

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 19-03-2015

CORAM:

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.630 of 2013
and
M.P.No.1 of 2013

1. C.Baskaran
2. A.Sumathi

...Petitioners

Vs

1. Revenue Divisional Officer,
Tindivanam.
2. C.Gaandharvai Ammal
3. Samuthira Vijayan
4. C.Virshabadoss
(RR 3 & R4 impleaded as per Court
order dt.11.01.2013 in MP 2 of 2013)
5. A.Kamala
(R-5 impleaded as per Court order
dt.11.02.2015 in MP.1 of 2014)

...Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of writ of Certiorari to call for the concerned records from the 1st respondent and quash the order of the 1st respondent dated 28.9.2012 in Case No.A2/4309/2010 as illegal, arbitrary, without jurisdiction and contrary to law.

For petitioner : Mr. Balan Haridas

For respondents : Mr.S.Gunasekaran,
Government Advocate for R-1

Mr.S.Subramaniam Balaji for RR 2 to 4

Mr.R.Karunakaran for R-5

ORDER

Heard Mr. Balan Haridas, learned counsel for the petitioner and Mr. Mr.S.Gunasekaran, learned Government Advocate for the first respondent, Mr.S.Subramaniam Balaji, learned counsel for RR 2 to 4 and Mr.R.Karunakaran, learned counsel for R5.

2. The petitioners seek for an issuance of writ of Certiorari to call for the concerned records from the first respondent and quash the order of the first respondent dated 28-09-2012 in Case No.A2/4309/2010 as illegal. The relationship of the parties are not in dispute. The first petitioner is the husband of the second petitioner and the second respondent who is no more is the mother of the first petitioner and the respondent Nos.3 to 5, who are his brothers and sister. The matter arises under the provisions of Maintenance and Welfare of Parents and Senior Citizen Act, 2007(Central Act of 2007). According to the first petitioner, the mother was residing with them and she was forcibly taken by his brothers, the respondent Nos.3 and 4 with a view to take the property which was settled in favour of the first petitioner by his mother, by settlement deeds dated 22-06-2009 registered as document Nos.1340 and 1341 of 2009. The second respondent lodged a complaint before the first respondent under the provisions of the Act making allegations against the petitioners. The first respondent by the impugned order among other things has directed that the settlement deeds dated 22-06-2009 is liable to be cancelled and accordingly issued a direction cancelling the same. The petitioners stating that the impugned order is wholly without jurisdiction and the first respondent has no power to cancel the registered document has come forward with the present writ petition. During the pendency of the writ petition, the second respondent died. Even prior to that, she has said to have executed a cancellation deed dated 19-11-2009, cancelling the settlement deed dated 22-06-2009 by document Nos.2833 and 2834 of 2009. It is submitted that prior to her demise the second respondent has executed a Will disposing of her property in the manner set out therein.

3. In my view, the persons who are entitled under the Act is clear under the provisions of the Act. It could be said that any person could set the law in motion on behalf of the parents or the senior citizen. In the present case, the parent is no more. Therefore, the two sons and daughter of the second respondent cannot now step into the shoes of the second respondent and seek to canvass her case. Furthermore, the first petitioner is also one of the legal heir of the second respondent.

4. In such circumstances, the challenge to the impugned proceedings has virtually become unnecessary, in view of the demise of the second respondent who died on 19-02-2013, during the pendency of the writ petition. Thus, this Court is of the view that the challenge to the impugned proceedings has virtually become academic and the direction to cancel the settlement deed also has worked itself out, since already the second respondent during her lifetime has executed the cancellation deed and thereafter, she has also written a Will. Therefore, if according to the petitioners, the cancellation of settlement deed executed by the second respondent-mother during her life time was not tenable, then it is for them to approach the appropriate Court for necessary relief. Likewise, if the respondent Nos.3 to 5 contend that the cancellation was justified and that they claim a right under the Will, etc., it is open to them to approach the appropriate forum for redressal of their grievance.

5. Therefore, the writ petition is closed, with an observation that the challenge to the impugned order has become academic on account of the demise of the second respondent, during the pendency of the writ petition. In view of the fact that this order was passed under the said provisions of the Act, under which the respondents cannot have any umbrage contending that they are the legal heirs of the second respondent. As already observed, the rights of the petitioners and the respondent Nos.3 to 5 are left open to be agitated before the appropriate forum and in the event of the parties approaching the appropriate forum, the same shall be considered independently based on the oral and documentary evidence in the manner known to law being uninfluenced by the observation in this order.

6. It is seen that at the time when the writ petition was entertained, this Court passed an interim order dated 11-01-2013 directing status quo as on the date to be maintained. The respondent Nos.3 to 5 would apprehend that taking advantage of the fact that the writ petition has been closed, the petitioner would attempt to dispossess them from the property. The learned counsel for the petitioner submitted that he is in possession of the property and the property is in the Village and it is incorrect to state that the petitioner as well as the respondent Nos.3 to 5 are in joint possession. In any event, till the parties approach the appropriate forum for necessary, the status quo which is directed to be maintained as on date the order of this Court dated 11-01-2013, shall be maintained till any one of the parties approach the appropriate forum for necessary interim directions.

7. No costs. The connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

glp

To

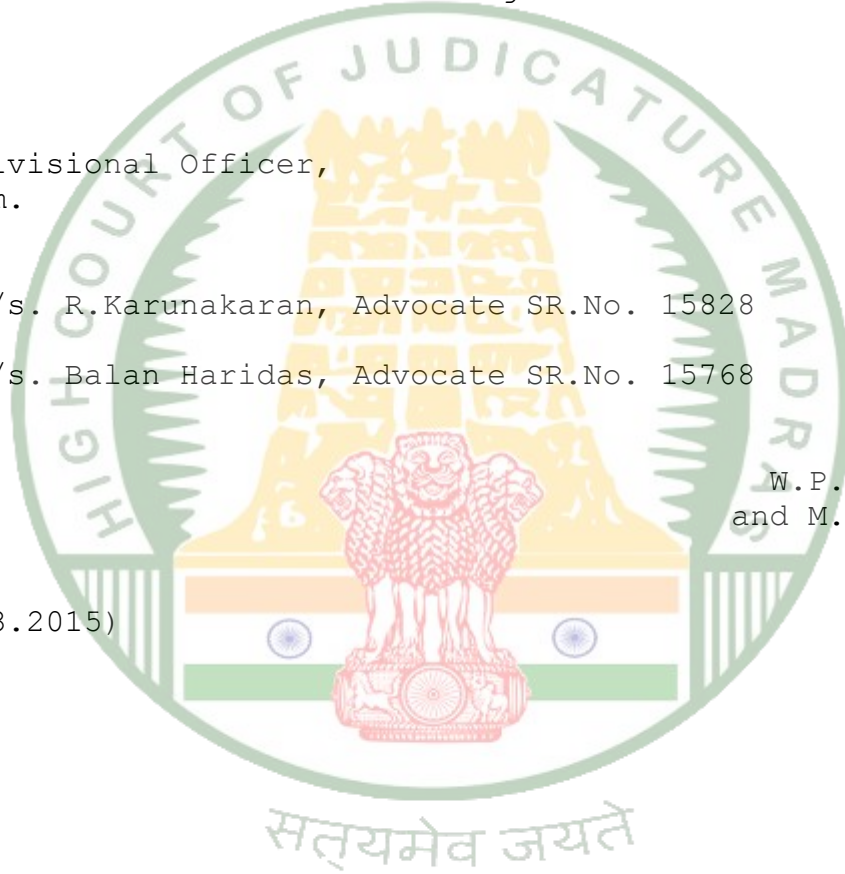
Revenue Divisional Officer,
Tindivanam.

1 CC to M/s. R.Karunakaran, Advocate SR.No. 15828

1 CC to M/s. Balan Haridas, Advocate SR.No. 15768

W.P.No.630 of 2013
and M.P.No.1 of 2013

RSK (CO)
PSI (27.03.2015)



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