

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

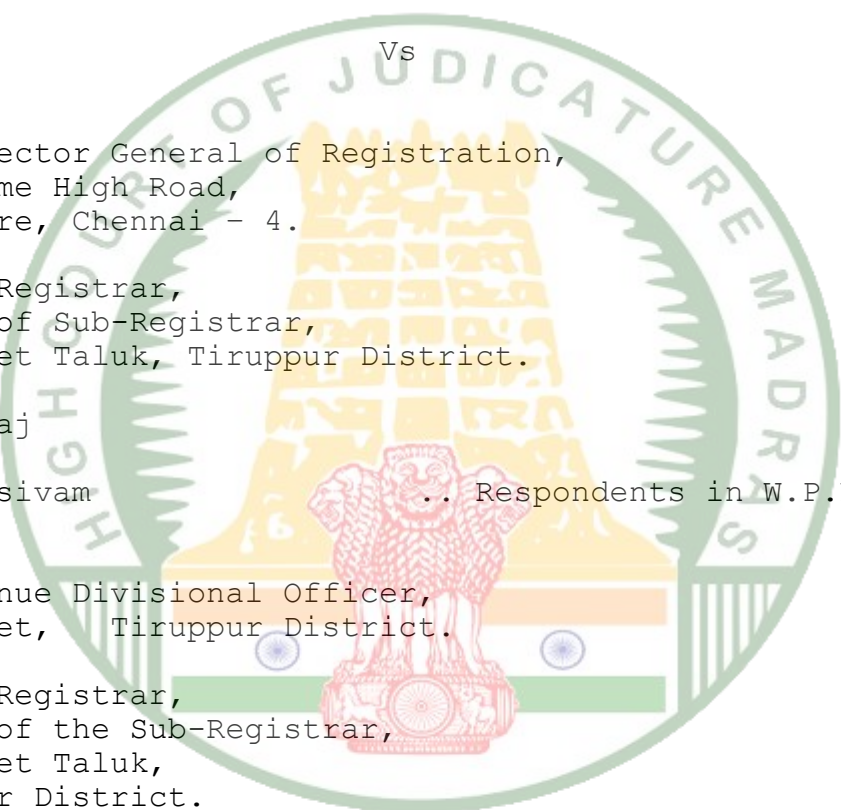
THE HON'BLE MR. JUSTICE T.RAJA

W.P.Nos.10849 and 26810 of 2017

Mrs.D.Devi

.. Petitioner in both WPs

Vs

- 
- 1.The Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai - 4.
- 2.The Sub-Registrar,
Office of Sub-Registrar,
Udumalpet Taluk, Tiruppur District.
- 3.V.Durairaj
- 4.K.Paramasivam ... Respondents in W.P.No.10849/17
- 1.The Revenue Divisional Officer,
Udumalpet, Tiruppur District.
- 2.The Sub-Registrar,
Office of the Sub-Registrar,
Udumalpet Taluk,
Tiruppur District.
- 3.V.Durairaj ... Respondents 1 to 3 in W.P.No.26810/17

Prayer in W.P.No.10849/17: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the second respondent pertaining to the impugned cancellation of settlement deed dated 14.12.2012 bearing document No.8693/2012 executed unilaterally by the third respondent cancelling the settlement deed dated 25.08.2009 bearing document No.5815/2009 in respect of the property to the extent of 4950 sqft. comprised in T.S.No.8, Ward

No.9 Block No.14 at Kanagapalayam Village in Survey No.138/1A and as per sub division 138/1A1A situated at No.27, Sardar Street Extension, Udumalpet Town Panchayat, Udumalpet Taluk, Tiruppur District and consequential registration of sale agreement dated 12.12.2016 bearing document No.9430/2016 and quash the same as illegal and consequently direct the second respondent to remove the entries in the encumbrance certificate of the said two documents.

Prayer in W.P.No.26810/17: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records relating to the proceedings of the first respondent dated 27.09.2017 in Na.Ka.No.2194/2017/A3, and quash the same and pass such further orders.

For Petitioner
in W.P.No.10849/17 : Mr.Vimal B.Crimson
in W.P.No.26810/17 : Mrs.AL.Ganthimathi
For R1 & R2 in W.P.No.10849/17: Mr.P.Purushothaman, GA
For R1 & R2 in W.P.No.26810/17: Mrs.P.Rajalakshmi, AGP
For R3 in both WPs : Ms.M.Jaishree Kumari
for M/s.Surana & Surana
For R4 in WP.No.10849/17 : No Appearance

COMMON ORDER

W.P.No.10849 of 2017 has been filed by the petitioner/Mrs.D.Devi, daughter of the third respondent/V.Durairaj, challenging the Deed of Cancellation dated 14.12.2012 of Settlement Deed 25.08.2009 executed in favour of the petitioner.

2. W.P.No.26810 of 2017 has been filed by the petitioner/Mrs.D.Devi, daughter of the third respondent/V.Durairaj, challenging the impugned order dated 27.09.2017 passed by the first respondent/the Revenue Divisional Officer, Udumalpet, Tiruppur District, declaring the execution of Settlement Deed dated 14.12.2012 executed in favour of the petitioner as void and illegal.

3. Learned counsel appearing for the petitioner in both writ petitions submitted that the third respondent/Mr.V.Durairaj is the father of the petitioner and he had purchased the property measuring to an extent of 4950 sq.ft. of land comprised in T.S.No.8, Ward No.9, Block No.14, Kanakkampalayam Village, Udumalpet Municipality, in Survey No.138/1A and Sub Division No.138/1A1A, situated at Door No.27, Sardar Street Extension, Udumalpet Town Panchayat, Tiruppur District, by way of a registered Sale Deed dated 15.12.1986, bearing Document No.1689 of 1986 on the file of the Sub Registrar, Udumalpet. Subsequently, out of love and affection, he settled the same in favour of his daughter/petitioner herein by executing a Settlement Deed dated 25.08.2009 bearing Document No.5815 of 2009 on the file of the Sub-Registrar, Udumalpet. From the said date of Settlement Deed, she has been in peaceful possession and enjoyment of the said property. Whiles, the petitioner came to know that her father/third respondent had unilaterally cancelled the said settlement deed executed by him in favour of his daughter by way of a Deed of Cancellation dated 14.12.2012 bearing Document No.8693 of 2012 on the file of the Sub-Registrar, Udumalpet, and subsequently, the third respondent had also executed a sale agreement dated 12.12.2016 in favour of one Paramasivam. Challenging the said action of her father, she has filed the above said writ petition No.10849 of 2017.

4. While the matter stood above, the third respondent had filed a petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short "the Act") before the first respondent/the Revenue Divisional Officer, Udumalpet, taking a stand that after the execution of the said Settlement Deed, the petitioner did not maintain her parents properly, and thereby requested the said Authority to cancel the Settlement Deed dated 14.12.2012 executed in favour of the petitioner as void. Thereafter, the first respondent, after receiving explanation from the petitioner, has wrongly passed the impugned order declaring the Settlement Deed dated 14.12.2012 executed in favour of the petitioner as void.

5. Assailing the impugned order, it is argued that the first respondent, without even considering the explanation submitted by the petitioner, has wrongly given a finding as though the petitioner has not maintained her parents properly after the execution of the said Settlement Deed. In fact, the petitioner had paid a sum of Rs.30,00,000/- to her father for various settlements and besides, she had also deposited a sum of Rs.25,000/- in her father's bank account and in August, 2014, she had paid a sum of Rs.2,95,520/- through one Mr.S.Selvam with

whom her father is having business transaction, therefore, the impugned order passed by the first respondent declaring the Settlement Deed dated 14.12.2012 executed in her favour as void, is expacie illegal and hence, the same is liable to be set aside.

6. Per contra, learned counsel appearing for the third respondent/V.Durairaj, urging this Court to dismiss the writ petitions, submitted that before passing the impugned order, the first respondent had conducted two personal enquiries on 18.07.2017 and 18.08.2017 and during the said enquiries, all the statements made by the petitioner as well as the third respondent were recorded and therefore, the stand of the petitioner that she was not heard before passing the impugned order cannot be sustained in the eye of law. It is further submitted that having purchased the property in question from Ramasamy Naidu vide Sale Deed dated 15.12.1986, the third respondent executed a Settlement Deed dated 25.08.2009 in favour of his own daughter with a promise that she would maintain her parents till their life time. But, contrary to such promise, to the shock and surprise of the third respondent, she had totally neglected her parents/third respondent to provide maintenance, medical relief and other basic and physical needs, therefore, in view of such harassment at the hands of the petitioner, the third respondent had rightly executed Deed of Cancellation of the said Settlement Deed dated 14.12.2012 as he was unable to meet out the medical expenses and other basic requirements to lead day-to-day life and thus, on this count, she pleaded, the writ petition No.10849 of 2017 filed by the petitioner challenging Deed of Cancellation of the Settlement Deed dated 14.12.2012 is liable to be dismissed.

7. Adding further, it is contended that under Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2017, which is extracted below;

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.

the settlement of the property in question effected by the third respondent in favour of the petitioner is deemed to have been made by fraud or coercion or undue influence in view of her failure to provide basic amenities to her parents, hence, the said Settlement Deed is liable to be declared as void and therefore, by following the said provision, the first respondent has also rightly passed the impugned order declaring the said Settlement Deed executed in faovur the petitioner as void and thus, the prayer of the petitioner to quash such a well-reasoned impugned order passed by the first respondent cannot be entertained and on this basis, she prayed for dismissal of both the writ petitions.

8. I fully agree with the above said submissions of the third respondent. It is not in dispute that the third respondent had executed a Settlement Deed dated 25.08.2009 in favour of his own daughter/the petitioner herein with a promise that she would maintain her father till his lifetime by providing all the facilities which he had enjoyed till the execution of said Settlement Deed. It is the stand of the third respondent that after the execution of such Settlement Deed, the petitioner had neglected the third respondent and she did not provide maintenance, medical relief and other basic and physical needs and therefore, having not satisfied with the attitude of his daughter that even after taking the properties of father she has failed to discharge the legal and moral obligation to take care of her father at the old age, the third respondent had executed Deed of Cancellation dated 14.12.2012 cancelling the Settlement Deed dated 25.08.2009 executed in favour of his daughter/petitioner herein. Therefore, the Deed of Cancellation cannot be questioned by the petitioner in this writ proceedings.

9. Besides, Section 23 of the Act, extracted above, stipulates that where any senior citizen 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 transfer of property shall be deemed to have been made by fraud or coercion or under influence and shall at the option of the transferor be declared void. Therefore, in view of such provision, the third respondent/V.Durairaj had rightly approached the Revenue Divisional Officer, Udumalpet, seeking to declare the Settlement Deed dated 25.08.2009 executed by him in favour his daughter as void. Subsequently, it is seen from the records that the RDO, after conducting enquiries and also after perusing the explanation submitted by the petitioner, has

rightly passed the impugned order declaring the said Settlement Deed executed in favour of the petitioner as void. Therefore, in my considered view, the petitioner, being a daughter of the third respondent, has a moral and legal obligation to take care and maintain her parents, even if they had not executed the Settlement Deed in her favour. But, in the case on hand, even after execution of subject property in her favour, she has failed to take care of the basic needs of her parents, hence, in such view of the matter, the writ petitions filed by the petitioner questioning the impugned order passed by the first respondent/RDO in W.P.No.26810 of 2017 declaring the said Settlement Deed executed in favour of the petitioner as void and also the Deed of Cancellation of the said Settlement Deed are liable to be dismissed.

10. Accordingly, for the reasons stated above, the writ petitions stand dismissed as devoid of any merit with cost of Rs.15,000/- payable to the third respondent/V.Duraiaraj within a period of four weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

rkm

To

1.The Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai - 4.

2.The Sub-Registrar,
Office of Sub-Registrar,
Udumalpet Taluk, Tiruppur District.

3.The Revenue Divisional Officer,
Udumalpet, Tiruppur District.

+1cc to Mr.Vimal B.Crimson, Advocate SR.98137
+2cc to M/s.Surana & Surana, Advocate SR.98219
+1cc to the Government Pleader SR.98436

W.P.Nos.10849 and 26810 of 2017

VGII(CO)
CB(31/01/2020)