



WEB COPY



W.P. No. 9307 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM

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

**W.P. No. 9307 of 2021
and
W.M.P. No. 9877 of 2021**

1. Sivagami
2. Govindasamy
3. Devi
4. Bhuvaneshwari

... Petitioners

-VS-

1. The District Collector,
Tiruppur District,
Tiruppur.
2. The Revenue Divisional Officer,
Tiruppur.
3. Subbathal (Deceased)
4. Gopalakrishnan
5. Sivasamy
6. Murugesan
7. Prasanth
8. Thirunavukkarasu

*(Substituted as LRs of Deceased Third Respondent
vide order dated 05.09.2023 made in
W.M.P. No. 19484 of 2023 in W.P. No. 9307 of 2021)*

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings dated 18.02.2021 passed in Na. Ka. No. 10522/2020/E1



W.P. No. 9307 of 2021

on the file of the First Respondent herein confirming proceedings dated 13.05.2020 passed in Mu. Mu. No. 195/2020/A3 on the file of the Second Respondent herein, quash both the same.

For Petitioners : Mr. K.Govi Ganesan

For Respondents : Mr. S.J.Mohamed Sathik
Government Advocate (for R1 & R2)

R3 – died

Ms. S.Pavithra (for R4 to R8)

ORDER

Heard Mr. K.Govi Ganesan, Learned Counsel for the Petitioners and Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the First and Second Respondents and Ms. S.Pavithra, Learned Counsel appearing for the Fourth to Eighth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent, who is a Senior Citizen, had executed a settlement-deed dated 02.05.2011 registered as Document No. 4481 of 2011 in the office of the Sub-Registrar, Avinashi transferring her property in favour of the deceased father of the Petitioners, viz., Palanisamy, who is her brother. She



W.P. No. 9307 of 2021

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, which was granted by Order No. Moo. Mu. 195/2020/A3 dated 13.05.2020 and has been confirmed in appeal under Section 16 of the Act by Order No. Na. Ka. 10522/2020/E1 dated 18.02.2021 passed by the First Respondent, which are 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 and he has refused or failed to carry out such condition, 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 Third Respondent in favour of the father of the Petitioners 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.

WEB COPY



W.P. No. 9307 of 2021



W.P. No. 9307 of 2021

4. In view of the foregoing discussion, the impugned orders dated 18.02.2021 and 13.05.2020 passed by the First and Second Respondents respectively treating the settlement-deed dated 02.05.2011 registered as Document No. 4481 of 2011 in the office of the Sub-Registrar, Avinashi as void, which cannot be sustained, are set aside. However, it is hastened to clarify here that it would not preclude the legal heirs of the Third Respondent 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, the connected Miscellaneous Petition is closed. No costs.

06.03.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 17.04.2024.

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To

1. The District Collector,
Tiruppur District,



W.P. No. 9307 of 2021

Tiruppur.

2. The Revenue Divisional Officer,
Tiruppur.



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W.P. No. 9307 of 2021

P.D. AUDIKESAVALU, J.

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W.P. No. 9307 of 2021

06.03.2024