IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.08.2022

PRONOUNCED ON: 27.09.2022

CORAM

THE HON'BLE Ms.JUSTICE P.T.ASHA

S.A.No.602 of 2020
and
C.M.P.No.12757 of 2020

1.Mr.N.Nagarajan
2.Mrs.Saroja Nagarajan
... Appellants/Respondents/Defendants

Vs.

Mr.Schekar Raj ... Respondent/Appellant/Plaintiff

PRAYER : This Second Appeal is filed under Section 100 of the C.P.C, against the judgement and decree of the Court of the learned III Additional Judge, City Civil Court, Chennai in A.S.No.172 of 2018 dated 15.02.2018 dismissing the appeal and reversing the judgement and decree dated 28.06.2017 passed in O.S.No.6570 of 2014 by the learned VIII Assistant Judge, City Civil Court, Chennai.

For Appellants : M/s.Sharada Vivek
For Respondent : Mr.K.R.Hariharan

J U D G M E N T

Saint Thiruvalluvar, the Great Tamil Poet had epitomized the role of a son in a couplet as follows:-

"*மகன்தந்தைக்கு ஆற்றும் உதவி இவன்தந்தை*
ஏன்நோற்றான் கொல்எனும் சொல்."

Translated the same means that ***"where a son conducts himself in such a manner that people around would praise the father and state that the father must have undergone great penance to have begotten such a son."***

The above words echoes the ethos of our society. The case on hand demonstrates how these values are fast loosing its significance.

The words of Justice V.R.Krishna Iyer in his Judgement reported in *AIR 1980 SC 2181 - The Life Insurance Corporation of India Vs. D.J.Bahadur and Others "Judicial acceptance of social dynamics as protected by the Constitution is the crucial factor in this case"* sets the tone for the instant case.

2. The unfortunate parents are the appellants before this Court. The challenge in this Second Appeal is to the Judgment and Decree in A.S.No.172 of 2018 on the file of the III Additional City Civil Court, Chennai in and by which the learned Judge has reversed the Judgement and Decree of the Trial Court. It is necessary to allude to the facts which has culminated in the filing of the above Second Appeal and for ease of understanding the parties are referred to in their same litigative status as before the Trial Court.

Plaintiff's Case

3. The plaintiff who is the eldest son of the defendants had filed the suit O.S.No.6570 of 2014 on the file of the VIII Assistant City Civil Court, Chennai for a declaration that the deed of cancellation of settlement deed dated 27.03.2014 in Document No.1475 of 2014 on the file of the Sub-Registrar, Konur is null and void and not binding on the plaintiff and also for a permanent injunction restraining the defendants, their men or agents or anybody claiming under them from in any manner

interfering with the right, title, interest and possession of the plaintiff. In and by the above deed the settlement deed dated 23.01.2012 registered as Document No.256 of 2012 on the file of the very same Sub-Registrar was cancelled.

4. It is his case that he was taking care of his parents as he was comfortably well of and living abroad. The defendants have executed a registered settlement deed dated 23.01.2012 under Document No.256 of 2012 registered with the SRO, Konur. Under this deed they had settled the suit property absolutely in favour of the plaintiff free of all encumbrances retaining only a life interest therein after delivering possession of the suit property to the plaintiff. Though possession was delivered to the plaintiff, the defendants were enjoying the property pursuant to the life interest contained therein.

5. While so, the plaintiff came to learn that the defendants had executed a deed dated 27.03.2014 which was in the nature of a

cancellation deed in and by which the settlement deed dated 23.01.2012 was cancelled. The plaintiff would submit that after delivering possession and transferring the suit property to the plaintiff and having accepted and acted upon the said settlement deed dated 23.01.2012 by enjoying their life interest, the defendants are completely devoid of any right, title or interest over the suit property except for their life interest. The cancellation of the settlement deed would at best only mean that the defendants have relinquished their life interest in the property. It is also the case of the plaintiff that taking advantage of the cancellation deed, the defendants were attempting to dispose of the suit property. Therefore, the present suit.

Written Statement of the Defendants-

6. The defendants had denied the contents of the plaint. It is their case that the suit property was purchased from out of the self-earned money of the defendants. They had developed the property by putting up construction and as such are the absolute owners of the suit property.

7. The 1st defendant is a retired defence personnel having retired from the Indian Air Force. The defendants had two sons. The eldest was the plaintiff who was also known as Nagarajan Rajasekar and the younger son is Rajesh Nagarajan. The defendant had provided their sons with a good education and had performed their marriages by spending considerable sums of money. A sum of nearly Rs.4,00,000/- was spent for the marriage of the plaintiff and Rs.3,00,000/- for the marriage of the 2nd son, Rajesh Nagarajan. The plaintiff is residing at Australia and is doing extremely well.

8. In the year 2012, the defendants had expressed their desire to settle the property equally to both their sons as they did not want any dispute between the brothers after their life time. They had also stressed that the settlement should be subject to the settlors retaining a life interest continuing to receive the rents till their life time and that they would be in possession of the same. The settlement deed was also to be executed on condition that the plaintiff takes care of the defendants by giving

food, clothing, medical facilities etc., till their life time. This condition was sought to be imposed by settling the suit property equally on both the sons. The plaintiff had agreed to the above conditions and he was entrusted with the task of preparing the settlement deed. The defendants trusting their son, the plaintiff had also affixed their signatures in the placed as sought for.

9. In the month of January 2013, the 1st defendant fell seriously ill and underwent a surgery at Miot Hospital. Owing to his age he had developed further set backs as a result of which he had to be rushed to the Vijaya Hospital, Chennai where once again he had undergone surgery and had been hospitalized for over three months therein. When the defendants had sought help from the plaintiff, he had not extended any financial help but gave evasive replies. The 2nd defendant had to spend several lakhs of rupees for the treatment.

10. In the year 2014, the 2nd defendant fell sick and she had to be hospitalized. Even during this crisis, there was no help from the plaintiff and the 2nd defendant was forced to send her husband, the 1st defendant to an old age home as there was no one to take care of him. At that point of time he was also bedridden. Once again, the medical expenses, the old age home charges etc; were spent by the 2nd defendant, through the pension, savings and family jewelry. The 2nd defendant tried to contact the plaintiff for help but he did not attend the phone calls and upon the persistent efforts of the 2nd defendant, the plaintiff attended the phone call in the month of March 2014. When the 2nd defendant had explained the crisis that the defendants were undergoing and sought help, the plaintiff not only refused to help but went one step further in asking the parents to vacate the premises as he required full possession of the property. The defendants after recovering from the illness came to learn that the plaintiff had totally misrepresented to the defendants and had illegally executed the settlement deed settling the property entirely in his name thereby committing a breach of trust. Therefore, since the plaintiff

had committed a fraud and had executed the deed entirely in his name and further had not complied with the condition stipulated in the deed, the defendants have a right to cancel the settlement deed and accordingly the defendants had cancelled the settlement deed. Therefore, it is their contention that the action was very much within the terms of the settlement deed.

11. The learned VIII Additional City Civil Judge had framed the following issues:-

> *"1. Whether the plaintiff proved that the Deed of Cancellation of Settlement deed dated 27.03.2014 is null and void?*
>
> *2. Whether the plaintiff is entitled for declaration as prayed for?*
>
> *3. Whether the plaintiff is entitled for permanent injunction or not?*
>
> *4. To that other relief?"*

Thereafter the learned Judge had recast the issues taking into account the convenience for discussion and to arrive at correct conclusion.

> "*1. Whether the plaintiff is entitled to get declarative relief as to the cancellation of Settlement Deed dated 27.03.2014 as null and void and not binding on the plaintiff?*
>
> *2. Whether the Settlement deed dated 23.01.2012 is a real settlement deed according to law and acted upon?*
>
> *3. whether the plaintiff is entitled to get permanent injunction against the defendants as prayed for?*
>
> *4. To what other relief?"*

12. The plaintiff had examined himself as PW.1 and marked Ex.A.1 to Ex.A.5.On the side of the defendants, the 2nd defendant had examined herself as D.W.1 and marked Ex.B.1 to Ex.B.8.

13. The Trial Court on considering the evidence on record held that the settlement deed Ex.A.1 though styled as a settlement deed is

actually a will which does not require any cancellation. The learned Judge had held that the conditions of the settlement deed had not been complied with since the plaintiff had failed to take care of the parents during their medical emergency. Ultimately the learned Judge dismissed the suit. Aggrieved by the same the plaintiff had preferred the First Appeal in A.S.No.172 of 2018 on the file of the III Additional Judge City Civil Court, Chennai.

14. The Appellate Court rejected the finding of the Trial Court that the document in question namely, Ex.A.1 was a will. The learned Judge observed that possession of the property had been handed over immediately upon the execution of the settlement deed Ex.A.1 and therefore, the settlement deed had been acted upon and it had come into force, thereafter the defendants have no right to cancel the settlement deed. Further the condition of the settlement deed had been complied with the plaintiff depositing a sum of Rs.3,00,000/- with the 2nd defendant which fact had been admitted by the 2nd defendant in her cross

examination as D.W.1. It is also the observation of the of the Appellate Court that if the defendants were aggrieved by the plaintiff not taking care of them, they should have resorted to legal methods. Therefore, the learned Judge proceeded to allow the appeal. Aggrieved by the same the defendants are the appellants before this Court.

15. The Second Appeal has been admitted on the following Substantial Question of law: -

> *" a) Whether the Settlement Deed becomes void by operation of law viz., Section 23 of the Maintenance and welfare of Parents and Senior Citizens Act, 2007, in view of non compliance with the condition set out in the document.*
>
> *b) Whether the Lower Appellate Court was right in concluding that the document dated 23.01.2012, styled as a Settlement Deed is in fact a Settlement Deed and not a testamentary instrument."*

Submissions:-

16. Ms.Sharda Vivek, learned counsel appearing on behalf of the defendants would place her arguments primarily on Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 which hereinafter shall be referred to as the Maintenance Act. It is her contention that Ex.A.1, settlement deed is a conditional settlement deed. Apart from the settlors retaining a life interest, the settlee was also bound to take care of their nutritional and health needs. Even according to D.W.1 apart from giving a sum of Rs.3,00,000/- after the execution of the settlement deed no other amounts have been paid by the plaintiff to the defendants. She would further contend that this fact is proved through the E-mail Ex.B.1 wherein the 1st defendant/father has sent a mail to the plaintiff that the 2nd defendant/ mother was also unwell and that he had nowhere to go. This mail has not been responded to by the plaintiff. In fact, in paragraph No.6 of the written statement the defendants have mentioned about the same, however, the plaintiff has not refuted the contention by filing a reply statement. Therefore it is clear that the 2nd limb of the conditional settlement deed namely providing the nutritional

and health needs of the parents has not been taken care of.

17. She would submit that the Trial Court has rightly considered all these factors and thereafter proceeded to dismiss the suit. However, she would submit that the Appellate Court had totally mis-construed the provisions of the Act. The Appellate Court had reversed the Judgement and Decree of the Trial Court by stating that under Ex.A.1, settlement deed the defendants had divested their right to the suit property and granted ownership and possession immediately to the plaintiff and thereafter they had no right over the same. She would submit that such an interpretation would render the object of the Act as well as the provisions of Section 23 of the Maintenance Act redundant. The learned Judge has also erred in stating that the settlement deed cannot be cancelled unilaterally, once again overlooking the provisions of Section 23 of the Maintenance Act. She would rely upon the following Judgements in support of her case.

1. 2016(1) KLT 185 - Radhamani and Ors. Vs. State of Kerala and Ors.,

2. 2016 (5) KHC 603- Shabeen Martin and Ors. Vs. Muriel and Ors;

3. 2021(4) ICC 576- Ramesh Vs. Ishwar Devi and Ors.

18. She would therefore submit that Judgement and Decree of the Lower Appellate Court in reversing the well-considered Judgement and Decree of the Trial Court suffers from perversity and is based on a total mis-interpretation of the law and therefore has to be necessarily set aside and the Second Appeal allowed.

19. Per contra, Mr.K.R.Hariharan, learned counsel appearing on behalf of the plaintiff would submit that the settlement deed had been acted upon immediately on its execution since the possession had been handed over to the plaintiff. He would submit that the petitioner had contributed to the construction of the building. That apart, he would submit that the defendants ought not to have cancelled the settlement deed but should have filed a suit for declaring the settlement deed as null and void. He would submit that the defendants who are now relying upon

Section 23 of the Maintenance Act has not referred to the same in their cancellation deed.

20. He would further submit that the plaintiff has not defaulted in his obligation and this fact is admitted by D.W.1, the 2nd defendant that the plaintiff has paid a sum of Rs.3,00,000/- to the defendants. He would further contend that the rents from the premises were being collected by the defendants and therefore, it does not lie in their mouth to say that the son has not maintained the parents. He would further submit that the provisions of Section 23 of the Maintenance Act will not apply since the obligations under the deed were already performed by the plaintiff. He would further submit that the defendants cannot unilaterally cancel the settlement deed and in support of the said argument he would rely upon the judgement reported in *2014 (3) CTC 113 - D.V.Loganathan Vs. The Sub-Registrar, Office of the Sub-Registrar, Pallavaram, Chennai - 600044 and another.*

Discussion-

21. Before answering the substantial questions of law it would be useful to trace the genesis for the Maintenance Act. Article 41 of the Constitution of India under the Directive Principles of State Policy provides that "the State should make effective provisions for public assistance including old age". India is also a signatory to the Madrid International Plan of Action on Ageing (MIPAA) adopted in 2002 which covers the priority areas of older people like their development, health and wellbeing during their old age and ensuring, enabling and supportive environment for the elderly. Keeping in view the United Nation's principles for older persons, the Government of India had announced a National Policy on Older Persons, which envisages legislative measures for securing the welfare of senior citizens. This gave birth to the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (the Maintenance Act). The Statement of Object and Reasons sets out in a nutshell the reasons for its enactment. The same would read as follows:-

*" **Statement of Objects and Reasons**.- Traditional norms and values of the Indian society laid stress on*

providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents."

22. Thereafter, since the Ministry of Social Justice and Empowerment had been receiving large number of representations from individuals and institutions setting out the teething problems relating to the implementation of various provisions of the principal Act at a grass root level a need was felt to bring about certain amendments. Therefore,

a Standing Committee on Social Justice and Empowerment under the aegis of Ministry of Social Justice and Empowerment was set up to suggest the amendments of the 2007 Act. The Committee had also submitted their report suggesting amendments to certain provisions and the same is yet to translate into an Amending Act.

23. The Scheme of the Act as it now exists is briefly set out herein below:-

i) Section 3 makes it clear that the Act shall have an overriding effect on the other Acts which are inconsistent with the Act.

ii) Section 4 deals with the basis for providing maintenance of parents and senior citizens.

iii) Section 5 provides the procedure for parents and senior citizens to demand maintenance by making an application to the Tribunal constituted under the Act.

iv) Section 6 talks about the jurisdiction and procedure of such Tribunal. The Act provides that the inquiry contemplated should be of a

summary nature so as to ensure immediate succour to the senior citizens /parents.

v) Taking into account the fact that senior citizens are lured to transfer their property with the promise of taking care of them and after having the property transferred, to abandon them, Section 23 has been introduced.

In this backdrop, the substantial questions of law that arise for consideration in this Second Appeal is herein below discussed.

24. The first substantial question of law revolves around the provisions of Section 23 of the Maintenance Act. The said provisions read as follows:-

> *"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 organization referred to in Explanation to sub-section (1) of section 5."

25. Section 3 of the Maintenance Act provides that the provisions of this Act would have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.

Section 3 of the Maintenance Act is extracted herein below :-

> "***3. Act to have overriding effect***. - *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act."*

In other words, the provisions of this Act would take predominance over any other enactment. The very object of the Maintenance Act is to guarantee the maintenance and welfare of parents and senior citizens. The Act enjoins under Section 4(3) of the Act that the children are obligated to maintain his or her parent with such needs as the parent may require to enable them to lead a normal life.

26. The Maintenance and Welfare of Parents and Senior Citizens Act is special legislation enacted for the specific object of protecting Parents and Senior Citizens from being deprived of their right to be maintained. This Act has been enacted taking into account the changing social values. Therefore, one has to analyze if the general law yields to

the provisions of this Act which is a special legislation. The Hon'ble Supreme Court in the Judgement reported in *AIR 1961 SCC 1170 - J.K.Cotton Spinning and Weaving Mills Ltd., Vs. State of U.P. and others* had held as follows:-

> *"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction shall have effect."*

27. The Judgement of the Hon'ble Supreme Court reported in *AIR 1980 SC 2181 - The Life Insurance Corporation of India Vs. D.J.Bahadur and Others* in Paragraph Nos. 52 & 53 discussed this dichotomy between the Special and general legislation and how to resolve the conflict between the two harmoniously as follows:-

> *" In determining whether a statue is a special or a*

general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purpose, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity, not absolutes-so too in life. The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the LIC Act does not speak at all with specific

reference to workmen. On the other hand, its powers relate to the general aspects of nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such, are beyond the orbit of and have no specific or special place in the scheme of the LIC Act. And whenever there was a dispute between workmen and management the ID Act mechanism was resorted to. "

"53. What are we confronted with in the present case, so that I may determine as between the two enactments which is the special? The only subject which has led to this litigation and which is the bone of contention between the parties is an industrial dispute between the Corporation and its workmen qua workmen. If we refuse to be obfuscated by legal abracadabra and see plainly what is so obvious, the conclusion that flows, in the wake of the study I have made, is that vis-a-vis 'industrial disputes' at the termination of the settlement as

between the workmen and the Corporation the ID Act is a special legislation and the LIC Act a general legislation. Likewise, when compensation on nationalisation is the question, the LIC Act is the special statute. An application of the generalia maxim as expounded by English textbooks and decisions leaves us in no doubt that the ID Act being special law, prevails over the LIC Act which is but general law."

28. In their judgement in *Nilesh Nandkumar Shah Vs. Sikandar Aziz Patel - 2002 SUPP (1) SCR 652*, the Hon'ble Supreme Court was considering the conflict between the general law (Transfer of Property Act) and the Spacial law (Bombay Rents, Hotel and Lodging, House Rates Control Act, 1947) and the learned Judges had observed as follows:-

"In the Rent Control Legislation the relevant provision which regulates or restricts the right of landlords to seek eviction of tenants invariably opens with a non-obstante clause and is given thereby an overriding effect on the statutory or

common law right of landlord to evict a tenant. Even in the absence of non-obstante clause a Rent Control Legislation being a special beneficial provision shall override the provisions of any general legislation in case of conflict. It would, therefore, be reasonable and consistent with the principles of interpretation of statutes to hold that such part of the tenancy premises as is protected by the Rent Contort Legislation (here, the residential portion) shall take along with it such other part of the tenancy premises as is not protected, the contract of tenancy being an integral one. A view to the contrary would defeat the provisions of the Rent Control Legislation. "

29. In the Judgement reported in *(2014) 8 SCC 319 - Commercial Tax Officer,Rajasthan V.s Binani Cements Ltd. & Another,* the Hon'ble Supreme Court has observed as follows:-

"34. It is well established that when a general law and a special law dealing with some aspect dealt with by the general

law are in question, the rule adopted and applied is one of harmonious construction whereby the general law, to the extent dealt with by the special law, is impliedly repealed. This principle finds its origins in the latin maxim of generalia specialibus non derogant, i.e., general law yields to special law should they operate in the same field on same subject. (Vepa P. Sarathi, Interpretation of Statutes, 5th Ed., Eastern Book Company; N. S. Bindra's Interpretation of Statutes, 8th Ed., The Law Book Company; Craies on Statute Law, S.G.G.Edkar, 7th Ed., Sweet & Maxwell; Justice G.P. Singh, Principles of Statutory Interpretation, 13th Ed., LexisNexis; Craies on Legislation, Daniel Greenberg, 9th Ed., Thomson Sweet & Maxwell, Maxwell on Interpretation of Statutes, 12th Ed., Lexis Nexis) "

"35. Generally, the principle has found vast application in cases of there being two statutes: general or specific with the latter treating the common subject matter more specifically or minutely than the former. Corpus Juris Secundum, 82 C.J.S. Statutes § 482 states that when construing a general and a

specific statute pertaining to the same topic, it is necessary to consider the statutes as consistent with one another and such statutes therefore should be harmonized, if possible, with the objective of giving effect to a consistent legislative policy. On the other hand, where a general statute and a specific statute relating to the same subject matter cannot be reconciled, the special or specific statute ordinarily will control. The provision more specifically directed to the matter at issue prevails as an exception to or qualification of the provision which is more general in nature, provided that the specific or special statute clearly includes the matter in controversy. (Edmond v. U.S., 520 U.S. 651, Warden, Lewisburg Penitentiary v. Marrero, 417 U.S. 653) "

"42. Having noticed the aforesaid, it could be concluded that the rule of statutory construction that the specific governs the general is not an absolute rule but is merely a strong indication of statutory meaning that can be overcome by textual indications that point in the other direction. This rule is particularly applicable where the legislature has enacted

comprehensive scheme and has deliberately targeted specific problems with specific solutions. A subject specific provision relating to a specific, defined and descriptable subject is regarded as an exception to and would prevail over a general provision relating to a broad subject."

30. Therefore viewed in the context of the above judicial pronouncement Section 23 of the Maintenance Act is a provision which enables a parent or senior citizen to have a transfer made by them declared void. The specific intent of this provision is for protecting parents and senior citizens from being deprived of maintenance by unscrupulous children and relatives and this provision would override the general law under Section 126 of the Transfer of Property Act. Section 126 of the Transfer of Property Act has to therefore necessarily yield to the provisions of the Maintenance Act. This intent is also encapsulated in Section 3 of the Maintenance Act.

31. Coming to the case on hand, the defendants had executed a settlement deed Ex.A.1 dated 23.01.2012 in and by which they have settled the suit property in favour of the plaintiff herein. The recitals of the said deed would show that the settlors who are the defendants had retained a life interest in the property settled by residing, letting out the same for rent and continuing to enjoy the rental benefits during their life time. The settlee had also agreed that he would be solely responsible to provide for and look after the future nutritional and health needs of the settlors absolutely until their life time. It was also made clear that if the 2nd defendant survives the 1st defendant then the above life interest with the attendant rights would devolve on her. However they had no right to alienate, encumber or mortgage the property. Therefore, it is clear that the settlement deed was executed subject to the condition that the settlors namely the defendants would retain the life interest with the exclusive right to reside therein and to lease out the same to third parties and collect the rents therefrom. That apart, the plaintiff, the Settlee was bound to look after the parent's nutritional and health needs. The case of the defendants is that the plaintiff had failed to fulfil his obligation

namely taking care of their nutritional and health needs. It is an admitted case that the 1st defendant had fallen ill on 26.01.2013 with a complaint in the left hip and inability to walk on account of a fall. The 1st defendant had undergone a surgery on 28.01.2013 and thereafter a bone grafting on 06.02.2013. He was admitted in the Miot Hospital on 26.01.2013 and remained there till 23.02.2013. Thereafter, he was once again admitted in the Vijaya Hospital on 25.03.2013 where he remained as an inpatient till 13.06.2013 and had undergone 3 surgeries on 01.04.2013, 20.05.2013 and 24.05.2013. Ex.B.2 is the hospital discharge summaries. The defendants had also marked Ex.B.4, Ex.B.5 and Ex.B.6 to show the expenditure incurred by them towards the hospitalization and for the purchase of medicines. It is the case of the defendants that the plaintiff had not given any financial assistance during these trying times. After the execution of the settlement deed, except for paying a sum of Rs.3,00,000/-, admittedly no other amount has been paid by the plaintiff to his parents, the defendants, despite the fact that even in his plaint he says that he is comfortably well off at Australia.

32. The plaintiff seeks to justify the same by stating that under the settlement deed the right to receive the rents has been given to the parents and that has to be treated as the maintenance amount. The plaintiff has failed to see that in addition to the right to receive the rents till their life time, the deed also stipulated that the plaintiff should take care of the nutritional and health needs meaning the food and medical expenses of his parents. This obligation has been overlooked by the plaintiff. The heartless treatment of the plaintiff is further highlighted on a perusal of Ex.B.1, e-mail. In the mail dated 02.03.2014 which is the mail sent after the plaintiff had sent a mail to his father on 01.02.2014, the 1st defendant father has made the following requests to the plaintiff:-

> *"mummy is not well she wants to go to hospital for treatment in case if she is admitted in in the hospital what I will do. In case if doctor advice her to admit only she will be admitted in the hospital. Then what I shall I do'. Inform me immediately. I know only one senior citizen home, Elder care centre - 9600019191 - 9600091919 WEB:WWW.SHELTER. INDIA.IN- [Maaran project Co Ordinator 96000 19191, 96000 91919. Block A 105, 106, 107, TVH PARK VILLA near Thorapakkam,, pallikaranai*

Toll plaza, Chennai- it park Chennai 600097. India.- WWW.eldercarecentre.in] we know him, once he came here and saw us. In case mummy admitted in the hospital I shall inform Mr MAARAN to take me to his shelter eldercarecentre-chennai, 900097. I do not know anybody else. You inform me IMMEDIATELY for further what I should do. Rajesh did not attend even in phone. There is no one to help here. Thanks. Daddy."

33. This email has been sent after the father had undergone four surgeries and a six month hospitalization where he implores his elder son that he is helpless and requests the son to inform him as to what he should do immediately. The father has also informed the plaintiff that the 2nd son is of no use as he did not even attend phone calls. Despite the anguish that has been expressed in the said letter there has not been any response from the plaintiff who under Ex.A.1 was obliged to take care of his parents, let alone the fact that he has forgotten his moral duty, Section 23 of the Maintenance Act provides that where a senior citizen has transferred by way of gift or otherwise his property on condition that the transferee provides him the basic amenities and basic physical needs and

such transferee refuses or fails to provide such amenities then the transfer would be deemed to have been made by fraud or coercion or under undue influence and at the option of the transferor the same can be declared void by the Tribunal. The instant case falls within the contours of this provision. The tranferors namely the defendants herein have exercised their option by executing Ex.A.4 cancellation deed.

34. The Kerala High Court in its Judgement reported in *2016(1) KLT 185 - Radhamani and Ors. Vs. State of Kerala and Ors.,* was dealing with more or less similar case. The learned Judge had therein referred to Section 122 and 126 of the Transfer of Property Act and Section 23 of the Maintenance Act to hold as follows in Paragraph Nos.10 and 11 of the said judgement.

> *"10. It is to be noted that the special scheme in terms of Senior Citizens Act, 2007 could declare certain transfer as void, taking note of the fact that by taking advantage of the emotionally dependent senior citizens, relatives grab the property on the pretext of providing emotional support. Therefore, Legislature thought such*

transaction could be declared as void as the conduct leading to transaction was based on malice or fraud. Therefore, condition referred in Section 23 has to be understood based on the conduct of the transferee and not with reference to the specific stipulation in the deed of transfer. Thus, this Court is of the view that it is not necessary that there should be a specific recital or stipulation as a condition in the transfer of deed itself. This condition mentioned in Section 23 is only referable as a conduct of the transferee, prior to and after execution of the deed of transfer. Thus, challenge based on the ground that there is no reference in the recital of deed that transferee will provide basic amenities and physical needs to the transferor is of no consequence."

"11. Under Section 17 of the Indian Contract Act, 1872, 'fraud' includes a promise made without any intention of performing it. Section 92 of the Evidence Act places a restriction on the admissibility of evidence in variance or in contradiction of the term of a registered document in writing. However, under second proviso to Section 92, the existence of any separate oral agreement as to any matter on which a document is silent, and which

is not inconsistent with its terms, may be proved. Under third proviso to Section 92, the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property may be proved. Thus, there is no requirement under law that condition as such should form part of written document. It can be implied from the circumstances of human conduct."

35. Ultimately, the learned Judge had upheld the revocation of the settlement deed by the Tribunal. This judgement has been approved by the Division Bench of the Kerala High Court in the judgement reported in *2016 (4) KLJ 699 - Shabeen Martin and Ors. Vs. Muriel and Ors;* wherein the learned Judges has stated as follows:-

"Section 23(1) shows that where, after the commencement of the Act, a senior citizen has transferred his property by way of a gift deed or otherwise, subject to the condition that the transferee shall provide basic amenities and physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the transfer of such property shall be

deemed to have been made by fraud or coercion, or under undue influence. Reading of this provision, itself, would show that it is not the legislative requirement or intent that the document evidencing the transfer, either by gift or otherwise, should itself contain an express condition that the transferee shall provide the basic amenities and physical needs of the transfer. On the other hand, if there are evidence to the satisfaction of the authorities under the Act that the requirements of Section 23 are satisfied in a case, it is always open to the authorities to invoke their power under Section 23 of the Act and invalidate the document. Such an understanding of the section, according to us, would only advance the object of the Act. On the other hand, if the contention now advanced is accepted, that will defeat the very object and purpose of the Act.

In the above view of the matter, we agree with the view taken by the learned Single Judge and affirm the principles laid down by this Court in the judgment in Radhamani v. State of Kerala : 2016 (1) KLT 185: ."

36. Considering the language of Section 23 of the Maintenance Act

and the dicta laid down in the above referred cases, the substantial question of law A is answered in favour of the defendants/appellants. The 2nd Question of law regarding the nature of the deed Ex.A.1 as to whether it was a settlement deed or a will was not canvassed by both the counsels. However, a perusal of the document would indicate that the same is only a settlement deed since the deed clearly stipulates that the symbolic possession has been handed over and the setllor retains only a life interest without a right of alienation, transfer etc.

37. The learned counsel for the respondent had argued that the settlement deed cannot be unilaterally cancelled and in support of this argument he would rely upon the judgement of this Court reported in *2014 (3) CTC 113 - D.V.Loganathan Vs. The Sub-Registrar, Office of the Sub-Registrar, Pallavaram, Chennai - 600044 and anther*.

38. In the case on hand, Section 3 of the Act provides that the

provisions of the Maintenance Act would have a overriding effect over any other enactments. Therefore, in the light of the above, even if the deed is considered as a settlement deed by virtue of Section 23 of the Maintenance Act the same has to be declared void in as much as the plaintiff has failed to comply with the obligations imposed upon him under the deed by ignoring the medical needs of the parents. This act of the plaintiff has provided the reason for the cancellation which has been upheld in the foregoing paragraphs. In these circumstances, the above Second Appeal is allowed and the Judgement and Decree of the lower Appellate Court in A.S.No.172 of 2018 on the file of the III Additional City Civil Court, Chennai is set aside and the Judgement and Decree passed by the Trial Court in O.S.No.6570 of 2014 on the file of the VIII Assistant City Civil Court, Chennai is confirmed with cost throughout. Consequently, the connected Miscellaneous Petition is closed.

27.09.2022

Index : Yes / No
speaking Order : Yes / No
shr

To

1.The III Additional Judge, City Civil Court, Chennai

2. The VIII Assistant Judge, City Civil Court, Chennai.

3.The Section Officer,
V.R.Section,
High Court, Madras -104.

P.T.ASHA, J.,

shr

Pre-delivery Judgment in
S.A.No.602 of 2020
and C.M.P.No.12757 of 2020

27.09.2022

HC allows appeal from parents seeking cancellation of settlement deed over son's failure to take care of them

Mohamed Imranullah S.
CHENNAI

"Mummy is not well. She has to go to hospital for treatment. If doctor advises her to be admitted, only she can be admitted over there. What will I do? I know only one senior citizen home...I can ask the coordinator Mr. Maaran to take me there. I do not know anyone else.

"You inform me IMMEDIATELY on what should I do. Ramesh [younger son] did not even attend my phone calls. There is no one to help here – Thanks, Daddy," an elderly and helpless Chennai-based retired Indian Air Force officer wrote to his well-settled elder son in Australia.

The aged man penned the e-mail after he underwent four hip surgeries and bone grafting following a fall. It led to his being bedridden for over six months. His wife took care of him during recuperation; but soon thereafter, she fell ill and he found himself in dire straits.

The words of the father moved Justice P.T. Asha of the Madras High Court so much that she described as heartless the treatment meted out by the two sons to their parents, who had to sell their jewellery and shell out every penny of their savings and pension to pay for the medical expenses.

Allowing an appeal from the parents against a lower court order in favour of their elder son in a property dispute, the judge held that the appellants were entitled to cancellation of the settlement deed executed in favour of him due to his failure to take good care of them.

> The cancellation of the settlement deed in the present case was in order, and the lower court need not have interfered with it
>
> **JUSTICE P.T. ASHA**
> Madras High Court

The elder son had contended that the settlement deed could not be cancelled unilaterally because he had paid ₹3 lakh to his parents when the deed was executed, and also allowed them to collect the rent from the immovable property until their death.

Equal share

On the other hand, the parents accused the elder son of having got the settlement deed executed only in his name, though they wanted to give an equal share to both their sons, on the condition that they take care of them and provide them food, shelter, nutrition and healthcare.

The parents also pointed out that they had spent several lakhs of rupees on the marriage of their sons, but neither of them extended a helping hand when they required money for medical expenses. Therefore, they chose to cancel the settlement deed.

Finding force in their argument, Justice Asha held that the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, a special law enacted after India signed the Madrid International Plan of Action on Ageing, would override all other general laws in the country.

Since Section 23 of the Act empowers the parents to cancel the transfer of properties to their children if they do not take care of them properly, the judge ruled that the cancellation of the settlement deed in the present case was in order, and the lower court need not have interfered with it.

Citing the *Tirukkural* couplet, *Magan Thanthaikku Aatrum Udhavi...*, which meant that a son should conduct himself so well that people around him should consider the father lucky for having begotten such a child, the judge wrote, "The above words echo the ethos of our society. The case on hand demonstrates how these values are fast losing their significance."

(The name of the younger son has been changed.)

மகன், மகள் 'பாசத்தில்' வழுக்கி விழுந்துவிடாதீர்கள்!

சொத்துகளை எழுதி வைக்கும் பெற்றோருக்கு அறிவுரையாக அமைந்த தீர்ப்பு

ஆர்.பாலசரவணக்குமார்

மகனோ, மகளோ பெற்றோரை முறையாக பராமரிக்காவிட்டால், அவர்கள் பெயரில் எழுதி வைத்த சொத்துகளை சட்ட ரீதியாக ரத்து செய்ய பெற்றோருக்கு முழு உரிமை உண்டு என்ற முக்கியத்துவம் வாய்ந்த தீர்ப்பை சென்னை உயர் நீதிமன்ற நீதிபதி பி.டி.ஆஷா சமீபத்தில் அளித்துள்ளார்.

எத்தனையோ குடும்பங்களில் வசதியாக வாழ்ந்த பெற்றோர் பலர் ஆதரவை இழந்து முதியோர் இல்லங்களில் ரத்தக் கண்ணீர் வடித்து வருகின்றனர். ஒரு லெர் சாப்பாட்டுக்கே வழியின்றியாசகம் பெற்று சாப்பிடும் நிலையையும் காண முடிகிறது. பெற்றோருக்கும், பிள்ளைகளுக்கும் சொத்து பிரச்சினை தொடர்பாக பல வழக்குகள் நீதிமன்றத்தில் நிலுவையில் இருக்கின்றன.

அப்படி ஒரு வழக்குதான் சமீபத்தில் சென்னை உயர் நீதிமன்றத்தில் விசாரணைக்கு வந்தது. தந்தை, விமானப் படையில் பணியாற்றி ஓய்வுபெற்ற அதிகாரி. தாய், செவிலியராக பணியாற்றி ஓய்வு பெற்றவர். இருவருமே அரசுப் பணியில் இருந்தவர்கள் என்பதால், தங்கள் 2 மகன்களையும் நன்றாக படிக்கவைத்தனர். நல்ல வேலை, சமூக அந்தஸ்துடன் பெரிய இடத்தில் திருமணம்எனஎந்தகுறையும்இல்லாமல் அவர்களை ஆளாக்கியுள்ளனர்.

ஒரு கட்டத்தில், தாங்கள் சேர்த்து வைத்த வீடு உள்ளிட்ட சொத்துகளை இரு மகன்கள் பெயரிலும் எழுதி வைக்க நினைத்தனர். இந்த சூழலில், இளைய மகன் உடல்நலம் குன்றிய நிலையில் இருந்ததால் முழுவது மாற்றிக் கொண்டனர். ஆஸ்திரேலியாவில் குடும்பத்துடன் வசதியாக வாழ்ந்து வரும் மூத்த மகன் பெயருக்கே மொத்த சொத்துகளையும் எழுதி கொடுக்க முடிவெடுத்தனர்.

நன்கு படித்தவர்கள், அனுபவம் மிக்கவர்கள் என்பதால், 'தங்கள் வாழ்நாள் முழுவதும் உணவு, உடை, இருப்பிடம், மருத்துவ செலவு செய்து தங்களை கண்கலங்காமல் பார்த்துக்கொள்ள வேண்டும்' என்ற நிபந்தனையுடன் தனது மூத்த மகனுக்கு கடந்த 2012-ல் செட்டில்மென்ட் பத்திரம் பதிவு செய்து கொடுத்துள்ளனர். அப்போது தாய் பெயரில் ரூ.3 லட்சத்தை மகன் டெபாசிட் செய்துள்ளார்.

அதன்பிறகு, நிலைமை தலைகீழானது. தந்தையும், தாயும் இருமுறை உடல்நலம் வெகுவாக பாதிக்கப்பட்டு, உயிர் பிழைப்பதே கடினம் என்ற சூழல் வரை சென்றபோதுகூட ஆஸ்திரேலியாவில் உள்ள மூத்த மகன் என்ன என்று கேட்கவில்லை.

வேறு வழி தெரியாமல் தவித்த தாய், ஒரு கட்டத்தில் தனது கணவரை முதியோர் இல்லத்தில் சேர்த்தார். சேமித்து வைத்த பணம், நகைகளை விற்று தனது கணவரின் உயிரைக் காப்பாற்றியுள்ளார். இறுதி

↑ நீதிபதி பி.டி.ஆஷா

முயற்சியாக கடந்த 2014-ல் மூத்த மகனை தொடர்பு கொண்ட தாயிடம், "என் வீட்டை எப்போது காலி செய்து கொடுப்பீர்கள்?" என்று கேட்டு அதிர்ச்சி கொடுத்தார் மகன்.

நம்மை இவ்வளவு கஷ்டத்தில் ஆழ்த்தி, நம்பிக்கை துரோகம் செய்த மகனுக்கா நம் சொத்தை எழுதி வைக்க வேண்டும்? என்ற சிந்தனை அவர்கள் மனதில் ஏற்பட்டது. மகனுக்கு எழுதிக் கொடுத்த செட்டில்மென்ட் பத்திரத்தை உடனடியாக ரத்து செய்தனர்.

பெற்றோர் உயிருக்கு போராடிய போது கண்டுகொள்ளாத மகன், பல கோடி மதிப்புள்ள, வாடகைதந்து கொண்டிருக்கும் சொத்து பறிபோனதால் பதறுகிறார். உடனடியாக ஆஸ்திரேலியாவில் இருந்து சென்னைக்கு வந்து, 8-வது உதவி பெருநகர உரிமையியல் நீதிமன்றத்தில் வழக்கு தொடர்ந்தார்.

வழக்கு விசாரித்த நீதிபதி, "பெற்றோர்

↑ வழக்கறிஞர் சாரதா விவேக்

சரியான காரியம்தான் செய்துள்ளனர்" என்று கூறி அந்த வழக்கை தள்ளுபடி செய்தார். அதை எதிர்த்து 3-வது கூடுதல் பெருநகர உரிமையியல் நீதிமன்றத்தில் மகன் மேல்முறையீடு செய்ய, அங்கு அவருக்கு சாதகமாக தீர்ப்பு கிடைத்துள்ளது. தாய் எட்டி பாய்ந்தால், குட்டிதான் பதினாறு அடி பாய வேண்டுமா? இங்கு தாய் பதினாறு அடி பாய்கிறது. அந்த தீர்ப்பை எதிர்த்து பெற்றோர் சென்னை உயர் நீதிமன்றத்தில் மேல்முறையீடு செய்தனர்.

வழக்கை விசாரித்த நீதிபதி பி.டி. ஆஷா, "மகன் தந்தைக்கு ஆற்றும் உதவி இவன் தந்தை என்நோற்றான் கொல்எனும் சொல்" எனும் திருக்குறளை உவமை காட்டி தனது தீர்ப்பை தொடங்குகிறார்.

பெற்றோருக்கு இருக்கும் கடமை உணர்வு, சட்ட ரீதியாக குழந்தைகளுக்கும் உண்டு. ஆனால், பெற்றோரை முதுமையில் மனம் நோகாமல் பார்த்துக்கொள்ள வேண்டும் என்பதை பெரும்பாலான பிள்ளைகள் ஏற்க மறுப்பது வேதனையின் உச்சம். இந்த வழக்கில் மூத்த மகனின் செயல்பாடு இதயமற்றது, ஈவு, இரக்கமற்றது என கடுமையாக விமர்சித்த நீதிபதி, கடந்த 2007-ம் ஆண்டு கொண்டு வரப்பட்ட பெற்றோர் மற்றும் மூத்த குடிமக்கள் நல பராமரிப்பு சட்டப்படி, பெற்றோரை கவனிக்காத பிள்ளைகளின் பெயரில் எழுதி வைக்கப்பட்ட சொத்துகளை சட்ட ரீதியாக ரத்து செய்ய பெற்றோருக்கு முழு உரிமை உண்டு என பல்வேறு வழிகாட்டி நீர்ப்புகளை மேற்கோள் காட்டி, பெற்றோர் செட்டில்மென்ட் பத்திரத்தை ரத்து செய்தது சரியானதே என்று நீர்ப்பளித்தார்.

மேலும், தற்போதைய இளைய சமூகம் பெற்றோரை நோகடிக்க கூடாது என்ற விழுமியத்தின் முக்கியத்துவத்தையும், சமுதாய பொதுப் பண்புகளையும் வேகமாக இழந்து வருவதாகவும் நீதிபதி வேதனை தெரிவித்துள்ளார்.

இந்த வழக்கில், வயதான பெற்றோருக்காக மாவட்ட சட்டப்பணிகள் ஆணைக்குழு சார்பில் இலவசமாக ஆஜராகி வாதிட்டு வெற்றி தேடிக் கொடுத்த முன்னாள் அரசு வழக்கறிஞர் சாரதா விவேக் கூறும்போது, "பெற்றோர் மற்றும் மூத்த குடிமக்கள் சட்டம் - 2007 பிரிவு 23-ன்படி, அவர்களுக்கான பராமரிப்பு மற்றும் நலன் கண்டிப்பாக பாதுகாக்கப்பட வேண்டும். நீதிமன்றத்தின் படியேறி நியாயம் கேட்ட பெற்றோருக்கு சரியான தீர்ப்பை நீதிபதி பி.டி.ஆஷா கொடுத்துள்ளார். பெற்றோரை பராமரிக்க வேண்டும் என்ற நிபந்தனைக்கு உட்பட்டு மகனுக்கோ, மகளுக்கோ செட்டில்மென்ட் கொடுக்கும்போது அந்த நிபந்தனைகளை அவர்கள் பூர்த்தி செய்யாவிட்டால், சட்ட ரீதியாக அந்த செட்டில்மென்ட் பத்திரத்தை ரத்து செய்ய பெற்றோருக்கு முழு உரிமை உண்டு. இனி தங்களது சொத்துகளை அன்பு மற்றும் பாசத்தின் வெளிப்பாடாக வாரிசுகளுக்கு எழுதி வைக்கும்போது தங்களை கடைசி வரை பராமரிக்க வேண்டும் என்ற நிபந்தனையுடன் எழுதி கொடுத்தால் அவர்களுக்கு சட்ட பாதுகாப்பு இருக்கும். பிள்ளைகளால் எந்த பிரச்சினையும் வராது" என்றார்.

அலசல் கட்டுரை

இந்து தமிழ் திசை

மகன், மகள் ‘பாசத்தில்’ வழுக்கி விழுந்துவிடாதீர்கள் - சொத்துகளை எழுதி வைக்கும் பெற்றோருக்கு அறிவுரையாக அமைந்த தீர்ப்பு

ஆர்.பாலசரவணக்குமார்

13 Oct, 2022 08:01 AM

நீதிபதி பி.டி.ஆஷா

வழக்கறிஞர் சாரதா விவேக்

மகனுக்கு எழுதி கொடுத்த

சொத்து பத்திரத்தை பெற்றோர் ரத்து செய்தது சரிதான்

ஐகோர்ட்டு பரபரப்பு தீர்ப்பு

சென்னை, அக்.14-

உடல் நலம் பாதிக்கப் பட்ட நிலையில் உதவி செய்யாத மகனின் பெய ருக்கு வீட்டை எழுதி வைத்த செட்டில்மெண்ட் பத்திரத்தை பெற்றோர் ரத்து செய்தது சரியானது தான் என்று சென்னை ஐகோர்ட்டு பரபரப்பு தீர்ப்பை அளித்துள்ளது.

நிபந்தனை

சென்னையை சேர்ந்த நாகரா ஜன், சரோஜா தம்பதி. நாகரா ஜன் விமானப்படையில் அதி காரியாகவும், சரோஜா நர்சாக வும் பணியாற்றி ஓய்வு பெற்றவர் கள். இவர்களுக்கு ராஜசேகர், ராஜேஷ் என்று 2 மகன்கள்.

மூத்த மகன் ராஜசேகர் ஆஸ் திரேலியாவில் குடும்பத்துடன் வசித்து வருகிறார். தங்கள் பெய ரில் இருந்த வீட்டை இவரது பெயரில் நிபந்தனையுடன் பெற் றோர் எழுதி வைத்தனர். தங்க ளது கடைசி காலம் வரை மருத் துவ செலவு உள்ளிட்ட அனைத்து செலவுகளையும் மூத்த மகன் வழங்க வேண்டும் என்று கூறியிருந்தனர்.

பதில் இல்லை

கடந்த 2012-ம் ஆண்டு நாகரா ஜன் உடல் நலம் பாதிக்கப்பட்டு ஆஸ்பத்திரியில் அனுமதிக்கப் பட்டு 4 அறுவை சிகிச்சைகள் மேற்கொண்டார். அப்போது மூத்த மகன் ராஜசேகரை தொடர்பு கொண்டபோது, அவர் எந்த உதவியும் செய்ய வில்லை. பல லட்சம் ரூபாயை சரோஜா செலவு செய்து, கண வரை காப்பாற்றியுள்ளார். பின் னர் சரோஜா உடல் நலம் பாதிக் கப்பட்டு ஆஸ்பத்திரியில் அனு மதிக்கப்பட்ட போது, உதவி கேட்டு, மூத்த மகனுக்கு தந்தை இ-மெயில் கடிதம் அனுப்பியுள் ளார். அதற்கு எந்த பதிலும் இல்லை. இதனால், சரோஜா ஆஸ்பத்திரியிலும், அவரது கண வர் நாகராஜன் முதியோர் இல் லத்திலும் சேர்க்க வேண்டிய நிலை ஏற்பட்டது.

பத்திரம் ரத்து

அதனால், அவர் பெயரில் எழுதி வைத்த செட்டில் மெண்ட் பத்திரத்தை நாகராஜ னும், சரோஜாவும் 2014-ம் ஆண்டு ரத்து செய்தனர். பல கோடி ரூபாய் மதிப்புள்ள சொத்து பறிபோனதால், சென்னை சிட்டி சிவில் கோர்ட் டில் ராஜசேகர் வழக்கு தொடர்ந்தார். இந்த வழக்கை விசாரித்த நீதிபதி, செட்டில் மெண்ட் பத்திரத்தை ரத்து செய் தது தவறு என்று தீர்ப்பு அளித் தார். இந்த தீர்ப்பை ரத்து செய் யக்கோரி சென்னை ஐகோர்ட் டில், நாகராஜன், சரோஜா ஆகியோர் மேல்முறையீடு செய்தனர்.

இந்த மேல்முறையீட்டு வழக்கை நீதிபதி பி.டி.ஆஷா விசாரித்தார். மனுதாரர் சார் பில் வக்கீல் சாரதா விவேக் ஆஜ ராகி வாதிட்டார். இதையடுத்து, "மகன் தந்தைக்கு ஆற்றும் உதவி இவன் தந்தை ஏன்நோற்றான் கொல் எனும் சொல்" என்ற திருக்குறளை உதாரணமாக கூறி நீதிபதி பி.டி.ஆஷா பிறப்பித்த தீர்ப்பில் கூறியிருப்பதாவது:-

யாரும் இல்லை

பெற்றோருக்கு இருக்கும் கடமை உணர்வு, சட்டரீதியாக பிள்ளைகளுக்கும் உண்டு. முது மையில் மனம் நோகாமல் பெற் றோரை பிள்ளைகள் பார்த்துக் கொள்ள வேண்டும். ஆனால், இதை பெரும்பாலான பிள்ளை கள் ஏற்க மறுப்பது வேதனை யாக உள்ளது. இந்த வழக்கில் மூத்த மகனின் செயல்பாடு இரக்கமற்றது ஆகும்.

அவருக்கு தந்தை அனுப்பிய இ-மெயிலில், "அம்மாவுக்கு உடல் நலம் சரியில்லை. அவரை ஆஸ்பத்திரியில் அனுமதிக்க டாக்டர்கள் கூறுகின்றனர். அப் படி ஆஸ்பத்திரியில் சேர்த்து விட்டால், நான் எங்கே போவது? முதியோர் இல்லத் துக்கு போகவா? தம்பி ராஜேஷ் போன் எடுக்கவில்லை. எங்க ளுக்கு உதவி செய்ய யாரும் இல்லை. என்ன செய்வது? உடனே சொல்" என்று கூறியுள் ளார்.

உரிமை உண்டு

ஆனால், இந்த இ-மெயில் கடிதத்துக்கு மூத்த மகன் எந்த பதிலும் தெரிவிக்கவில்லை. பெற்றோரை கடைசி காலத்தில் கவனித்துக் கொள்ள வேண்டும் என்ற பொறுப்பை மகன் மறந்து விட்டான். தனக்கு எழுதி வைத்த செட்டில்மெண்ட் படி, வீட்டு வாடகையை மட்டுமே பெற்றோர் சாகும் வரை வசூ லிக்கலாம். அதற்காக செட்டில் மெண்ட்டை ரத்து செய்ய முடி யாது என்று மகன் தரப்பில் வாதிடப்பட்டது.

ஆனால், கடந்த 2007-ம் ஆண்டு கொண்டு வரப்பட்ட பெற்றோர் மற்றும் மூத்த குடிமக் கள் பராமரிப்பு சட்டம், பிரிவு 23-ன்படி, பெற்றோர்களை கவ னிக்காத பிள்ளைகளின் பெய ரில் எழுதி வைக்கப்பட்ட சொத் துக்களை சட்ட ரீதியாக ரத்து செய்ய பெற்றோருக்கு முழு உரிமை உண்டு.

சரிதான்

இந்த வழக்கில் தாயும், தந்தை யும் உடல் நலம் பாதிக்கப்பட்டு ஆஸ்பத்திரியில் சேர்க்கப்பட்ட போது அவர்களை மகன் கவ னிக்கவில்லை. பணம் கொடுத்து உதவி செய்யவும் இல்லை. எனவே, மகனுக்கு எழுதி வைத்த செட்டில்மெண்ட் பத் திரத்தை ரத்து செய்தது சரியான துதான்.

இவ்வாறு நீதிபதி கூறியுள் ளார்.