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W.P.No.11818 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.11818 of 2023
and
W.M.P.No.11720 of 2023

P.Sekar

... Petitioner

Vs.

1.The District Collector,
Perambalur District,
Perambalur.

2.The Presiding Officer,
Tribunal for Special Cases and
Revenue Divisional Officer,
Perambalur Division,
Perambalur District.

3.The Sub-Registrar of Registration,
Veppur,
Kunnam Taluk,
Perambalur District.

4.P.Periyasamy

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the orders passed by the second respondent in Mu.Mu.File



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No.A6/607/2022 dated 12.08.2022 (signed on 09.02.2023) and quash the same.

For Petitioner : Mr.S.Kamadevan

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader [R1 to R3]
Mr.J.Pradeep [R4]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records pertaining to the orders passed by the second respondent in Mu.Mu.File No.A6/607/2022 dated 12.08.2022 (signed on 09.02.2023) and quash the same.

2. The writ petitioner is the son of the 4th respondent and he had two wives. Petitioner's father owned landed properties inherited from his father to an extent of more than 17 acres in different survey numbers and wanted to live as a spendthrift hence started to alienate the joint family properties one after another. He settled some of the properties in favour of his sons through first wife. When he wanted to alienate the properties in S.F.Nos.283/8 and 283/12 measuring to an extent of 0.06.5 ares to 3rd parties, wherein two bore wells were erected and catering the water need



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for the other lands, petitioner along with his two brothers, who are born through the second wife of the 4th respondent, had purchased the said lands under a registered sale deed dated 05.02.2009 for a valuable consideration and registered as Document No.210/2009. Whiles, the 4th respondent made a complaint before the 2nd respondent on 28.01.2022 under the Maintenance and Welfare of Parents and Seniors Citizens Act, 2007 and the 2nd respondent vide impugned order dated 12.08.2022 directed the petitioner and others to pay a sum of Rs.2,000/- each to the 4th respondent. Aggrieved by the same, the petitioner had preferred an appeal before the 1st respondent and the same is pending. However, the 2nd respondent had re-opened the complaint and passed another order dated 12.08.2022 but signed on 09.02.2023 directing the 3rd respondent to take action for cancelling the settlement deed dated 05.02.2009, since they have not complied with the earlier order. Challenging the same, the present writ petition is filed.

3. Learned counsel appearing for the petitioner submitted that, the respondents failed to see that the very scope and object of the Act is to provide maintenance and basic needs to the parents, who are not having



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means to maintain themselves and when the children neglected or failed to maintain them. In the instant case, there is no grievance expressed by the 4th respondent in his petition regarding his maintenance except seeking the cancellation of the various sale deeds executed in different dates. Further, he submitted that the 2nd respondent failed to see that already an order was passed on 12.08.2022 and the same is subject matter of appeal before the 1st respondent and the same is pending. When the appeal against the orders directing the maintenance is pending, the 2nd respondent has no jurisdiction to re-open the matter and pass other orders cancelling the sale deed to the choice of the 4th respondent. He further submitted that during the pendency of this writ petition, the 4th respondent had passed away, hence, the impugned order becomes infructuous. Accordingly, he prays for allowing the writ petition.

4. On the above contentions, heard the learned Additional Government Pleader appearing for the respondents 1 to 3.

5. Learned counsel appearing for the 4th respondent submitted that, though the 4th respondent died during the pendency of this writ



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petition, however, the impugned order passed by the authority is well within the power, which cannot be interfered with. Accordingly, he prays for dismissal of the writ petition.

6. Heard the learned counsel appearing for the parties and perused the materials available on record.

7. Admittedly, the petitioner is the son of the 4th respondent and a registered sale deed dated 05.02.2009 has been registered as Doc.No.210/2009 in favour of the petitioner along with his brothers. The power under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 can be invoked by the Maintenance Tribunals only if the deed of conveyance contains a condition as envisaged under the said provision. In this case, I do not find any condition incorporated in the settlement deed. In fact the intention is clear from the fact that it has been made irrevocable. Section 23 of the Act came to be considered by the Hon'ble Supreme Court in the decision reported in **2022 SCC OnLine SC 1684 (Sudesh Chhikara v. Ramti Devi)**. It was held as follows :

“13. When a senior citizen parts with his or her property by executing a gift or a release or otherwise in



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favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in subsection (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.

14. Careful perusal of the petition under Section 23 filed by respondent no.1 shows that it is not even pleaded that the release deed was executed subject to a condition that the transferees (the daughters of respondent no.1) would provide the basic amenities and basic physical needs to respondent no.1. Even in the impugned order dated 22nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems that oral evidence was not adduced by the parties. As can be seen from the impugned judgment of the Tribunal, immediately after a reply was filed by the appellant that the petition was fixed for arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor – senior citizen is sine qua non for applicability of subsection (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent No.1 that the release deed was executed subject to such a condition.”

8. A perusal of the above decision of the Hon'ble Supreme Court, it is made clear that the Maintenance Tribunal will not have the jurisdiction to cancel the document under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 if the settlement deed does not contain the condition as contemplated by the Section. I am therefore of the view that the impugned order has to be set aside. It is



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accordingly set aside.

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9. This writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

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M.DHANDAPANI, J.

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