



W.P.(MD)No.15838 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 03.01.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.15838 of 2022

and

W.M.P(MD).No.13970 of 2022

S.Kannappan

... Petitioner

Vs.

1.The Revenue Divisional Officer cum
Tribunal of Maintenance and Welfare of
Parents and Senior Citizens,
Madurai, Madurai District.

2.The Sub-Registrar,
Madurai (South),
Department of Registration,
Madurai, Madurai District.

3.The Registrar of Firms,
Madurai (South),
171, Palace Road,
Madurai, Madurai District.

4.R.Sekkapan

5.Sugi Premala
The Revenue Divisional Officer cum
Tribunal of Maintenance and Welfare of
Parents and Senior Citizens,
Madurai, Madurai District.

... Respondents



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Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the fifth respondent vide Mu.Mu.No. 1075/2022/J dated 12.07.2022 (received on 18.07.2022) quash the same.

For Petitioner : Mr.V.Raghavachari
for Mr.T.Cibi Chakraborty

For Respondents : Mr.S.Shanmugavelu (for R1 to R3)
Additional Government Pleader
No appearance (for R4)
given up (for R5)

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the respondents 1 to 3.

2. The fourth respondent, who is the real contestant has been served and his name is also printed in the cause-list, but he has not chosen to enter appearance. The petitioner has made an endorsement that though the fifth respondent has been named in person, he would give her up in personal capacity.



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3. The petitioner is none other than the son of the fourth respondent. The petitioner had purchased a piece of property for valuable consideration under sale deed dated 10.03.2005. It was registered as Document No.1780 of 2005 on the file of the Joint Sub-Registrar No.1, Madurai South. The vendor was Express Publications (Madurai) Limited. The fourth respondent represented the petitioner as his power agent. Subsequently, the petitioner had inducted the fourth respondent as partner. The partnership was also subsequently reconstituted in the year 2021. Following the retirement of the fourth respondent, the petitioner would claim that a sum of Rs.33,00,000/- was paid to the fourth respondent.

4. At this stage, the fourth respondent lodged a complaint under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, (hereinafter referred to as the “Act” for brevity) before the first respondent. The first respondent issued a notice to the petitioner and after holding enquiry, passed the impugned order dated 12.07.2022. The effect of the order is cancellation of the sale deed dated 10.03.2005 (Doc No.1780/2005) and the deed of reconstitution.



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5. As rightly pointed out by the learned counsel appearing for the writ petitioner, the Maintenance Tribunal will not have any jurisdiction to cancel transactions that were entered into prior to the date on which the Central Act 57/2007 came into force. The issue is no longer *res-integra*. In the decision reported in **2018 (6) CTC 21 (S.Neelavathi Vs., District Magistrate-cum-District Collector)**, it was held that the authority has no jurisdiction to exercise any power under the Act in respect of transactions that took place before the notification of the Act. In that view of the matter, the impugned order passed by the competent authority annulling the sale deed is clearly non-est in law. 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 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



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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.”

6. The said provision can be invoked by the Senior Citizen/transferor, only if he had transferred his property by way of gift or otherwise. The Hon'ble Supreme Court, in the decision made in Civil Appeal No.174 of 2021 dated 06.12.2022, held that if the document does not stipulate any condition, then Section 23 is not applicable. Section 23 covers only transactions wherein property is conditionally transferred by the Senior Citizen. The provision cannot be invoked to deal with reconstitution of firms. The order impugned in this writ petition is patently lacking in jurisdiction. Accordingly, the impugned order is set aside and the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.01.2023

NCC : Yes / No
Index : Yes / No
Rmk



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G.R.SWAMINATHAN,J.,

Rmk

To

- 1.The District Collector,
Office of District Collector,
Madurai District, Madurai.
- 2.The Tahsildar,
Office of the East Taluk,
East Taluk, Madurai District.

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