

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.NO.4575 OF 2022

AND

W.M.P.NO.4714 OF 2022

C.Mariya Pragasam

... Petitioner

-Vs-

1. The District Collector,
Ariyalur District,
Ariyalur.

2. Mrs.Chinnammal

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the impugned order dated 22.12.2021 passed by the first respondent in his proceedings No.Na.Ka.E2/8164/2021 and quash the same.

For Petitioner : Mr.M.Loganathan

For Respondents : Mr.T.Sreenivasan
Special Government Pleader

ORDER

This writ petition has been filed challenging the order dated 22.12.2021 passed by the first respondent under Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, ordering for cancellation of the Settlement Deed dated 03.11.2016 executed by the second respondent in favour of the petitioner.

2. The petitioner is the son and the second respondent is his mother. The petitioner has challenged the impugned order on the ground that Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is not attracted in view of the fact that there was no condition imposed upon the petitioner by the second respondent under the Settlement Deed dated 03.11.2016 to maintain the second respondent. The petitioner also claims that he has been continuously maintaining the second respondent till date by paying monthly maintenance of Rs.2,000/-. Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 reads as follows:

" Sec.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."

3. As seen from the aforementioned section, it is clear that only when there is a condition that the transferee (settlee herein) shall provide the basic amenities and basic physical needs to the transferor and such transferee (settlee) 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 be declared to be void by the Tribunal.

4. In the instant case, the second respondent has not imposed any condition in the Settlement Deed executed by her in favour of the petitioner, who is her son that he will have to provide basic amenities and physical needs to her. When no such condition has been imposed and when the second respondent has failed to establish fraud or coercion or undue influence against the petitioner, the Settlement Deed of the year 2016 executed in favour of the petitioner cannot be declared to be void. However, under the impugned order, without jurisdiction, the first respondent has passed the order, under which, the Settlement Deed executed in favour of the petitioner by the second respondent has been ordered to be cancelled. Even if a plea is

taken by the senior citizen that the document executed has been obtained by fraud, coercion or undue influence, the senior citizen will have to prove the same. As seen from the impugned order, excepting for extracting Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, without any evidence to establish that the petitioner had committed fraud, coercion, undue influence against the second respondent in obtaining settlement deed in his favour, the first respondent has passed the impugned order ordering for cancellation of the settlement deed, which is unsustainable in law. Under the impugned order, the petitioner has been directed to pay a monthly maintenance amount of Rs.2,000/-(Rupees two thousand only).

5. Learned counsel for the petitioner, on instructions, would submit that the petitioner has been paying the maintenance amount to the second respondent in accordance with the impugned order. However, this Court is of the considered view that a sum of Rs.2,000/-(Rupees two thousand only) awarded by the first respondent under the impugned order is too low and therefore, it has to be necessarily enhanced.

6. This Court deems it fit to fix the monthly maintenance payable by the petitioner to the second respondent at Rs.5,000/-(Rupees five thousand only). If the petitioner has not paid the arrears as stipulated under the impugned order, the same shall also be paid to the second respondent together with the enhanced amount of Rs.5,000/-(Rupees five thousand only), from the month of July 2022 onwards without committing any default. Liberty is granted to the second respondent to challenge the settlement deed executed in favour of the petitioner, if so advised, before the competent civil court.

7. With the aforesaid direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The District Collector,
Ariyalur District,
Ariyalur.

+1cc to the State Government Pleader, S.R.No.42327

W.P.NO.4575 OF 2022

GSM(CO)
PBS/19/07/2022