



W.P.No.7763 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.7763 of 2021
and W.M.P.No.8298 of 2021

D.Murugan

... Petitioner

VS.

1.The Sub Collector-cum First Class Executive Magistrate,
Kallakurichi,
Kallakurichi District.

2.G.Duraisamy Gounder

3.D.Sankar

4.D.Muthukumar

... Respondents

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 order of the 1st Respondent dated 22.01.2020 in Na.Ka.A6/9292/2019, and quash the same only in so far as it relates to the Petitioner.

For Petitioner : Mr.K.Selvaraj

For R1 : Mr.G.Ameedius
Government Advocate

For R2 and R3 : No Appearance



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ORDER

WEB COPY The Writ Petition is filed challenging the order passed by the 1st respondent in Na.Ka.A6/9292/2019, dated 22.01.2020, cancelling three Settlement Deeds executed by 2nd respondent in favour of the petitioner and respondents 3 and 4 herein.

2. The learned counsel appearing for the petitioner submits that the writ petition is confined to the Settlement Deed executed in favour of the petitioner dated 22.11.2018.

3. It is the case of the petitioner that the property covered by the Settlement Deed dated 22.11.2018 originally belonged to the petitioner's father-2nd respondent herein. Out of love and affection, he executed a Settlement Deed on 22.11.2018 in favour of the petitioner. The Settlement Deed executed by 2nd respondent was accepted by the petitioner and he has been in possession and enjoyment of the same from the date of settlement. The father of the petitioner, 2nd respondent herein filed a petition before the 1st respondent under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, claiming maintenance from his three



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sons namely petitioner and respondents 3 and 4. In his statement before the 1st respondent, the 2nd respondent clearly stated that the petitioner paid a sum of Rs.6,00,000/- to him and out of said amount, he discharged the entire outstanding loan in his name. The 2nd respondent also made a statement that the petitioner had been maintaining him all along.

4. Since the 2nd respondent made a statement before the 1st respondent that respondents 3 and 4 were not maintaining him, the 1st respondent has exercised his power under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and cancelled the Settlement Deeds executed in favour of the petitioner and respondents 3 and 4.

5. The learned counsel appearing for the petitioner submitted that the Settlement Deed executed in favour of the petitioner was not executed by the 2nd respondent with a condition that the petitioner shall provide basic amenities and basic physical needs of the Settlor/2nd respondent herein. Therefore, the ingredients of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, is not satisfied and without taking into consideration the ingredients of said section, the 1st respondent unjustly



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exercised power under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and cancelled the Settlement Deed executed in his favour.

6. Heard the argument of Mr.K.Selvaraj, learned counsel appearing for the petitioner and Mr.G.Ameedius, learned Government Advocate appearing for the 1st respondent.

7. Though notice was served on the respondents 2 and 3, there is no representation for the respondents. As far as the 4th respondent is concerned, the subject matter of the writ petition is only in respect of the Settlement Deed executed in favour of the petitioner, we are not concerned with the Settlement Deed executed in favour of the 4th respondent in this writ petition. Therefore, non-service of notice to 4th respondent may not be impediment for this Court to dispose of the writ petition.

8. A perusal of the Settlement Deed executed in favour of the petitioner would make it clear that it was executed by 2nd respondent out of love and affection and in the said Settlement Deed, there is no clause that



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the same was executed on condition the petitioner shall provide basic amenities and basic physical needs of the Settlor. Therefore, without appreciating the conditions mentioned in the Settlement Deed, the 1st respondent wrongly exercised his power under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, when the ingredients are not satisfied.

9. In this regard it would be appropriate to refer to the observation of the Apex Court in ***Sudesh Chhikara vs. Ramti Devi and another*** reported in ***2022 SCC Online SC 1684***. The relevant observation of Apex Court reads as follows:-

"12. Sub - Section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression by way of gift or otherwise. For attracting sub-section (1) of Section 23, the following two conditions must be fulfilled.

a. The transfer must have been made subject to the condition that the transferee shall provide he basic amenities and basic physical needs to the transferor; and b. the transferee refuses or fails to provide such amenities and physical needs to the transferor."



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10. In view of the law settled by the Apex Court in the above mentioned case law, unless the Settlement Deed was executed by the Senior Citizen with a condition that Settlee shall provide basic amenities and basic physical needs, the 1st respondent is not entitled to invoke Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and cancel the Settlement Deed. Therefore, the order passed by the 1st respondent by invoking Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, is not tenable in law and accordingly, the same is quashed as far as the Settlement Deed executed in favour of the petitioner dated 22.11.2018 registered as Document No.3124 of 2018 on the file of the Sub-Registrar Office, Thiyagadurgam, is concerned.

11. The Writ Petition is allowed to the extent indicated above. No costs.

11.11.2024

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
dm



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To

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The Sub Collector-cum First Class Executive Magistrate,
Kallakurichi,
Kallakurichi District.



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S.SOUNTHAR, J.

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