



W.P.(MD) No.6104 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.6104 of 2021

and

W.M.P.(MD) Nos.4746 and 4747 of 2021

Ravi

.. Petitioner

Vs.

1.The Revenue Divisional Officer,
O/o. Revenue Divisional Office,
Thanjavur, Thanjavur District.

2.The Tahsildar,
Boodhaloor Taluk,
Boodhaloor, Thanjavur District.

3.The Sub Registrar,
Thirukattupalli,
Thanjavur District.

4.Anusuriya

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records relating to the impugned proceedings of the first respondent made in Na.Ka.No. 4776/2020/A3 dated 05.02.2021 and quash the same.



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For Petitioner : Mr.M.Suresh Kumar
For RR1 to 3 : Mr.D.Ghandiraj
Special Government Pleader

ORDER

The impugned order emanates from the proceedings which have been initiated under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as “the Act”).

2. The facts in brief are as follows:

The petitioner is the son of the fourth respondent herein. It is the case of the petitioner that his father had died in the year 1981 leaving behind him, his mother, the fourth respondent herein and five daughters. It is the case of the petitioner that at the time of the death of his father, he was 19 years old and had started working (having got a compassionate appointment) and it was he who had conducted the marriage of his sisters and as a result of which he had married only at the age of 41. He would submit that he is blessed with a daughter, who is aged about 15 years and a son who is aged about 12 years. All along the petitioner and his mother were living together at the very same address.



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3. It is his case that he has been taking care of his mother, who is receiving the family pension of the father. He has also attended to her health issues and had got a cardio surgery done for her at the Apollo Hospital, Trichy. The petitioner would submit that he had joined the Agricultural Department as an Office Assistant and is now working as an Assistant Agricultural Officer in the Horticulture Section.

4. The petitioner would submit that he has purchased properties in the name of the mother, who being the elder member of the family and having due respect upon her. She, in turn, had executed a registered settlement deed on 01.07.2020 settling the properties on the petitioner. In the month of September, 2020, his mother had gone to stay in the petitioner's sister's house and on her instigation, his mother had preferred a complaint dated 05.10.2020 before the first respondent to cancel the settlement deed dated 01.07.2020 executed by her in favour of the petitioner. The said application was moved under Section 23 of the Act.



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5. On the basis of this complaint, the first respondent had issued an enquiry notice for an enquiry on 15.12.2020. The petitioner was hospitalised at that relevant point of time, thereby vide letter dated 14.12.2020, he had sent reply seeking to reject the petition of his mother. The enquiry was postponed to 13.01.2021 and on the said date, the first respondent had directed the petitioner to file a detailed report through his Advocate on the next hearing. It appears that the fourth respondent alone had attended the enquiry and the impugned order came to be passed cancelling the settlement deed and directing the petitioner to pay monthly maintenance to the fourth respondent. This order is challenged by the petitioner primarily on the ground that the first respondent did not have the jurisdiction to entertain the petition, as the petition did not fall within the provisions of Section 23 of the Act.

6. A counter affidavit has been filed by the fourth respondent in which the mother would state that her signature had been fraudulently obtained. The fourth respondent had represented that the petitioner



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misled her into believing that she was executing a mortgage deed and clandestinely the settlement deed has been executed.

7. This statement is refuted by the petitioner's counsel, who would submit that the mother has voluntarily executed the settlement deed and it is only at the behest of the petitioner's sister that the complaint has come to be lodged. He would also rely upon the decision of the Hon'ble Supreme Court in *Sudesh Chhikara Vs. Ramti Devi and another* reported in **2022 0 Supreme(SC) 1219** to say that the contingencies contemplated under Section 23 of the Act do not apply to the present case and therefore, the writ petition ought to be allowed.

8. Heard the learned counsel on either side.

9. Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 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 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.

(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.”



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10. The two conditions for invoking the provisions of Section 23 *supra* are that (i) the document should have been executed after the commencement of the Act; and that (ii) the document should contain a condition that the transferee has to take care of the transferor.

11. In the instant case, the first condition is met. However, as regards the second condition, a reading of the settlement deed would clearly show that there is no such condition. Therefore, in the light of the language of the section and the judgment of the Hon'ble Supreme Court referred *supra*, the impugned order has to definitely be set aside, insofar as it relates to the cancellation of the settlement deed. However, with reference to the direction to pay maintenance, the first respondent is vested with such jurisdiction.

12. The Hon'ble Supreme Court, in the judgment *cited* above, has clearly held that the condition to take care of the senior citizens has to be incorporated in the document in order to invoke the provisions of Section 23 of the Act. Therefore, applying the ratio of the said judgment and



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considering of the provision, this Writ Petition is partly allowed. It is well open to the fourth respondent to initiate such proceedings as advised for setting aside the settlement deed. No costs. Consequently, connected miscellaneous petitions are closed.

09.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

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