Court in **Urmila Dixit**, the Division Bench of this Court, in the case of **S.Mala**, observes:

*".....cullled out the legal proposition that, even an implied condition i.e. love and affection for execution of gift or settlement deed would be sufficient enough for nullifying the documents. The*



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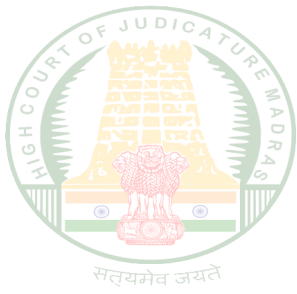
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*intent of the legislature has been considered by the Supreme Court."*

38. As observed earlier, the decision of the Supreme Court in ***Urmila Dixit*** was a case where the recitals in the document and the accompanying pro-note both contained a condition that the donee would take care of the donor. This Court has once again carefully gone through the decision in ***Urmila Dixit*** and is unable to find a single sentence/word in that decision, which supports the theory of "***implied condition***" propounded by the Division Bench of this Court in the case of ***S.Mala***.

39. Thereafter, the Division Bench of this Court, in the case of ***S.Mala***, referred to the decision in the case of ***Radhamani Vs. State of Kerala [reported in 2015 SCC Online Ker. 33530]*** without noticing that the said case related to a document, which contained an express condition. The Division Bench observed thus:

*"In Subhashini Vs. Collector, the legal proposition laid down by the learned Single Judge in the Radhamani's case has been approved by the Division Bench of the Kerala High Court."*



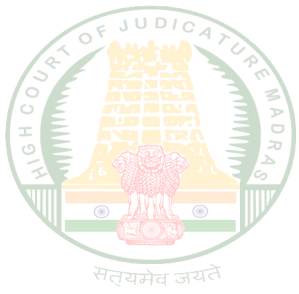
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40. The decision in ***Subhashini*** is of a Full Bench of the Kerala High Court and not by a Division Bench. The Full Bench had observed as follows :

*"We approve Radhamani Vs. State of Kerala [2016 (1) KHC 9], which had a recital in the document akin to that required under Section 23(1)."*

41. Thus, the Full Bench in the case of ***Subhashini*** had approved the decision in ***Radhamani*** not because it approved the theory of implied conditions, but because it found that on facts, ***Radhamani*** was a case where the conditions akin to Section 23(1) of the Act were found in the document.



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42. The Division Bench, in the case of **S.Mala**, followed itself the decision in **Easwaramoorthy** without noticing the earlier decisions of the two different Division Benches of this Court in **R.Sekkappan** and **D.Devi**.

43. The question that now arises is as to whether this Court should refer the matter to a Bench of Larger Coram notwithstanding the fact that the decision of the Division Bench of this Court in **S.Mala** followed itself the decision in **Easwaramoorthy**, which are clearly contrary to the decisions of the Supreme Court and the earlier decisions of the two different Division Benches of this Court.

44. This Court has been recently told by an order of a Division Bench of this Court in the case of **P.R.Saravanan Vs. K.Dhanalakshmi [A.S.No.617 of 2025 etc. cases dated 22.5.2025]** holding that the doctrine of per incuriam is a nuclear weapon and that this weaponized version of the doctrine cannot be used casually. In matters of judicial adjudication, it is perhaps better to avoid use of extreme expressions, which may be more appropriate for use among combatants engaged in nuclear warfare. Courts are not war



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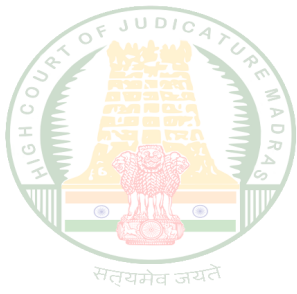
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zones. They are solemn places where Judges decide cases in a sober and calm atmosphere of detachment and objectivity. Judges are not combatants or adversaries at war when they decide cases or even differ with their colleagues. Judges may legitimately differ on matters of law or fact. It is a matter of perception as to how each of the Judges sees the facts of a case before him.

45. In the present case, this Court is faced with the two Division Bench judgments, which have ignored the two earlier Coordinate Benches' decisions by taking a different view. The decisions of the Supreme Court in (i) **S.Vanitha**, (ii) **Sudesh Chhikara** and (iii) **Urmila Dixit** do not support the view taken in **S.Mala** and **Easwaramoorthy**.

46. In the case of **Government of A.P. Vs. B.Satyanarayana Rao [reported in 2000 (4) SCC 262]**, the Supreme Court held thus:

*"A case cannot be referred to a Larger Bench on mere asking of a party. A decision by two Judges has a binding effect on another Coordinate Bench of two Judges, unless it is demonstrated that the said decision by any*



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*subsequent change in law or decision ceases to laying down a correct law. We, therefore, reject the arguments of learned counsel for the respondents.”*

47. The doctrine of per incuriam is not a judicial weapon. It is a legal tool, which could be resorted to if the conflicting views permit reconciliation. A Single Judge faced with two conflicting decisions need not instantly throw up his hands and shirk from making an attempt to reconcile the conflict by passing that burden to a Larger Coram. In the decision in **Sundeep Kumar Bafna Vs. State of Maharashtra [reported in 2014 (16) SCC 623]**, the Supreme Court has held thus:

*“19. ... A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court.”*

48. This decision was approved by a Three Judges' Bench of the Supreme Court in the case of **Enforcement Directorate Vs. Kapil Wadhawan [reported 2024 (7) SCC 147]** wherein a guidance was



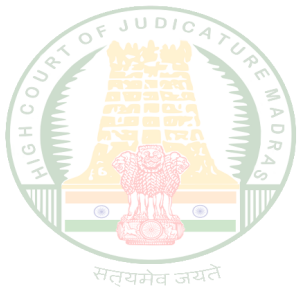
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सत्यमेव जयते also given to the Court as hereunder:

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*"The law of binding precedent provides that the rule of per incuriam is an exception to the doctrine of judicial precedent. Quite literally, it provides that when a judgment is passed in ignorance of a relevant precedent or any other binding authority, the same is said to be postulating incorrect law. It becomes pertinent to resolve the conflict arising from diverging opinions by taking recourse to the ratio decidendi of the earliest opinion."*

49. In view of the above, the earlier decisions of **R.Sekkappan** and **D.Devi** must be followed in preference to the latter decisions in **S.Mala** and **Easwaramoorthy**. Even otherwise, it has already been demonstrated that the latter decisions in **S.Mala** and **Easwaramoorthy** are also contrary to the decisions of the Supreme Court in **S.Vanitha**, **Sudesh Chhikara** and **Urmila Dixit**. It has also attributed certain observations to the judgments of the Supreme Court, which cannot be found even hard if one were to try. The earlier decisions are supported by numerous decisions of Single Judges of this Court and half a dozen decisions of other High Courts.



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50. In the case of ***Shah Faesal Vs. Union of India [reported in 2020 (4) SCC 1]***, the Supreme Court has cautioned against making references in a casual manner. This Court is of the opinion that it does not require a Full Bench to say that a judgment of the Supreme Court has to be followed in preference to a judgment of a Division Bench. For all these reasons, the decisions in ***S.Mala*** and ***Easwaramoorthy*** cannot be taken as laying down the correct position of law.

51. In the light of the above discussions on the position of law as it stands today, this Court must look into the facts of the present case and examine as to whether the impugned proceedings of the second respondent dated 15.2.2019 requires the interference of this Court.

52. It is not in dispute that the father of the petitioner had executed the said settlement deed dated 06.2.1997 in favour of the petitioner. On reading the recitals in the said settlement deed, it is seen that the properties have been settled in favour of the petitioner absolutely. It has also been stated in the said settlement deed that the said document would not be cancelled under any circumstances and



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that the possession of the properties involved was also handed over to the petitioner. The fact that the possession of the properties involved was handed over to the petitioner is supported by the patta that was issued in the name of the petitioner in patta No.831.

53. Apart from that, the name of the petitioner is also found in the kist receipt issued to the petitioner on payment of kist. The father of the petitioner did not reserve any right in the said settlement deed to revoke the same in future on any contingencies. The father of the petitioner died and thereafter, the mother of the petitioner filed an application before the second respondent seeking for cancellation of the said settlement deed on the ground that she was deprived of love and affection from the petitioner and that she was not taken care by the petitioner.

54. From the above discussions, this Court has observed that love and affection is not an aspect touching upon the consideration involved in the said settlement deed and that it is, at best, a motive for the settlor to gift/settle the subject properties. This Court has also given a finding that Section 23(1) of the Act deals with a situation



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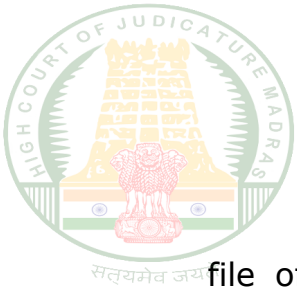
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where the transfer of property is accompanied by a specific condition to maintain and provide for the needs of a senior citizen. The same cannot be either implied or assumed.

55. As per the scheme of the Act, it is only a senior citizen, who can submit an application and such a senior citizen must be the transferor of the property through a gift, settlement, etc. Hence, except a transferor, no other person can maintain an application under Section 23(1) of the Act before the Authority concerned. As a consequence, the application submitted by the mother of the petitioner is not maintainable and the second respondent ought not to have entertained the said application and passed orders.

56. The upshot of the above discussions, both on facts and in law, would lead to the conclusion that the impugned proceedings is unsustainable.

57. Accordingly, the writ petition is allowed and the impugned proceedings of the second respondent dated 15.2.2019 is hereby quashed. If any entry is made in the encumbrance certificate on the



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file of the third respondent pursuant to the order dated 15.2.2019 passed by the second respondent, the same shall be reversed and the said settlement deed dated 06.2.1997 shall stand restored to the file of the third respondent by virtue of this order. No costs. Consequently, the connected WMPs are closed.

19.6.2025

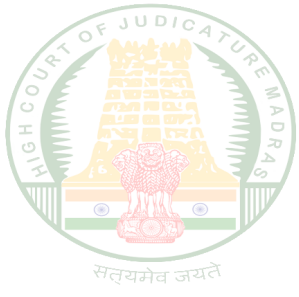
Index : Yes  
Neutral Citation : Yes

To

- 1.The District Magistrate-cum-District Collector, Appellate Tribunal under the Maintenance of Parents & Senior Citizens Act, Office of the District Collector, Kallakurichi.
- 2.The Sub-Collector-cum-First Class Executive Magistrate, Kallakurichi.
- 3.The Sub-Registrar, Kallakurichi Sub-Registrar Office, Kallakurichi-606202.
- 4.The Revenue Divisional Officer-cum-Sub Divisional Magistrate, Kallakurichi

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N.ANAND VENKATESH,J

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of 2022

19.6.2025

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