

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 21738 OF 2019

ORDER :

This writ petition is filed challenging the proceedings dt.06.08.2019 in Case No.H/1642/2019, issued by the 2nd respondent whereby the 2nd respondent cancelled the registered gift deed vide No.1480/2007, dt.21.02.2007 and directed the petitioner and 5th respondent to re-gift the subject property in favour of respondent No.3 and 4 and also directed the sons of respondents 3 and 4 to pay maintenance of Rs.2,000/- , each, to respondent Nos.3 & 4, under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

2. Originally, the 3rd and 4th respondents filed petition before the 2nd respondent under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, against the writ petitioner and 5th respondent herein stating that they have two sons and one daughter named N.Vara Prasad, N.Bhaskar Raju and D.Krishna Veni, respectively; that their daughter D.Krishna Veni died leaving behind her two sons named D.Santhos Kumar Varma and D.Chandrashekar Varma, who are writ petitioner and 5th respondent herein; that hoping that grand sons will take care of them, the 3rd and 4th respondents have registered gift deed vide No.1480/2007, dt.21.02.2007, in favour of their grand sons (daughter's sons) in respect of land to an extent of 120 Sq.Yards in Survey No.86/part, situated at Shamshabad Village

and Mandal; and that as D.Santhosh Kumar Varma-writ petitioner herein, is not taking care of them after his marriage, the 3rd respondent filed petition before the 2nd respondent for cancellation of the gift deed registered in favour of writ petitioner and 5th respondents and to return the property in their names. It is further stated that thereafter the said application was enquired into and notices were issued to all the concerned on 11.07.2019 fixing the date of enquiry on 27.07.2019 and later the case was ultimately posted to 03.08.2019, on which date, the 3rd respondent, her sons N.Vara Prasad, N.Bhaskar Raju and her two grand sons D.Santhosh Kumar Varma-writ petitioner and D.Chandrashekar Varma-5th respondent were present; that the two sons of the 3rd respondent agreed to deposit monthly maintenance of Rs.2,000/- each and also assured that they would take care of their parents i.e. 3rd and 4th respondents in all respects including health; that the writ petitioner and 5th respondent have also accepted for cancellation of gift deed bearing No.1480/2007, dt.21.02.2007 and to re-register the gift deed in favour of 3rd and 4th respondents and have also filed written consent to that effect; and that basing on the above, the impugned order dt.06.08.2019 is passed by the 2nd respondent. Challenging the same the petitioner who is the 1st respondent therein filed the present writ petition.

3. This Court on 14.10.2019 granted interim suspension.
4. The 3rd respondent filed vacate petition and counter denying the contents in the writ affidavit that the subject property is purchased

from out of the funds of the mother of the writ petitioner. It is stated that the mother of 3rd respondent late Appala Narsamma had gifted certain properties to her two daughters i.e. to the 3rd respondent and another; that the 3rd respondent herein received one acre of land, one house located in Tadepalligudem, Kesavaram Village towards her share as gift from her late mother Appala Narsamma; that the 3rd respondent sold the said property and purchased a house plot through registered Sale Deed No.10131/2005, dt.10.09.2005; that thereafter in the said plot constructed a small house bearing H.No.6-in the said plot 123/D, situated at Kappugadda, Shamshabad, Ranga Reddy District, from out of her own funds, as such the contention of the writ petitioner that the subject house was constructed out of the funds of her late mother is incorrect.

4(i) It is also denied that the 3rd respondent is instigated by the 5th respondent; and that the 3rd respondent obtained an award on 08.05.2019 behind notice of the writ petitioner. It is clarified that in fact the 3rd respondent and also the 5th respondent have informed about the said award proceedings to the writ petitioner, but the petitioner himself was not present to sign the Memo dt.08.05.2019 in PLC.No.130/2019 before the Lok Adalath held at L.B.Nagar, Ranga Reddy District. The said Memo dt.08.05.2019 is also filed by the 3rd respondent along with the counter affidavit.

4(ii) It is also further denied that the 2nd respondent without giving any opportunity to the writ petitioner to submit his

objections/defenses passed the impugned order dt.06.08.2019. It is stated that in fact a bare perusal of the present information obtained under the RTI Act by the writ petitioner herein, which is filed herewith as material documents to the present counter affidavit, clearly substantiates the case of the 3rd respondent and negatives plea of the writ petitioner that the writ petitioner had no notice prior to the passing of the impugned order. In fact the writ petitioner has given his written consent before the 2nd respondent and also signed on the note file H/1642/2019 at page Nos.1 and 4. It is also submitted that the contention of the writ petitioner that he had no opportunity to submit his objections is totally false, incorrect, baseless and sought for dismissal of the writ petition.

5. No reply affidavit is filed by the writ petitioner disputing the aforesaid facts mentioned in the counter affidavit.

6. Learned Counsel for the petitioner submits that the impugned order is passed without affording appropriate opportunity to the petitioner to submit objections. He also submits that the writ petitioner has not consented for cancellation of the gift deed; and that the gift deed is executed on 21.02.2007 by the 3rd respondent i.e. before the Act came into force, as such, the Revenue Divisional Officer has no power to cancel the gift deed.

7. Learned counsel for vacate petitioner submits that when writ petitioner has signed the docket sheet on 03.08.2019 before the 2nd

respondent agreeing for cancellation of the gift deed, it cannot be said that the writ petitioner has not been given appropriate opportunity for filing objections. When, once, the writ petitioner consented as stated in the impugned order, he cannot challenge the said order, again. More so, for suppressing these facts alone the writ petition is liable to be dismissed.

8. The impugned order is passed basing on the consent given by the writ petitioner as well as 5th respondent and the docket order dt.03.08.2019 filed by the 3rd respondent along with counter affidavit goes to show that the petitioner has signed the same. Suppressing the said fact the writ petitioner filed the writ petition stating that he was not given notice. The writ petitioner while obtaining registered gift deed gave an undertaking that he will maintain 3rd and 4th respondents, but, he failed to do so and also filed this writ petition suppressing the fact about giving consent before the 2nd respondent for passing the impugned order, which shows the conduct of the writ petitioner. In fact, the writ petitioner is also liable to be prosecuted for giving false affidavit before this Court, but, however, this Court refrains to order prosecution of writ petitioner keeping in view his age and petitioner is warned and let off and he should be careful in future.

Even the appeal is also not maintainable against the consent order. When such is the position, this Court is not inclined to entertain the writ petition by exercising the extra ordinary equitable jurisdiction of this Court under Article 226 of the Constitution India.

In *K.D. Sharma v. SAIL*, (2008) 12 SCC 481 at page 492, the

Hon'ble Supreme Court held as follows:

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

44. In *Welcom Hotel v. State of A.P.* [(1983) 4 SCC 575 : 1983 SCC (Cri) 872] certain hoteliers filed a petition in this Court under Article 32 of the Constitution challenging the maximum price of foodstuffs fixed by the Government contending that it was uneconomical and obtained ex parte stay order. The price, however, was fixed as per the agreement between the petitioners and the Government but the said fact was suppressed. Describing the fact as material, the Court said: (SCC pp. 580-81, para 7)

“7. ... Petitioners who have behaved in this manner are not entitled to any consideration at the hands of the Court.”

9. In view of the above, the other contentions need not be gone into.

10. Accordingly, the writ petition is dismissed with exemplary costs of Rs.20,000/- payable by the petitioner to the 3rd respondent. Failing which, the High Court Legal Services Committee is to take steps for recovery of the said amount from the petitioner.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

04.02.2020
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