

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

WP(C).No. 19704 of 2014 (K)

PETITIONER(S):

1. ABILASH V.S. AGED 35 YEARS
S/O.SARASAN.M.V, 'RADHEYAM', MUTTAM.P.O
HARIPPAD, ALAPPUZHA DISTRICT.
2. RADHA,
W/O.SARASAN.M.V, 'RADHEYAM', MUTTAM.P.O
HARIPPAD, ALAPPUZHA DISTRICT.

BY ADVS.SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN
SMT.T.J.SEEMA

RESPONDENT(S)

1. SARASAN,, AGED 67 YEARS
S/O.VELAYUDHAN, 'RADHEYAM', MUTTAM.P.O
HARIPPAD, ALAPPUZHA DISTRICT.
2. THE REVENUE DIVISIONAL OFFICER & THE TRIBUNAL
FOR MAINTENANCE & WELFARE,
SENIOR CITIZENS, CHENGANNOOR, ALAPPUZHA DISTRICT.
3. THE VILLAGE OFFICER,
CHEPPAD, MUTTOM.P.O, ALAPPUZHA DISTRICT
PIN-690511.

R1 BY ADV. SRI.A.SHAFAEEK (KAYAMKULAM)
R2 BY GOVERNMENT PLEADER SRI.THOMAS JOHN AMBOOKAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 COPY OF THE SETTLEMENT DEED NO.130/2010 OF CHEPPAD S.R.O.DATED 20.01.2010.
EXT.P2 COPY OF THE PETITION SUBMITTED BY THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT,DATED 13.02.2013
EXT.P3 COPY OF REPORT OF THE 3RD RESPONDENT DATED 20.11.2013
EXT.P4 COPY OF THE NOTICE OF THE 2ND RESPONDENT DATED 11.12.2013.
EXT.P5 COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 09.07.2014
EXT.P6 COPY OF THE PETITION SUBMITTED BY THE 2ND PETITIONER AS M.C.1/2014 BEFORE OF J.F.C.M.-1,HARIPPAD,DATED NIL.
EXT.P7 COPY OF THE OBJECTION FILED BY THE 1ST RESPONDENT IN M.C.1/2014 OF J.F.C.M.-1,HARIPPAD,DATED NIL.
EXT.P8 COPY OF THE PETITION AS M.C.28/2013 FILED BY THE 1ST RESPONDENT BEFORE THE FAMILY COURT,MAVELIKKARA.
EXT.P9 COPY OF THE OBJECTION FILED BY THE 1ST PETITIONER IN M.C.28/2013 OF FAMILY COURT,MAVELIKKARA, DATED NIL.

RESPONDENT(S)' EXHIBITS

NIL.

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///True copy///

P.S. to Judge

ALEXANDER THOMAS, J.

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W.P.(C).No. 19704 of 2014

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Dated this the 23rd day of January, 2015

J U D G M E N T

The prayer in this Writ Petition (Civil) is for issue of a writ of certiorari to quash the impugned Ext.P-5 order dated 9.7.2014 passed by the 2nd respondent-Tribunal for Maintenance & Welfare of Senior Citizens, Chengannoor (Revenue Divisional Officer concerned) under the provisions of Secs.4 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The 1st petitioner is the son of the 1st respondent. The 2nd petitioner is the wife of the 1st respondent and the mother of the 1st petitioner. The 1st respondent had executed Ext.P-1 settlement deed on 20.1.2010 as deed No.130/10 registered by the Sub Registrar's office, Cheppad, Alappuzha district, whereby the 1st respondent had settled 10 cents of property and residential building constructed thereon in favour of the 1st petitioner. It appears that the relationship between the petitioners on the one hand the 1st respondent got strained. The 1st respondent filed Ext.P-2

application under Secs.4 and 23 of the above said Act before the 2nd respondent-Tribunal praying that the 1st petitioner herein may be directed to make monthly maintenance amount of Rs.3,000/- in favour of the 1st respondent herein and also with the prayer to set aside Ext.P-1 settlement deed by resort to the powers under Sec.23 of the above said Act. The 2nd respondent Tribunal obtained Ext.P-3 report dated 20.11.2013 from the 3rd respondent Village Officer on the matters in Ext.P-2 application. In Ext.P-3 it is stated that the 1st respondent had informed that he has been relieved from his employment in a temple since 2011 and that he is living in one of the rooms in the residential building referred to in Ext.P-1 deed, wherein the petitioners are also residing and that he is not getting any co-operation from the other members of his family. It is also stated in Ext.P-3 that the 1st petitioner has informed the 3rd respondent that he is willing to give food and medications and other services to the 1st respondent and that the 1st respondent is not taking food offered by the family members due to his own insistence and that the family relationship between the petitioners and the 1st respondent got strained after the death of the daughter of the 1st respondent, etc. Ext.P-4 notice was issued by the 2nd

respondent Tribunal to the 1st petitioner directing him to appear before the Tribunal on 3.1.2014. It is the case of the 1st petitioner that he had duly appeared before the Tribunal on 3.1.2014 and that on that day, he was informed by the 2nd respondent that he would be communicated about the outcome of the proceedings later. That later he had contacted the 2nd respondent's office in the third week of March, whereupon he was informed that orders could not be passed as the office of the 2nd respondent-RDO was pre-occupied with the matters connected with general elections to the Lok Sabha. Later the 1st respondent could understand that after the general elections, the officer, who earlier occupied the post of Revenue Divisional Officer, Chengannoor, was transferred and another officer had assumed charge and that much later, he received Ext.P-5, communicating the impugned order dated 9.7.2014. In Ext.P-5 it is stated that the 1st petitioner had not appeared before the Tribunal on 8.5.2014 and 3.6.2014. It is ordered in the operative portion of the impugned Ext.P-5 that the settlement deed executed on 20.1.2010 (Ext.P-1 herein) is set aside by virtue of the powers conferred under Sec.23(1) of the above said Act. Further, it is ordered that the 1st petitioner will make monthly payment of

maintenance amount of Rs. 3,000/- to the 1st respondent and that the 1st petitioner shall not cause any obstruction to the peaceful living of the 1st respondent in that house, etc. It is the case of the 1st petitioner that he had not received any notice or intimation about the fact that the matter was posted before the 2nd respondent Tribunal on 8.5.2014 and 3.6.2014 and that he was denied a reasonable opportunity to defend himself before the Tribunal.

2. The relationship between the parties appears to be quite strained. The 2nd petitioner (wife of the 1st respondent) has instituted Ext.P-6 petition before the Judicial First Class Magistrate's Court, Harippad, claiming maintenance against the 1st respondent by taking recourse to the provisions under the Protection of Women From Domestic Violence Act. Ext.P-7 is the objections filed by the 1st respondent in Ext.P-6 petition filed by the 2nd petitioner. The 1st respondent has also filed Ext.P-8 petition claiming maintenance against the 1st petitioner by taking recourse to the provisions under Sect.125 of the Code of Criminal Procedure. This Court, while admitting the matter on 31.7.2014, had granted interim stay of the impugned order on condition that the petitioners shall not alienate or encumber the property pending final decision in the Writ Petition.

Later this Court as per order dated 2.9.2014, referred the parties for mediation. It is submitted by the counsel appearing on both sides that the mediation ended in a failure. It appears that the parties are not willing for any compromise. During the course of the hearing, this Court had specifically enquired to the learned Advocates appearing on both sides as to whether there is any possibility for referring the parties again for a mediation so that the disputes in the family could be reasonably resolved by taking recourse to mediation proceedings. The learned Advocates appearing on both sides submitted that there is no point in referring the parties again for mediation.

3. The main contention urged by the learned counsel appearing for the petitioners is that the 1st petitioner has been denied a reasonable opportunity to defend himself before the Tribunal. It is further urged that the only independent material that was available before the Tribunal was Ext.P-3 report of the 3rd respondent-Village Officer and that the said report does not in any way disclose that the claim of the maintenance made by the 1st respondent herein is justified and warranted. It is further urged that there is no whisper in Ext.P-3 report about the crucial aspects in

relation to the claim under Sec.23 of the Act and that the Tribunal, without any materials and contrary to the aspects discernible from Ext.P-1 deed, has set aside the said settlement deed in an arbitrary and unreasonable manner.

4. Per contra, the learned counsel appearing for the 1st respondent would submit that the impugned order is reasonable and proper. It is further submitted by the learned counsel for the 1st respondent that notice of intimation regarding the postings on 8.5.2014 and 3.6.2014 was duly effected by the 2nd respondent through the Village Officer concerned and the Sub Inspector of Police concerned and that as the 1st petitioner did not appear, the 2nd respondent Tribunal was fully right in deciding the matter ex parte.

5. The learned Government Pleader sought some time to get instructions in the matter. But this Court, as per order dated 19.1.2015, has specifically ordered that considering the urgency pointed out by both sides, this matter should be posted for hearing before a non-admission court. Therefore, this Court was constrained to proceed with the matter, as the disputing parties on either sides wanted a decision in this case without any further delay.

6. It is indisputable that the officer, who had conducted the hearing of the matter on 3.1.2014, is not the one who passed the impugned Ext.P-5 order dated 9.7.2014, as the earlier incumbent was transferred. The only material that was available before the Tribunal was Ext.P-3 report dated 20.11.2013 submitted by the Village Officer concerned. A reading of Ext.P-3 report would make it clear that there are no sufficient or proper materials therein in order to enable the Tribunal to come a considered decision on the merits of the matter on the issue as to whether the claims under Secs.4 and 23 of the above said Act are justified and warranted. The petitioners have a specific case that the 1st respondent is earning more than Rs. 30,000/- per month from the Chakkulathu Kavu temple, Thiruvalla, in capacity of his employment as the Personal Assistant to the chief priest of the said temple. The petitioners have a specific plea that there is no recital anywhere in Ext.P-1 settlement deed that the said deed has been executed by the 1st respondent subject to the condition that the transferee shall provide the basic amenities and physical needs to the transferor as contemplated under Sec.23(1) of the Act. That, on the other hand, there is a explicit recital in Ext.P-1 settlement deed that the 1st

petitioner is dependent on the 1st respondent herein. These crucial relevant aspects have not been taken into consideration by the 2nd respondent Tribunal.

7. Sec.23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, provides 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.”

Therefore, it is mandatory that the jurisdictional facts stipulated in Sec.23(1) should be fully satisfied and the Tribunal should have concrete, relevant and proper materials to come to a conclusion as to whether or not the jurisdictional facts stipulated in Sec.23(1) are fully satisfied, before the Tribunal can consider the question of setting aside the deed in question. Therefore, non-consideration of the above said aspects regarding the invocation of the power under Sec.23(1) of the Act would vitiate the said impugned Ext.P-5 order.

8. It is found from a reading of Ext.P-5 order that no proper evidence has been taken in the proceedings before the

Tribunal. Sec.6(4) of the Act provides that all evidence to such proceedings shall be taken in the presence of the children or relative against whom an order for payment of maintenance is proposed to be made and shall be recorded in the manner prescribed for summons cases. True that the proviso to Sec.6(4) enables the Tribunal to hear and determine the case ex parte in a case where the Tribunal is satisfied that the opposite party concerned is wilfully avoiding the service of summons or wilfully neglecting to attend the Tribunal. Rule 7 of the Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, framed under the above 2000 Act provides that in case, despite service of notice, the opposite party fails to show cause in response to a notice, the Tribunal shall proceed ex parte, by taking evidence of the applicant and making such other inquiry as it deems fit and shall pass an order disposing of the application. Therefore, even though the Tribunal is justified to proceed with the matter ex parte, the Tribunal is obligated to take evidence of the applicant and to make such other inquiry as it deems fit and then only pass order disposing of the application. Sec.8(1) of the Act provides that in holding any inquiry under Sec.5, the Tribunal may, subject to any rules that may be prescribed by the

State Government in that behalf, follow such summary procedure as it deems fit. Sec.8(2) further specifically mandates that the Tribunal shall have all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed and the Tribunal shall be deemed to be a civil court for all the purposes of Sec.195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Sec.8(3) further provides that subject to any rule that may be made in this behalf, the Tribunal may, for the purpose of adjudicating and deciding upon any claim for maintenance, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

9. On going through the impugned order, it appears that the Tribunal has not taken recourse to the above said provisions of the Act and the Rules in the matter of adducing evidence to decide the issues raised in Ext.P-2 application. It is to be borne in mind that the main prayer in Ext.P-2 application is to set aside Ext.P-1 settlement deed by taking recourse to the powers under Sec.23 of the Act. Such a drastic step in setting aside a deed relating to

transfer of property cannot be approached in a light and casual manner and the same has to be done with all seriousness taking into account the crucial aspects that any decision of the Tribunal under Sec.23 will have grave repercussions on the civil rights of the parties.

10. As earlier observed, this Court is constrained to hold that there were no proper materials before the Tribunal to adjudicate the claims under Secs.4 and 23 of the Act. The only material that was available before the Tribunal was the one, as per Ext.P-3 report of the Village Officer concerned, and it does not throw any light to decide on the issues raised under Sec.4 of the Act or on the more serious issues raised under Sec.23 of the Act. Moreover, it is the admitted fact that the 1st petitioner could not avail of a reasonable opportunity in the posting dates on 8.5.2014 and 3.6.2014. The 1st petitioner would say that he has never been served with any notice or intimations about the posting dates on 8.5.2014 and 3.6.2014 and this is disputed by the 1st respondent. In the view that this Court is proposing to take, there is no necessity to adjudicate on this issue of service of notice, for this Court is convinced that the impugned order is vitiated for want of relevant materials and for

non-consideration of crucial relevant aspects of the matter, as stated above.

11. In this view of the matter, as no proper and reasonable materials were available before the Tribunal to decide on the issues of the claims raised under Secs. 4 and 23 of the Act and as crucial relevant aspects of the matter as stated above, have been omitted to be taken into consideration by the Tribunal, the impugned Ext.P-5 order is set aside.

12. The petitioners and the 1st respondent will appear before the 2nd respondent on 27.2.2015 at 11 a.m. and produce a certified copy of this judgment before the 2nd respondent–Revenue Divisional Officer, Chengannoor. The 2nd respondent will intimate the next posting date to the parties. The 2nd respondent shall provide a reasonable opportunity to the 1st petitioner as well as the 1st respondent to adduce evidence on the issues raised in the matter as indicated above. After the conclusion of the proceedings on each day of posting, the 2nd respondent shall positively inform both sides about the next posting date concerned so that the parties are fully aware about that and get their signatures appended on the proceedings sheet. It is pointed out by the learned counsel for the

petitioners that reservation of right of permanent residence for the 2nd petitioner has been created in Ext.P-1 settlement deed and therefore it is submitted that the 2nd petitioner may also be given reasonable opportunity of being heard and adduce evidence in the matter. The 2nd respondent will give a reasonable opportunity of being heard as well as to adduce evidence to the 2nd petitioner as well. The 2nd respondent will conduct a proper enquiry through a competent Revenue official on the issue as to whether the 1st respondent is employed in the Chakkulath Kavu temple, Thiruvalla and as to whether he has any source of income in that regard or from any other sources and the copy said report shall be made available to the petitioners as well as to the 1st respondent in order to advance their respective claims and contentions on the basis of that report as well. The learned counsel for the petitioners would submit that the 1st petitioner has expended lot of monies for the renovation and upkeep of the residential building and he is paying off such loans, etc. and this aspect should be taken into account by the Tribunal before dealing on the prayer under Sec.23. The Tribunal will give a reasonable opportunity to the 1st petitioner to adduce evidence on the claim of the monies expended by him for

the renovation and upkeep of the residential building and on the loans, if any, that he had incurred in that regard and such aspects should also be taken into account by the Tribunal, while deciding the dispute. The 2nd respondent shall complete the adjudication process as indicated above and render final decision in the above matter without much delay, at any rate, within the outer time limit of four months from 27.2.2015. Until a final decision is so taken by the Tribunal, the petitioners shall not alienate or encumber the properties covered by Ext.P-1.

With these observations and directions, the Writ Petition (Civil) stands finally disposed of.

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Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge