



W.P.No.4818 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.02.2023**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.4818 of 2022

J.Chakrabani

... Petitioner

Vs

1.The District Collector
Tiruppur District.

2.The Executive Magistrate
and Revenue Divisional Officer
Tiruppur District.

3.The Sub Registrar
Sathiyamangalam, Erode District.

4.The Sub Registrar
Uthukuli, Tiruppur District.

5.Minor.D.Soundarya
Rep. by her natural guardian and
mother D.Kavitha

6.Minor. U.D.Thiru.Vishnuvardh
Rep by his Natual Guardian and
mother D.Kavitha

7.D.Kavitha

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus calling for the entire records in Oo.Mu.No.5535/2021/E1 dated 03.08.2021 on the file of the 1st respondent and confirming order made in



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Na.Ka.2024/2020/ E3 dated 25.01.2021 on the file of 2nd respondent and quash the same consequently direct the 3rd and 4th respondents to remove consequent entires in the Patta.

For the Petitioner : Mr.K.Sudhakar
For the Respondents : Ms.P.Rajarajeswari,
Government Advocate,
for respondents 1 to 4

ORDER

The writ petition has been filed in the nature of a certioraried mandamus seeing records relating to an order dated 03.08.2021 passed by the first respondent, District Collector Tiruppur in his capacity as an appellate authority under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which order was passed confirming an earlier order dated 25.01.2021 of the second respondent/Executive Magistrate and Revenue Divisional Officer at Tiruppur in his capacity as original authority under the said Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

2. The father of the petitioner K. R. Jayabalan had originally executed a settlement deed in favour of the petitioner herein. Subsequently, he had approached the second respondent under the



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provisions of the said Act.

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3. By an order dated 25.01.2021, the second respondent had cancelled the settlement deed. Thereafter, the petitioner herein filed an appeal before the first respondent/District Collector.

4. The said appeal is not at all maintainable because Section 16 of the said Act gives authority and liberty only to a senior citizen to file a further appeal before the District Collector/Appellate Authority. At any rate, the District Collector had taken the appeal on record.

5. Pending the appeal, the father Jayabalan had settled the very same property taking advantage of the settlement deed executed in favour of the petitioner being cancelled by the second respondent and executed a second settlement deed in favour of the 5th, 6th and 7th respondents. They are the legal heirs of his another son, Durairaj.

6. Pending the appeal, the father also died. The first respondent however passed an order confirming the order of the second respondent. The order of the first respondent is non est since he had no authority to pass such an order and as a matter of fact no authority to entertain the appeal.



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7. However, the order of the second respondent now stares in the face of the petitioner herein. His grievance is now focused not against his father, but against the subsequent settees namely the 5th, 6th and 7th respondents. This now turns into a civil dispute between the petitioner and the 5th, 6th and 7th respondents .

8. It is contended by the learned counsel for the petitioner that the original order cancelling the settlement deed by the second respondent itself is not lawful since, in the settlement deed there was no clause giving a responsibility on the petitioner herein to maintain his father. It is contended that overlooking absence of such clause still the second respondent had cancelled the said document.

9. However, as against that particular order, instead of taking steps in manner known to law, the petitioner himself had approached the first respondent who is not the proper authority to examine that particular order. The petitioner has thus invited the impugned order by himself.

10. Now the petitioner has to work out his remedy against the



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5th, 6th and 7th respondents and if he contends that the order of cancellation of settlement deed is not proper and the order subsequently settling the property on the 5th, 6th and 7th respondents again is not proper then, the entire issue revolves around evidence and to tender evidence, the only forum available is the civil court. Therefore the petitioner may approach the proper civil court for redressal of his grievances. Instituting a civil suit is an inherent right, provided the suit is not implicitly or explicitly barred under Section 9 of the Code of Civil Procedure. The petitioner will have to examine whether there is an implicit or explicit bar for filing the suit. Provided the law of limitation does not work against him, he has the liberty of filing a civil suit. No other orders are required.

11. The writ petition stands disposed of. No costs. Consequently, connected W.M.P.Nos. 4927 and 4929 are closed.

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Index: Yes/no
mrn



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C.V.KARTHIKEYAN, J.
(mrn)

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