



W.P.No.44258 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 05.07.2022

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.44258 of 2016
and
W.M.P.Nos.38103 & 38104 of 2016

1.R.Kasturi

2.V.Parameswari

... Petitioners

VS.

1.The Revenue Divisional Officer cum
The Presiding Officer
Maintenance and Welfare of Parents and
Senior Citizens Tribunal, Erode -638 001.

2.B.Sakravarty

3.K.Ravisankar

4.P.K.Ramesh

5.C.Soundarya

6.C.Keerthana

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order dated 11.03.2014 in R.C.No.7063/2013/AA2 on the file of the



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Revenue Divisional Officer cum the Presiding Officer, Maintenance and Welfare of Parents and Senior Citizens Tribunal, Erode – 638 001, the first respondent herein and quash the same in so far as the same relates to the sale deed dated 06.08.2012 registered as Doc.No.4151 of 2012 on the file of the Joint Sub Registrar of Assurances, No.2, Erode.

For Petitioner : Mr.A.V.Arun

For Respondents : Mrs.V.Yamuna Devi,
Special Government Pleader for R1

Mr.S.Jayakumar for R5 and R6

R2 to R4 – No appearance

ORDER

Challenge in this proceedings is to the orders passed by the Authorities under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

The facts that led to the proceedings before the Authorities are as follows:

2. One Balusamy S/o. Ramaswamy who had obtained the property under the sale deed dated 16.11.1987 and 17.11.1987 executed a settlement



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deed on 18.02.2011 in favour of his son viz., B.Chakravarthy, 2nd respondent herein. Thereafter, the said Balusamy along with his son Chakravarthy had sold the property to the respondents 3 and 4 herein under the registered sale deed dated 06.05.2012. After execution of the said sale deed, it appears that one of the vendors viz., Balusamy approached the Authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 seeking cancellation of the sale deed claiming that his son had obtained the settlement deed by playing fraud on him and had transferred the property to third party Benami.

3. During the pendency of the said complaint, the respondents 3 and 4 had sold the property to the petitioners herein under the sale deed dated 16.09.2016. The said Balusamy had also gone ahead and cancelled the settlement deed executed by him in favour of his son on 19.02.2016. The Authority had taken up the enquiry and tested the validity of the sale deed and concluded that the sale deed is not valid because the settlement deed executed in favour of the 2nd respondent is not valid. It is now not in dispute that the father of the 2nd respondent Balusamy is no more. It is also



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not in dispute that he had settled the property in favour of his grand children born through the other son after the order was passed by the Authority.

4. Mr.A.V.Arun, learned counsel appearing for the petitioner would vehemently contend that the entire proceedings are made up to defeat the rights of the third party purchasers and the very fact that the father Balusamy had chosen to execute the settlement deed in favour of the grandchildren born through other son would itself show that the proceedings have been stage managed only to recover the property from third party alienees.

5. Relying upon Section 23 of the Act, he would contend that the Officer under the Act have no right to cancel the documents which does not have a condition to the effect that the transferee shall provide basic amenities and basic physical needs to the transferor. Admittedly the sale deed in favour of the respondents 3 and 4 dated 06.05.2012 does not have any such stipulations. Having joined the execution of sale deed dated 06.05.2012, the very proceeding initiated by Balusamy under the Act are not maintainable.



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WEB COPY 6. The learned counsel would also contend that such right of maintenance can be enforced against the transferee if the transferee has notice of such right. A right of maintenance even if available under sub-Section 2 of Section 23 of the Act cannot be enforced against the transferee for consideration without notice of right. Thus the transferee referred to under sub-Section 2 would be only a transferee from the setlee and not a transferee from the person who is claiming maintenance. In the case on hand, since Balusamy had joined execution of the sale deed dated 06.05.2012 he himself is transferor and the respondents 3 and 4 are transferee for a valuable consideration from the senior citizen.

7. None of the provisions of the Act enable the officers under the Act to direct the District Registrar to cancel the document. Such cancellation can be done upon proof of facts which would invalidate the document that too only by a civil Court. A Full Bench of this Court in *M/s.Latif Estate Line India Ltd. Vs. Mrs.Hadeeja Ammal and others* reported in *CDJ 2011 MHC 747* has held that any non testamentary instrument cannot be



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cancelled by the author of the instrument without the consent of the other party.

8. A claim is made to the effect that the deceased Balusamy was blind and he was cheated in this transaction. That claim in my opinion has to be resolved only by the civil Court and not by a Officer acting under this enactment. This enactment is strictly for maintenance and welfare of senior citizens and Section 23 has to be strictly construed since it seeks to avoid certain transfers unless all the ingredients of Section 23 are satisfied. Officers sitting under the Act will not have the power to direct cancellation of the document.

9. Even in cases where there is a transfer of property by the setlee the documents cannot be cancelled or a direction can be issued for cancellation of the document. The alienee cannot be directed to pay maintenance provided he is alineee with exiting right of maintenance. Therefore, the sweep of Section 23 would be only with reference to the property that is in hands of setlee from the senior citizen. Once it passes on all third party question of cancellation or direction to cancellation will not arise.



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10. I am therefore of the considered opinion that the respondents had essentially exceeded his Authority in directing cancellation of the documents in question. Therefore the writ petition is allowed and the order impugned in the writ petition dated 11.03.2014 is set aside. The setting aside of the impugned order of the Authority will not affect the rights of the parties and it will be open to them to seek appropriate remedy before the competent Court, if it is open to them under law. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

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Index: No

Internet: Yes

Speaking order



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R.SUBRAMANIAN, J.

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To

The Revenue Divisional Officer cum
The Presiding Officer
Maintenance and Welfare of Parents and
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