



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2021

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P. No. 23643 of 2021
and
WMP No.24893 of 2021

Mrs. Vellaiyammal

...Petitioner

Versus

1. The Revenue Divisional Officer,
Office of the Revenue Divisional
Officer, Perambalur Division,
Perambalur District.
2. The Tahsildar
Office of the Tahsildar,
Perambalur Taluk,
Perambalur District
3. The Sub-Registrar,
Office of the Sub-Registrar,
Perambalur
4. Mrs.P.Nellammal

...Respondents

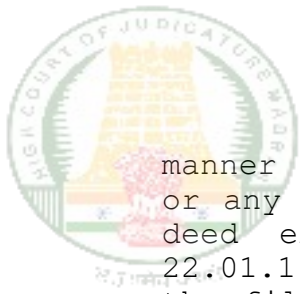
Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus forbearing the respondents from in any manner proceeds with the representation of the fourth respondent or any other person claiming under her that to cancel the settlement deed executed by the fourth respondent in favour of the petitioner dated 22.01.1990 registered as document No.83 of 1990 on the file of the third respondent by invoking the provisions of Section 23 of the Maintenance and Welfare of parents and Senior Citizens Act 2007

For Petitioner : Mr.G.Ilamurugu

For Respondents : Mr. G. Krishnaraja
Government Counsel for R1 to R3

ORDER

The petitioner has filed this writ petition praying to issue a Writ of Mandamus to forbear the respondents 1 to 3 from in any



manner entertaining the representation of the fourth respondent or any other person claiming under her to cancel the settlement deed executed by the fourth respondent in her favour on 22.01.1990, which was registered as document No.83 of 1990 on the file of the third respondent, by invoking the provisions of Section 23 of the Maintenance and Welfare of parents and Senior Citizens Act 2007

2. According to the petitioner, her parents were blessed with two sons and three daughters, including her. The petitioner was given in marriage and thereafter, the fourth respondent, who is her mother, had executed a settlement deed dated 22.01.1990 by which the land in Survey No.62/3 measuring an extent of 1.40 acres out of 3.40 acres in Elambur Village Panchayat, Perambalur District was settled in her favour. It is stated that the petitioner has mutated the revenue records and obtained patta bearing No. 2493 in her favour. It is also stated that the petitioner is financially supporting the fourth respondent. In fact, when the petitioner was facing financial crunch, she had sold a portion of the land measuring 432 square meters out of 1.40 acres in favour of one Mr. Thangavel by executing a registered sale deed dated 27.12.2010 and it was also known to the fourth respondent and her brothers and sisters. While so, the petitioner came to know that at the instance of her brothers and sisters, the fourth respondent is attempting to cancel the settlement deed dated 22.01.1990. It is also stated that the fourth respondent along with her brothers and sisters attempted to interfere with her possession and enjoyment of the property settled in her favour and therefore, she has filed a suit in O.S. No. 146 of 2021 before the learned District Munsif, Perambalur for bare injunction and it is pending. Thus, apprehending that the fourth respondent may cancel the settlement deed dated 22.01.1990 executed in her favour by invoking the provisions contained under Section 23 of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the petitioner has filed this writ petition for the relief stated supra.

3. The learned counsel for the petitioner would contend that the recitals in the settlement deed dated 22.1.1990 clearly establish that it was executed by the fourth respondent out of love and affection to enable the petitioner to maintain herself. However, the attempt on the part of the fourth respondent to cancel the said document after three decades is unjust and unreasonable. The learned counsel for the petitioner also placed reliance on the full Bench judgment of Kerala High Court, in the case of Subhashini Vs. The District Collector and others in W.A.No.1460 of 2015, dated 22.09.2020, wherein it was held that the provisions of Section 23 of the Maintenance and Welfare of parents and Senior Ctiizens Act 2007 is not applicable in the



absence of specific recital as to the maintenance of the executant by the settee. It is stated that in the settlement deed dated 22.01.1990, there is no recital to the effect that the petitioner has to maintain the fourth respondent. Even otherwise, the petitioner is continuously supporting the fourth respondent financially, as such, the provisions of Section 23 of the said Act will not be applicable to the facts and circumstances of the above case. The learned counsel for the petitioner also submitted that there is imminent possibility of dispossession of the petitioner from the property by cancelling the settlement deed executed by the fourth respondent on 22.01.1990, by invoking the provisions of Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Therefore, the learned counsel for the petitioner prayed for allowing this writ petition by restraining the fourth respondent from cancelling the settlement deed dated 22.01.1990.

4. Heard the counsel for both sides and perused the materials available on record.

5. The petitioner has filed this writ petition apprehending that the fourth respondent may resort to cancel the settlement deed dated 22.01.1990 executed in her favour. On the other hand, it is brought to the notice of this Court that the fourth respondent has already filed W.P. No. 20738 of 2021 before this Court praying for issuance of Writ of Mandamus, directing the respondents therein to consider the representation dated 21.09.2021 submitted by her to cancel the Settlement Deed No.83 of 1990 dated 22.01.1990 executed in favour of the petitioner herein. The said writ petition was disposed of by this court on 28.09.2021 by issuing the following directions:-

"Having regard to the limited scope of the prayer that is now sought for in this writ petition before this Court and taking into account the submissions made on either side, without expressing any opinion on the merits of the petitioner's representation or the case pleaded by the petitioner in the present writ petition, the Writ Petition is disposed of, the 2nd respondent is directed to consider the petitioner's representation dated 21.09.2021 and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner and to conduct de nova enquiry, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.



6. Thus, it is evident that already, the fourth respondent has given a representation to the respondents 1 and 2 herein on 21.09.2021. When her representation dated 21.09.2021 was not considered, the fourth respondent has filed WP No. 20738 of 2021 before this Court in which a direction was issued to conduct an enquiry after affording opportunity of hearing to the fourth respondent and other parties concerned. Therefore, in view of the order dated 28.09.2021 passed by this Court in WP No. 20738 of 2021, no further order is required to be passed in this writ petition. It is needless to mention that the petitioner herein will be given adequate opportunity of hearing while considering the representation of the fourth respondent for cancellation of the settlement deed dated 22.01.1990.

7. This writ petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

msr/rsh
To

1. The Revenue Divisional Officer,
Office of the Revenue Divisional
Officer, Perambalur Division,
Perambalur District.
2. The Tahsildar,
Office of the Tahsildar,
Perambalur Taluk,
Perambalur District.
3. The Sub-Registrar,
Office of the Sub-Registrar,
Perambalur.

+1cc to Mr.G.Ilamurugu, Advocate, S.R.No.56443
+1cc to the Government Pleader, S.R.No.57170

WP No.23643 of 2021

NK[co]
NSK 25/11/2021