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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.17500 of 2020

Kalyani

... Petitioner

vs.

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Executive Magistrate and Revenue Divisional Officer,
Aruppukottai,
Virudhunagar District.
3. The Joint Sub Registrar No.2,
Virudhunagar, Virudhunagar District.
4. The Tahsildar,
Aruppukottai Taluk,
Virudhunagar District.
5. Mariammal
6. Maheswari

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of 2nd respondent in his



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proceedings in Mu.Mu.A5/7075/2020, dated 17.11.2020 and quash the same as illegal, arbitrary, violation of law.

For Petitioner	: Mr.M.Jothi Basu
For R-1 to R-4	: Mr.R.Suresh Kumar Additional Government Pleader
For R-5	:Mr.R.Ramadurai
For R-6	: No appearance

ORDER

This writ petition has been filed for Writ of Certiorari, to quash the impugned proceedings, dated 17.11.2020.

2. Heard Mr.M.Jothi Basu, the Learned Counsel appearing for the petitioner, Mr.R.Suresh Kumar, the Learned Additional Government Pleader appearing for the respondents 1 to 4 and Mr.R.Ramadurai the Learned Counsel appearing for the 5th respondent and perused the material documents available on record.



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3. The 5th respondent had married one Ramasamy Chettiyar and they are having two sons and five daughters. The petitioner is one of the daughters of the 5th respondent. The petitioner's father died on 23.09.1996. The petitioner's mother had executed a settlement deed in favour of the petitioner and the 6th respondent, vide document No.2494/2014 on 30.05.2014. In the settlement deed, the petitioner and the 6th respondent are having equal share. On 12.03.2018, the 6th respondent further executed another settlement deed in respect of her share to the petitioner through a Document No.1156/2018.

4. On 17.06.2020, the petitioner's brother namely Murugan has issued a legal notice for partition. At present the 5th respondent is 80 years old and on 23.10.2020 the 5th respondent has submitted a petition before the appropriate authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 to cancel the Settlement Deed executed in favour of the petitioner. The respondents had cancelled the settlement deed, aggrieved over the same, the petitioner is before this Court.



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5. It is an admitted fact that the settlement deed was executed after Maintenance and Welfare of Parents and Senior Citizens Act, 2007. However, in the settlement, there is no clause or condition that the petitioner has to take care of the mother. Moreover, the settler has not reserved her right to revoke the settlement. In such circumstances, the authority has no power to pass an order cancelling the settlement deed as per judgment of Hon'ble Full Bench of this Court reported in ***MLJ (2022) 7 MLJ 1***, in the case of ***Sasikala and Others Vs. Revenue Divisional Officer cum Sub Collector, Devakottai, Sivagangai District and Others***. The relevant portion is extracted here under:

*“46. The writ petition in W.P(MD)No.6889 of 2020 is filed by the daughter of the second respondent to quash the order passed by the first respondent under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007. The gift deed executed by the second respondent in favour of the writ petitioner was unilaterally cancelled by the second respondent father. The settlement deed stated to have been executed by the second respondent, dated 06.03.2015 is irrevocable and it is a deed of settlement out of love and affection. The second respondent has specifically stated that he has no right to revoke the settlement deed. From the recitals, the settlement does not attract Section 126 of Tamil Nadu Property Act. **It is seen that the settlor viz., the second respondent, has not put any condition. In other words, the gift deed is not subject to any condition or terms that the transferor shall provide the basic amenities and basic physical needs to the second respondent. In such circumstances, this Court is of the view that there is no scope for invoking the power***



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provided to the second respondent under Section 23 of the Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Therefore, the order impugned is liable to be quashed. Even though we agree that the writ petition can be allowed, this Court is unable to decide the writ petition in this batch where question referred to us is different. Hence, the writ petition in W.P(MD)No.6889 of 2020 is delinked and the Registry is directed to list the matter before the appropriate Bench”.

Therefore, the impugned order cannot be sustained and the same is liable to be quashed and accordingly is quashed.

6. However, the 5th respondent is not receiving any pension and she is finding difficult without financial support. Therefore, this Court is directing the petitioner to pay a sum of Rs.1 Lakh to the 5th respondent. As far as the 6th respondent is concerned, she is physically challenged and hence the petitioner is directed to pay Rs.1 Lakh to the 6th respondent. Both the payments shall be paid within a period of six weeks, from the date of receipt of a copy of this order.



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7. With these observations and directions, this Writ Petition is disposed of.

Index : Yes / No
Internet : Yes
NCC : Yes / No
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S.SRIMATHY, J

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