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Rev.Aplw No.10 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

Rev.Aplw No.10 of 2023
and W.M.P.No.2955 of 2023

R.Jawahar

... Petitioner

Vs.

1. R.Rajaramanan

2. The Sub Collector,
Office of the Sub Collector.

3. The Sub Registrar,
O/o.The Sub Registrar,
Registration Department,
Panruti Town,
Cuddalore District – 607 106.

... Respondents

Prayer: Review Application filed under Order 47 Rule 1 of C.P.C. r/w Section 114 of C.P.C. to review the order passed in W.P.No.2371 of 2020 dated 28.09.2022 passed by this Court.

For Petitioner : Mr.P.Dinesh Kumar

For R2 and R3 : Mr.U.Baranidharan
Additional Government Pleader

ORDER

The petitioner has filed this Review Application to review the order dated 28.09.2022 passed by this Court in W.P.No.2371 of 2020.



Rev.Aplw No.10 of 2023

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2. When the matter is taken up for hearing, the learned counsel for the petitioner submits that the petitioner's father / first respondent herein has made a complaint under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, against the review petitioner to cancel the settlement deed which was executed by the petitioner's father in favour of the petitioner. Since the said representation was rejected by the Sub Collector, the petitioner's father has filed the writ petition in W.P.No.2371 of 2020 seeking cancellation of the settlement deed executed in favour of the petitioner.

3. He further submits that pursuant to the above said writ petition, the review petitioner has filed the review petition solely on the ground that this Court vide order dated 28.09.2022 in W.P.No.2371 of 2020 has recorded that the petitioner has consented to pay a sum of Rs.15,000/- each to his father and mother towards monthly maintenance. However, at the time of arguments, he submitted that though he only prayed for dismissal of the said writ petition, this Court had inadvertently passed the said order, as if the petitioner had consented to pay a sum of Rs.15,000/- each to his father and mother.



Rev.Aplw No.10 of 2023

4. On the above said contentions, heard learned Additional Government Pleader for the respondents 2 and 3 and perused the materials placed before this Court.

5. The whole grievance of the review petitioner is that he has not given any consent to pay a sum of Rs.15,000/- each to the father and mother, totalling a sum of Rs.30,000/- per month and only on that ground, the review petition has been filed.

6. This Court had not gone into the issue on merits only on the consent expressed by the petitioner, which the petitioner now contradicts. In such a scenario, it becomes necessary for this Court to deal with the petition on merits, as the order passed in the writ petition would merge with the order passed in the review petition.

7. It is borne out by record that the review petitioner's parents are senior citizens aged above 80 years. Only on the fond hope that their children would be maintaining them in their old age, the parents resort to entering into the settlement between the various siblings, so that after their demise, the



siblings lead a harmonious life without fighting with each other. However, when the parents, with due regard to the later life of their children take all necessary steps to see that they lead a life, which is not shrouded with any difficulties and heartburns, it is equally the duty of the children to take care of their parents at an age, where it is becomes difficult for the parents to sustain themselves, both physically and financially.

8. It is to be pointed out that crossing the age of 80 years, an octogenarian becomes a child and just as the parents take care of their child at the age, where the child would not be in a position to take care of itself, it is the duty of the children to take care of their parents at their old age. However, many a times, the children, discard their parents at the age, where they should be properly taken care of, resulting in the Legislature stepping in to enact the Senior Citizens Act, whereby the senior citizens, who have fallen prey to the guiles of their children by settling their property are not thrown into the streets. In fact, the result of the act of the children in pushing their parents on to the streets is the reason for the mushrooming of a number of old age homes to take care of such persons.



Rev.Aplw No.10 of 2023

9. The present case is of one such nature where the petitioner has executed a settlement deed in favour of his two sons and his wife while retaining 1/4th share of the property. However, pursuant to the settlement deed, the review petitioner, having not maintained his parents properly, the 1st respondent herein, the father, was forced to knock the doors of the 2nd respondent herein u/s 23 of the Senior Citizens Act. However, the disinclination of the review petitioner to take care of the 1st respondent, viz., his father, has resulted in the 1st respondent filing a suit in O.S. No.48 of 2013 before the Principal District Court, Cuddalore, praying to declare the said settlement deed as null and void. The 2nd respondent herein had rejected the petition filed u/s 23 of the Senior Citizens Act on the ground of pendency of the aforementioned suit. Aggrieved by the same, the petitioner had filed the writ petition in which this Court had passed the order on consent, which is now contradicted by the review petitioner.

10. No doubt that a suit in O.S. No.48/2013 is pending before the Principal District Court, Cuddalore, praying to declare the settlement deed as null and void. A perusal of the affidavit filed by the 1st respondent in the writ



petition, it transpires that life interest was retained by the 1st respondent with himself and his wife and the settlee were not permitted to sell the property.

However, it is the pointed case of the 1st respondent that the review petitioner and his wife drove the 1st respondent and his wife after execution of the settlement deed, whereby the 1st respondent and his wife were thrown to the street.

11. In the above backdrop, suit was filed by the 1st respondent, which is pending consideration. However, the 2nd respondent herein had rejected the claim of the 1st respondent u/s 23 of the Senior Citizens Act in view of the pendency of the suit. However, it is borne out by record that the 1st respondent had retained life interest on the property till his life time and that of his wife. Such being the case, driving out the 1st respondent and his wife out of the property, is wholly against the construction of Section 23 and definitely it is the duty of the review petitioner to maintain his parents. If the review petitioner is not ready and willing to maintain his parents, he cannot enjoy the fruits of the hard earned labour of his parents in the form of property, as mere status of a legal heir would not give the review petitioner any right during the



Rev.Aplw No.10 of 2023

life time of his parents over the property, which was earned by his father and mother.

12. The review is filed only on the ground that no consent was given for payment of a sum of Rs.15,000/- each to the review petitioner's father and mother, totalling to a sum of Rs.30,000/-. However, in view of the fact that the review petitioner, on his own volition submits that he has not given any consent for payment of the said sum, it is of necessity that this Court has to invoke its jurisdiction under Article 226 of the Constitution of India to render substantial justice by ordering payment of maintenance amount till such time the suit in O.S. No.48/2013 is decided.

13. In such view of the matter, while this Court makes it clear that no consent is being given by the review petitioner to pay any maintenance, exercising its inherent jurisdiction under Article 226 of the Constitution, to render substantial justice, in view of the duty cast on the review petitioner to maintain his parents as mandated for under the Senior Citizens Act, more particularly, keeping in mind the execution of the settlement deed with clear mandate of retaining life interest, directs the review petitioner to pay a sum of



Rev.Aplw No.10 of 2023

Rs.25,000/- (Rupees Twenty Five Thousand only) to his mother and Rs.15,000/-

(Rupees Fifteen Thousand only) every month to his father towards monthly maintenance on or before the 5th day of every English Calendar month, starting from April, 2023, till their life time. In case of any default in payment of the said sum, the 1st petitioner is at liberty to file appropriate representation before the 2nd respondent herein for necessary action for realising the said amount ordered above and on such representation being filed, the 2nd respondent herein is directed to take necessary action for realising the said amount from the review petitioner. Insofar as the arrears of maintenance from the date of date of the filing of the maintenance application before the 2nd respondent herein is concerned, subject to the orders that is passed in the suit, the 1st respondent herein is at liberty to file necessary application claiming the arrears of maintenance.

14. The review application is ordered with the aforesaid modification and directions. No costs. Connected Miscellaneous petition is closed.

25.04.2023

Index : Yes / No

Speaking order / Nonspeaking order

Netrual Citation Case : Yes / No

(rap)

Office to note : Issue order copy today i.e.,06.06.2023



Rev.Aplw No.10 of 2023

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To

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O/o.The Sub Registrar,
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