



W.P. No. 3284 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 3284 of 2022

and

W.M.P. Nos. 3416 and 3417 of 2022

and

W.M.P. No. 19164 of 2023

R. Velliangiri

... Petitioner

-VS-

1. The District Collector,
(Senior Citizen and Maintenance Welfare Appellate
Tribunal),
Tiruppur,
Tiruppur District.
2. The Revenue Divisional Officer,
(Senior Citizen and Maintenance Welfare Tribunal),
Tiruppur,
Tiruppur District.
3. The Sub Registrar,
Thottiapalayam,
Tiruppur.
4. V.Ramasamy
5. V.Parameshwari

... Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari calling for the records of the order dated 02.02.2022 vide proceedings in Muu.Mu.No.27932/2021/E1 on the file of the 1st respondent and quash the same.

For Petitioner : Mr. K. Myilsamy

For Respondents : Mr. B. Vijay, (for R1 to R3)
Additional Government Pleader

Mr. R.Prabhakar (for R4)

Mr. R.Vivekananthan (for R5)

ORDER

Heard Mr. K. Myilsamy, Learned Counsel for the Petitioner, Mr. B.Vijay, Learned Additional Government Pleader appearing for the First to Third Respondents, Mr. R.Prabhakar, Learned Counsel appearing for the Fourth Respondent and Mr. R.Vivekananthan, Learned Counsel appearing for the Fifth Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Fourth Respondent, who is a Senior Citizen, along with the Fifth Respondent, who is his daughter, had executed a settlement-deed dated 04.03.2011 registered as Document No. 1758 of 2011 in the office of the



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Sub-Registrar, Thottipalayam transferring their property in favour of the Petitioner, who is their son and brother respectively. The Fourth Respondent had made an application invoking Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act' for short) for treating that settlement-deed as void before the Second Respondent, who had declined to grant such relief by Order in Na. Ka. No. 4096/2021/E3 dated 29.11.2021, but on appeal preferred by the Fourth Respondent under Section 16 of the Act, the First Respondent by Order No. Moo. Mu. 27932/2021/E1 dated 02.02.2022 granted such relief, which is challenged in this Writ Petition.

3. It is clear from the plain language of Section 23 of the Act that its benefit would be applicable only when there is a specific clause in the instrument of transfer that the transferee has an obligation to provide the basic amenities and needs of the senior citizen, which he has refused or failed to carry out, which is fortified by the ruling of the Hon'ble Supreme Court of India in the decision in ***Sudesh Chhikara -vs- Ramti Devi*** (Order dated 06.12.2022 in Civil Appeal No. 174 of 2021) holding the field. In this case, the requisite clause to avail the remedy in Section 23 of the Act mentioned supra is absent and on the contrary, there is an express recital in the aforesaid settlement-deed executed by the



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Fourth and Fifth Respondents in favour of the Petitioner that it is irrevocable.

Afortiori, the bar of jurisdiction of the Civil Court to entertain suit for such relief created under Section 27 of the Act would not arise.

4. In view of the foregoing discussion, the impugned order dated 02.02.2022 passed by the First Respondent treating the settlement-deed dated 04.03.2011 registered as Document No. 1758 of 2011 in the office of the Sub-Registrar, Thottipalayam as void, which cannot be sustained, is set aside. However, it is hastened to clarify here that it would not preclude the Fourth and Fifth Respondents from working out their remedies under common law including Section 31 of the Specific Relief Act, 1963, for appropriate relief. It is needless to add here that no view has been expressed by the Court on the merits of the controversy involved in the matter.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, connected Miscellaneous Petition is closed. No costs.

22.01.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 17.04.2024.

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To

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P.D. AUDIKESAVALU, J.

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