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W.P. No. 9642 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2024

CORAM

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

**W.P. No. 9642 of 2023
and
W.M.P. No. 9696 of 2023**

V.Kumar

... Petitioner

-VS-

1. The District Collector,
Collectorate,
Chennai District,
Chennai – 600 001.
2. The Revenue Divisional Officer,
North Chennai Division,
North Chennai,
Chennai – 600 046.
3. The Sub Registrar,
Puraisaiwakkam Sub Registrar Office,
Puraisaiwakkam,
Chennai – 600 012.
4. V.Loganayagi

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Second Respondent pertaining to order in Na. Ka. No. A7/1153/2022 dated 15.12.2022, cancelling the settlement deed dated 09.06.2016, registered as Document No. 2803 of 2016 in the Office of the Sub



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Registrar Office, Purasawakkam and quash the same and consequently direct the Third Respondent to restore the cancelled settlement deed in Document No. 2803 of 2016 thereby remove the order in the Second Respondent in Na. Ka. No. A7/1153/2022 dated 15.12.2022 in the Encumbrance Index on the file of the Third Respondent.

For Petitioner : Mr. S.William

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

Mr. U.Baranidharan,
Additional Government Pleader (for R3)

Mr. T.Dharani (for R4)

ORDER

Heard Mr. S.William, Learned Counsel for the Petitioner, Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the First and Second Respondents, Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the Third Respondent and Mr. T.Dharani, Learned Counsel for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.



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2. The Fourth Respondent, who is a Senior Citizen, had executed a settlement-deed dated 09.08.2016 registered as Document No. 2803 of 2016 in the office of the Sub-Registrar, Purasawalkam transferring her property in favour of the Petitioner, who is her son. She 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 in Na. Ka. No. A7/1153/2022 dated 16.12.2022 and 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 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. *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.



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4. In view of the foregoing discussion, the impugned order dated 15.12.2022 passed by the Second Respondent treating the settlement-deed dated 09.08.2016 registered as Document No. 2803 of 2016 in the office of the Sub-Registrar, Purasawalkam as void, which cannot be sustained, is set aside. However, it is hastened to clarify here that it would not preclude the Fourth Respondent from working out her 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.

5. At this stage, Learned Counsel for the Petitioner submits that the Petitioner would pay a sum of Rs. 10,000/- per month as maintenance to the Fourth Respondent and he has made an endorsement to that effect in the court record, which shall enforceable as if it is an order passed by the Concerned Authority under Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, and shall be without prejudice to the rights of the Fourth Respondent to seek any further amount towards maintenance that she may be entitled under law.



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In the result, the Writ Petition is ordered on the aforesaid terms.

Consequently, the connected Miscellaneous Petition is closed. No costs.

21.02.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 17.04.2024.

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To

1. The District Collector,
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2. The Revenue Divisional Officer,
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P.D. AUDIKESAVALU, J.

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