

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.13244 of 2020

N.Sankaran

...

Petitioner

Vs

1. The Revenue Divisional Officer,
Namakkal,
Namakkal District.

2. S. Senthil Kumar

...

Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the 1st respondent to consider and dispose of the petition dated 20.03.2020 preferred by the petitioner under Sections 5 and 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

For Petitioner ... Mr.T. Mohan for M.Murali

For Respondents ... Mr.V.Shanmuga Sundar,
Spl. Govt. Pleader for R1.
R2 - Served - No appearance.

ORDER

This writ petition has been filed for a Mandamus seeking for a direction to the 1st respondent to consider and dispose of the petitioner's representation dated 20.03.2020 given under Sections 5 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, within a time frame to be fixed by this Court.

2. The case of the petitioner is that he is a Senior citizen and the 2nd respondent is his Son in whose favour, he had executed a Settlement Deed, dated 11.04.2018 registered as Document No.1137 of 2018 on the file of the Joint Sub Registrar - II, Namakkal, reserving his life interest over the property and with a condition to repay the loan amount taken for the construction of the said property. According to the petitioner, he had executed the Settlement Deed in favour of the 2nd respondent only on the assurance given by the 2nd respondent that he will maintain him for the rest of his life as a dutiful son. According to the petitioner, despite the assurance given

by the 2nd respondent, the 2nd respondent failed to maintain him. In such circumstances, the petitioner has submitted an application on 20.03.2020 with the 1st respondent against the 2nd respondent under Sections 5 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 seeking for cancellation of the Settlement Deed, dated 11.04.2018 registered as Document No.1137 of 2018. Since, the said application has not been considered, till date, this writ petition has been filed.

3. Heard Mr.T.Mohan, learned counsel for the petitioner and Mr.V.Shanmuga Sundar, learned Special Government Pleader for the 1st respondent. Despite service of notice on the 2nd respondent and his name having been printed in the cause list, today, there is no appearance on his side.

4. The relief sought for in this writ petition is an innocuous one. No prejudice will be caused to the respondents, if the petitioner's representation, dated 20.03.2020 given under Sections 5 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 against the 2nd respondent is considered by the 1st respondent, within a time frame to be fixed by this Court. It is the case of the petitioner that he had executed a Settlement Deed dated 11.04.2018 in favour of the 2nd respondent who is his son, on the assurance given by the 2nd respondent that he will maintain him during his lifetime as a dutiful Son. According to the petitioner, despite the execution of the Settlement Deed, dated 11.04.2018, the 2nd respondent failed to maintain him. The petitioner has submitted the aforementioned application dated 20.03.2020 with the 1st respondent under Sections 5 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 against the 2nd respondent. Admittedly, the said application has not been considered, till date by the 1st respondent.

5. The learned counsel for the petitioner submits that the present whereabouts of the 2nd respondent is not known. He would submit that the 1st respondent has already issued one summon to the 2nd respondent, which has been returned unserved. He would further submit that the 1st respondent is not ordering for Substituted Service of notice on the 2nd respondent and hence, he seeks for a direction from this Court that in case, the 2nd summons sent by the 1st respondent to the 2nd respondent is also returned unserved, the petitioner may be permitted to effect Substituted Service through Paper Publication for effecting service of notice on the 2nd respondent.

6. This Court is of the considered view that in view of the submissions made by the learned counsel for the petitioner that the present whereabouts of the 2nd respondent is not known, such a direction can be issued by this Court.

7. For the foregoing reasons, this Court directs the 1st respondent to consider the petitioner's application, dated 20.03.2020 filed against the 2nd respondent under Sections 5 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and pass final orders on merits and in accordance with law, after hearing all necessary parties including the petitioner as well the 2nd respondent, within a period of three months from the date of receipt of a copy of this order.

8. It is also made clear that in case, notice sent by the 1st respondent to the 2nd respondent is returned unserved for the 2nd time, the 1st respondent shall thereafter order for Substituted Service of notice on the 2nd respondent through Paper Publication.

7. With the aforesaid direction, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To
The Revenue Divisional Officer,
Namakkal,
Namakkal District.

+1cc to Mr.M.Murali, Advocate, S.R.No.18919

DMK(CO)
KM(19/04/2021)

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