

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.NO.19789 OF 2020 &
W.M.P.NO.24456 OF 2020

Devi

... Petitioner

vs.

1. Sub Divisional Magistrate cum Sub Collector,
Thirupattur.
2. Rajammal
3. T.K.Purushothaman
4. Suresh
5. Nirmala
6. K.Manjula
- 7 .Sub Registrar, Office of Sub Registration District,
Thirupattur.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorarified Mandamus calling for the entire records of the 1st respondent pertaining to the impugned order of the 1st respondent dated 24.03.2020 under its Reference No.Na.Ka.A3.106/2020 and quash the Impugned Order of the 1st respondent dated 24.03.2020 under its Reference No.Na.Ka.A3.106/2020.

For Petitioner : Mr.N.Sivaprakash

For Respondents 1 & 7: Mr.B.Vijay
Additional Government Pleader

For Respondent 2 : Mr.G.Ravisankar

ORDER

This writ petition has been filed challenging the impugned order dated 24.03.2022 passed by the first respondent under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as "Act") under which the settlement

deed dated 27.05.2019 executed by the second respondent in favour of the third respondent was ordered to be cancelled.

2. According to the petitioner, subsequent to the execution of the aforementioned settlement deed dated 27.05.2019, the third respondent executed a sale deed in favour of the sixth respondent on 27.06.2019 and thereafter, the sixth respondent sold the property to the petitioner under a sale deed dated 02.12.2019. The petitioner has challenged the impugned order on the ground that section 23(1) of the Act can be invoked, only when the settlement deed imposes condition for maintenance of senior citizen. In the case on hand, the second respondent is a senior citizen. Since the settlement deed dated 27.05.2019 does not impose any such condition, section 23(1) of the Act does not get attracted. According to her, since section 23(1) of the Act is not attracted, the impugned order has to be quashed.

3. Heard Mr.N.Sivaprakash, learned counsel for the petitioner, Mr.G.Ravishankar, learned counsel for the respondent 2 and Mr.B.Vijay, learned Additional Government Pleader appearing for the respondents 1 & 7. Despite service of notice on the respondents 3 to 6, there is no representation on their side.

4. Learned Additional Government Pleader appearing for the respondents 1 & 7 would submit that the Act is meant to protect the interest of the senior citizens. He would also submit that the conduct of the petitioner as seen from the affidavit filed in support of this writ petition creates suspicion as to whether he is a bonafide purchaser or not. Learned Additional Government Pleader appearing for the respondents 1 & 7 drew the attention of this court to the sale deed executed by the third respondent in favour of the sixth respondent subsequent to the execution of the settlement deed dated 27.05.2019 and would submit that within a short period of time, the said sale deed has been executed which creates suspicion. According to him, the first respondent has rightly ordered the cancellation of the settlement deed dated 27.03.2019 executed by the second respondent in favour of the third respondent. According to him, though the Full Bench of Kerala High Court has held that section 23 of the Act has to be applied by following its literal meaning, there are other decisions rendered by other High Courts which have interpreted section 23 of the Act in favour of the senior citizens. Though the said decisions have been referred to by the learned Additional Government Pleader, the same has not been placed before this Court during the course of his argument.

5. Mr.G.Ravisankar, learned counsel for the second respondent would submit that the petitioner has no locus standi to challenge the impugned order as he is a third party to the

impugned proceedings. He would also reiterate the submissions made by the learned Additional Government Pleader appearing for the official respondents. Learned counsel for the second respondent submits that the sale deeds executed in favour of the respective parties subsequent to the settlement deed dated 27.05.2019 are fraudulent sale deeds. He would also point out that the sale deeds disclose that it is a vacant land whereas the the subject property comprises of land and building.

6. Learned counsel for the petitioner drew the attention of this Court to section 23 of the Act and also to the decision rendered by a learned Single Judge of the this Court in the case of M.Venugopal vs. The District Magistrate cum District Collector, Kanyakumari District and others reported in 2014 (5) CTC 162 and would submit that the learned Single Judge of this court has held that only if a transfer has been effected on 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. Therefore according to him, since there is no condition for providing maintenance under the settlement deed dated 27.05.2019 executed by the second respondent in favour of the third respondent, section 23 of the Act does not get attracted. Learned counsel for the petitioner claims that the petitioner is in possession and enjoyment of the property even now and the second respondent is not in possession of the property which is denied by the learned counsel for the second respondent.

Discussion:

7. Admittedly, the impugned proceedings were initiated by the second respondent vide her application dated 23.01.2020 which is subsequent to the execution of sale deeds viz., sale deed dated 27.06.2019 executed by the third respondent in favour of the sixth respondent and the sale deed dated 02.12.2019 executed by the sixth respondent in favour of the petitioner. The contention of the learned counsel for the second respondent is that the petitioner is a third party and he has no locus standi to file this writ petition. The said contention has to be rejected on the ground that as on the date of the proceedings initiated by the second respondent against the third respondent seeking for cancellation of settlement deed, the property was already transferred in favour of the petitioner. Infact two transactions have taken place namely sale deed dated 27.06.2019 registered as document No.6022 of 2019 and sale deed dated 02.12.2019 registered as document No.11593 of 2019. No notice of the impugned proceedings were also given to the petitioner even

though in the impugned order, the first respondent has been informed that the sale deed dated 27.06.2019 and sale deed dated 02.12.2019 have been executed subsequent to the settlement deed dated 27.05.2019 executed by the second respondent in favour of the third respondent. Having been informed about the sale deeds, the petitioner has not been put on notice with regard to the impugned proceedings by the first respondent.

8. For the foregoing reasons, this court is of the considered view that the petitioner cannot be treated as a third party to the impugned proceedings as he is the person who will be aggrieved by the impugned order.

9. It is undoubtedly true that the Act has been enacted only to protect the senior citizens. Based on the complaint given by the second respondent on 23.01.2020 under section 23 of the Act, the impugned order has come to be passed under which the settlement deed executed by the second respondent (mother) in favour of the third respondent (son) has been ordered to be cancelled.

10. Section 23 of the Act reads as follows:

"23. Transfer of property to be void in certain circumstances

1. Where any senior citizen who, after the commencement of this Act, has 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.

2. Where any senior citizen has a right to receive maintenance out of an estate and such estate or part, thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

3. If any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5."

11. As seen from section 23 of the Act, a condition must be

imposed by transferor (settler) that the transferee (settlee) shall provide the basic amenities and basic physical needs to the transferor. Admittedly, in the settlement deed dated 27.05.2019 executed by the second respondent in favour of the third respondent, no such condition has been imposed by the transferor. It is also an irrevocable settlement. In the decision relied upon by the learned counsel for the petitioner in the case of M.Venugopal vs. The District Magistrate cum District Collector, Kanyakumari District and others reported in 2014 (5) CTC 162, the learned Single Judge has also interpreted section 23 of the Act in its literal sense and also held that only if a transfer has been effected on 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.

12. In the instant case, as seen from the settlement deed dated 27.05.2019, there is no condition imposed by the (transferor) second respondent to the (transferee) third respondent to provide amenities and physical needs to her. When there is no such condition, this Court is of the considered view that section 23 of the Act does not get attracted. Further, the petitioner has purchased the property even before the proceedings were initiated by the second respondent against the third respondent under the Act. Therefore, the first respondent ought not to have exercised its jurisdiction under section 23 of the Act as it lacks jurisdiction in view of the prohibition contained in section 23 of the Act which makes it very clear that only when conditions are imposed under which the settlee undertakes to maintain the settlor, jurisdiction under section 23 of the Act can be exercised.

13. Though the impugned order will have to be necessarily quashed, the senior citizen/ second respondent's interest with regard to her possession of the property has to be protected as she can be evicted only by following the due procedure established under law.

14. For the foregoing reasons, the grounds raised by the petitioner for challenging the impugned order deserves merit. Accordingly, the impugned order dated 24.03.2022 passed by the first respondent is hereby quashed. However, the petitioner shall evict the second respondent only by approaching the civil court by following the due procedure established under law. Liberty is granted to the second respondent to challenge the sale deeds dated 27.06.2019 executed by the third respondent in favour of the sixth respondent and the sale deed dated

02.12.2019 executed by the sixth respondent in favour of the petitioner before the Civil Court in the manner known to him under law and liberty is also granted to the second respondent to seek for maintenance against the third respondent before the appropriate forum in the manner known to him under law.

15. In terms of the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Divisional Magistrate cum Sub Collector,
Thirupattur.
2. The Sub Registrar, Office of Sub Registration District,
Thirupattur.

+1cc to Mr.N.Sivaprakash, Advocate, S.R.No.39691
+2ccs to Mr.G.Ravisankar, Advocate, S.R.No.39669
+1cc to the Government Pleader, S.R.No.40356

W.P.No.19789 of 2020

PMK(CO)
PM/13/07/2022