

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

WP(C).No. 8685 of 2015 (I)

PETITIONER(S):

1. SAJI, AGED 39,
S/O.PAPPAN, RESIDING AT LALITHA NIVAS, APRA-3,
KANNAMMOOLA, MEDICAL COLLEGE,
THIRUVANANTHAPURAM - 695 001.
2. SMT.MINI.S, AGED 34,
D/O.SANTHA, APRA-3, LELITHA NIVAS,
KANNAMMOOLA, MEDICAL COLLEGE,
THIRUVANANTHAPURAM - 695 001.

**BY ADVS.SRI.M.RAJENDRAN NAIR
SMT.M.SANTHY**

RESPONDENT(S):

1. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM, KUDAPPANAKKUNNU P.O,
TVM. DIST. PIN - 695 001.
2. SMT.SANTHA,
C/O.SURESH KUMAR.T, SURESH BHAVAN, VETTIKKONAM,
MANIKANDESWARAM P.O, PIN-695 013.

**R1 BY GOVERNMENT PLEADER SRI. MANOJ P.KUNJACHAN
R2 BY ADV.SRI.T.K.ANANDA KRISHNAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PTO

WP(C).No. 8685 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. THE TRUE COPY OF THE MORTGAGE DEED DT 15.04.13.

**EXHIBIT P2. THE TRUE COPY OF THE ORDER OF RDO, THIRUVANANTHAPURAM
DATED 13.02.14 IN J-27651/13/K.DIS.**

**EXHIBIT P3. THE TRUE COPY OF THE ORDER OF APPELLATE AUTHORITY NO.A4-
47201/14/K.DIS. DT. 22.01.2015.**

RESPONDENT(S)' EXHIBITS

**EXHIBIT. R2(a). TRUE COPY OF THE DOCUMENT EXECUTED BY THE 1ST
PETITIONER IN FAVOUR OF THE 2ND RESPONDENT.**

**EXHIBIT. R2(b). TRUE COPY OF THE PETITION SUBMITTED BY THE 2ND
RESPONDENT TO THE C.I. OF POLICE MEDICAL COLLEGE
POLICE STATION.**

**EXHIBIT. R2(c). TRUE COPY OF THE PETITION SUBMITTED BY THE 2ND
RESPONDENT TO THE R.D.O**

**EXHIBIT. R2(d). TRUE COPY OF THE APPEAL SUBMITTED BY THE 2ND
RESPONDENT TO THE DISTRICT COLLECTOR.**

/TRUE COPY/

NVB

P.S. TO JUDGE

K. VINOD CHANDRAN, J.

W.P(C). No.8685 of 2015

Dated this the 16th day of July, 2015.

JUDGMENT

The petitioners; the son-in-law and the daughter of the 2nd respondent, are aggrieved with Ext.P3 order in so far as the petitioners have been directed to return Rupees Two lakhs, which according to the 2nd respondent, was taken by the petitioners to take a house on lease. The first petitioner is the son-in-law of the 2nd respondent and obviously could not come under the definition of 'relative' under Section 2(g) of the Maintenance and Welfare of Parents and Senior Citizen's Act, 2007 [the Act of 2007].

2. With respect to the amounts directed to be granted, the learned counsel for the petitioners would contend that, there is absolutely no power conferred on the Tribunal to grant such lump sum amounts. The learned counsel for the 2nd respondent however would contend that, the definition of property as given

under Section 2(f) of the Act of 2007 would include money and any transfer would be void as per Section 23(1) and hence order of the Tribunal is proper. The learned counsel would also rely on Rule 19(2) of the Rules of 2009 to contend that the Tribunal is competent to pass an order of protection of the property and it is only that, which has been done by the Tribunal in the impugned order.

3. This Court is of the opinion that, such contentions are misplaced and the definition clause or the provision does not necessarily clothe the Tribunal with the power to order a refund of money. Admittedly, the transaction was of a loan. Obviously the respondent relies on an admission made by the petitioners that the lease was taken on the amounts given by the mother. Ext.R2(a) produced by the 2nd respondent itself would indicate that it was a loan transaction between the mother and the daughter. The lease deed definitely did not contain any such condition and if at all the loan was used for the purpose of obtaining a lease, it cannot be said that the same is covered under Section 23. Section 23 speaks of rendering void

documents, which contain a specific condition that the senior citizen would be looked after, on which alone the conveyance had been effected. This specifically indicates a conveyance and not a transaction of money. Section 9 of the Act also does not indicate that any transaction of money could be looked into by the Tribunal. The Tribunal definitely has to act within the bounds of the power conferred under the Act and Rules. The order of maintenance definitely is not liable to be interfered with. The recovery of money would have to be agitated before the appropriate civil forum.

The writ petition would stand allowed to the extent the Tribunal directs the amounts to be refunded by the petitioner.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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