

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

Writ Petition No.2494 of 2021
and
WMP No.2810 of 2021

Karuppannan

... Petitioner

vs.

1. The Presiding Officer,
The Parents and Senior Citizen
Maintenance Tribunal cum
Revenue Divisional Officer
Coimbatore South
Coimbatore.
2. Nallammal

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to call for the records in Na.Ka.No.5025/2020/A-1 dated 17.12.2020 on the file of 2nd respondent and quash the same.

For petitioner : Mr.N.Ponraj

For respondents : Mr.K.Parameswaran

Government Advocate for R1

ORDER

Mr.K.Parameswaran, learned Government Advocate accepts notice for the first respondent.

2. By consent of both parties, this writ petition is taken up for final disposal at the time of admission itself.

3. This writ petition has been filed challenging the notice of hearing issued by the first respondent in the application filed by the second respondent against the petitioner under Section 23 of the Parents and Senior Citizen Maintenance Act, 2007 seeking for cancellation of the settlement deed, which was earlier executed by the second respondent in favour of the petitioner.

4. The petitioner is the brother of the second respondent.

The second respondent has executed a settlement deed, dated 08.01.2014 in favour of the petitioner. An application has been filed by the second respondent against the petitioner under Section 23 of the Parents and Senior Citizen Maintenance Act, 2007 before the first respondent seeking for cancellation of the aforementioned settlement deed on the ground that the petitioner has not maintained her despite the execution of the settlement deed in his favour. Acting on the complaint lodged by the second respondent, the impugned notice of hearing has been issued by the first respondent on 17.12.2020.

5. Aggrieved by the said impugned notice of hearing on the ground that the notice has been issued contrary to the provisions of Section 23 of the Parents and Senior Citizen Maintenance Act, 2007, the petitioner has filed this writ petition.

6. Heard Mr.N.Ponraj, learned counsel for the petitioner and Mr.K.Parameswaran, learned Government Advocate for the first respondent.

7. The petitioner in this petition has challenged only the notice of hearing issued by the first respondent on 17.12.2020 on the application filed by the second respondent against the petitioner under Section 23 of the Parents and Senior Citizen Maintenance Act, 2007, seeking for cancellation of the settlement deed, which was earlier executed by the second respondent in favour of the petitioner. The contention of the petitioner in this writ petition is that the first respondent ought not to have taken cognizance of the second respondent's application and issued notice to the petitioner, which according to him is a clear abuse of process of law and has been issued without jurisdiction. It is the contention of the petitioner that the settlement deed is an unconditional settlement deed and there is no express condition to maintain the second respondent in the settlement deed. According to the petitioner under Section 23 of the Parents and Senior Citizen Maintenance Act, 2007 unless and until there is a specific condition stipulated under the settlement deed that the settlee will have to maintain the settlor, no application under Section 23 of the Parents and Senior Citizen Maintenance Act, 2007 can be entertained by the first respondent. It is also the contention of the petitioner that the only remedy available to the second respondent is to approach the Civil Court seeking for cancellation of settlement deed and according to him, an application under Section 23 of the Parents and Senior Citizen Maintenance Act, 2007 is not maintainable.

8. The contentions raised by the petitioner in this writ petition will necessarily have to be considered only by the

first respondent. The petitioner has approached this Court prematurely even before passing of final orders by the first respondent on the application filed by the second respondent against the petitioner under the said Act.

9. It is settled law that unless and until any notice has been issued without any authority under law or without jurisdiction only then the writ petition under Article 226 of the Constitution of India is maintainable. In the case on hand, the contentions raised by the petitioner in this writ petition, as referred to supra, will have to be considered only by the first respondent and even before such consideration, the petitioner has prematurely approached this Court under Article 226 of the Constitution of India.

10. For the foregoing reasons, this writ petition is dismissed, as the same has been filed prematurely by the petitioner. However, it is made clear that the first respondent while disposing of the application filed by the second respondent against the petitioner under Section 23 of the Parents and Senior Citizen Maintenance Act, 2007 shall consider all the contentions raised by the petitioner on merits and in accordance with law.

11. This writ petition is dismissed with the aforesaid observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To:

The Presiding Officer,
The Parents and Senior Citizen
Maintenance Tribunal cum
Revenue Divisional Officer
Coimbatore South
Coimbatore.

W.P.No.2494 of 2021

RGN (CO)
RMP (03/03/2021)