

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 8052 of 2014 (F)

PETITIONER:

K.P.JOSEPH AGED 49 YEARS
S/O.PAPPACHAN, KALARIKKAL, KOMMADI P.O.
ALAPPUZHA.

BY ADVS.SRI.M.D.SASIKUMARAN
SRI.GEORGE MATHEW
SRI.P.A.ISMAIL
SRI.SUNIL KUMAR A.G
SRI.DIPU JAMES

RESPONDENTS:

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1. MAINTENANCE TRIBUNAL
& SUB COLLECTOR, CIVIL STATION, ALAPPUZHA - 688 005.
 2. PAPPACHAN, AGED 78 YEARS
S/O.VARKEY, KALARIKKAL, KOMMADI P.O.
ALAPPUZHA688 003.

R2 BY ADV. SRI.PEEYUS A.KOTTAM
BY SENIOR GOVERNMENT PLEADER SRI.ABDUL KHADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P-1: TRUE COPY OF SALE DEED NO.4241 DATED 8.8.2008 OF SRO
ALAPPUZHA
- EXT.P-2: TRUE COPY OF SALE DEED NO.4286 DATED 12.8.2008 OF S.R.O.,
ALAPPUZHA
- EXT.P-3: TRUE COPY OF BASIC TAX RECEIPT NO.5754990 DATED 24.7.2013
- EXT.P-4: TRUE COPY OF APPLICATION DATED 30.11.2013 SUBMITTED BY THE
2ND RESPONDENT
- EXT.P-5: TRUE COPY OF NOTICE DATED 25.1.2014 ISSUED BY THE 1ST
RESPONDENT
- EXT.P-6: TRUE COPY OF ORDER NO.K.DIS.7144/13/E DATED 6.3.2014

RESPONDENTS' EXHIBITS : NIL

SJ

TRUE COPY

P.A.TO JUDGE

ANU SIVARAMAN, J.
= = = = =
W.P.(C).No.8052 of 2014
= = = = =
Dated this the 9th day of October, 2015

JUDGMENT

This writ petition is filed challenging Ext.P6 order passed by the first respondent under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as "the Act"). It is the contention of the petitioner that the second respondent, who is his father, has abandoned his mother and has contracted a second marriage and is living separately from his family. By Exts.P1 and P2, the second respondent had executed sale deeds in favour of the petitioner by which property as well as the residential house was sold to him. It is stated that the petitioner received a belated notice and Ext.P6 order was passed setting aside Exts.P1 and P2 sale deeds without hearing him. It is the petitioner's case that he was issued with a notice which he received after the date notified for hearing. He approached the office of the first respondent and was told that fresh notice would be issued to him before the matter was taken up, but it was disposed of without any such notice being issued.

2. The second respondent has preferred an application to vacate the interim order issued by this Court on 20.03.2014 supported by an affidavit wherein he states that Exts.P1 and P2 sale deeds were obtained by coercion and fraud.

3. Section 23(1) of the Act provides that where any senior citizen who, after the commencement of the 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 need, 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.

4. In the above circumstances, it was the duty of the Tribunal to consider whether the conditions contained in Section 23 of the Act stood satisfied before an order in the nature of Ext.P6 could have been passed. Since it is not disputed that the petitioner was not heard before Ext.P3 order which visits him with serious civil consequences was passed. Even though the learned counsel for the second respondent would contend that

the petitioner was issued with notice but chose not to attend the hearing, I am of the opinion that in view of the explanation offered by the petitioner, this is a fit case where the matter has to be remanded to the Tribunal for fresh consideration. Ext.P6 order is therefore set aside. The first respondent is directed to take up the application preferred by the second respondent and consider the same in accordance with law, with specific reference to provisions of Section 23 of the Act and to pass orders thereon after considering the contentions raised on either side. Parties are directed to appear before the Tribunal on 20.11.2015. The Tribunal shall proceed to consider the contentions and pass orders as directed above.

The writ petition ordered accordingly.

Anu Sivaraman, Judge

sj