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W.P.Nos.11798 & 12453 of 2024

+IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.11798 & 12453 of 2024

and

WMP.Nos.12886, 13603 & 13604 of 2024

WP.No.11798 of 2024

Helan Mary

... Petitioner

Vs.

1.The Maintenance Tribunal under
The Maintenance and Welfare Parents
And Senior Citizens Act, 2007-cum-
Revenue Divisional Officer,
Coimbatore North,
Coimbatore District

2.P.Rajan

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorari calling for the entire records relating to the impugned order dated 11.03.2024 passed by the first respondent in Na.Ka.No.7146/2023/A1 and quash the same.



W.P.Nos.11798 & 12453 of 2024

For Petitioner : Mr.L.Mouli

For Respondents

For R1 : Mr.V.Manoharan,
Additional Government Pleader

For R2 : No appearance

WP.No.12453 of 2024

R.Hepsybha

... Petitioner

Vs.

1.The Sub Divisional Arbitrator cum
The Revenue Divisional Officer,
Coimbatore North,
Coimbatore District

2.P.Rajan

3.Helam Mary

4.The Sub Registrar,
Ganapathy,
Coimbatore

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorari calling for the records in relation to the order dated 11.03.2024 in Na.Ka.No.7146/2023/A1 passed by the first respondent and quash the same as arbitrary.

For Petitioner : Mr.P.Tamilavel



WEB COPY



W.P.Nos.11798 & 12453 of 2024

For Respondents

For R1 & 4 : Mr.P.Gurunathan,
Government Advocate

For R3 : Mr.L.Mouli

For R2 : No appearance

COMMON ORDER

The writ petition in WP.No.11798 of 2024 has been filed challenging the order passed by the first respondent dated 11.03.2024 thereby allowed the complaint lodged by the second respondent and set aside the settlement deed executed in favour of the petitioner herein.

2. The petitioner is the wife of the second respondent. Both had jointly purchased the land to an extent of 2 cents in SF.No.220 and another 2 cents of adjacent land situated at Gandhipuram 3rd Street, Ganapathy Village, Coimbatore. While being so, there was quarrel between the petitioner and the second respondent. The second respondent failed to maintain the petitioner. The second respondent is also living with another woman. Therefore, at the instance of the petitioner, the second respondent had executed settlement deed dated



W.P.Nos.11798 & 12453 of 2024

WEB COPY

04.10.2018 registered vide document No.6849 of 2018 in favour of the petitioner in respect of his share. In turn, the petitioner had executed settlement deed in respect of the entire extent of the property in favour of her one daughter i.e. Hepsybha. However her daughter paid a sum of Rs.1,75,00,000/-, in which the petitioner had paid Rs.25 lakhs to the second respondent. In turn, the second respondent had given Rs.10 lakhs to his son to build a house. He kept Rs.5 lakhs for himself. At that juncture, the second respondent filed a complaint, that too under Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007. After recording the statement of the second respondent as well as the petitioner, the first respondent cancelled the settlement deed executed in favour of the petitioner as well as the settlement deed executed by the petitioner in favour of her daughter Hepsybha dated 27.06.2022 registered vide document No.5819 of 2022.

3. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.



W.P.Nos.11798 & 12453 of 2024

WEB COPY

4. On perusal of the statement of the second respondent, revealed that the second respondent and the petitioner had jointly purchased the subject property. Thereafter, the second respondent is living with another woman without maintaining the petitioner. Therefore, in order to maintain the petitioner, the second respondent had executed settlement deed in favour of the petitioner insofar as his share. In turn, the petitioner had settled the entire extent of the property in favour of one daughter vide settlement deed dated 27.06.2022 registered vide document No.5819 of 2022. In fact, her daughter paid a sum of Rs.1,75,00,000/- in favour of the petitioner, in which the petitioner had paid a sum of Rs.25 lakhs in favour of the second respondent.

5. The only point arises in the writ petition is that whether the complaint lodged by the second respondent is maintainable under Section 23(1) of Maintenance and Welfare of Parents and Senior Citizens Act, 2007. It is relevant to extract the provisions under Section 23(1) of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 hereunder:



W.P.Nos.11798 & 12453 of 2024

23. Transfer of property to be void in certain circumstances - (1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

6. Thus it is clear that in order to attract complaint under Section 23(1) of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, settlement deed should be executed after commencement of the Act and there must be a specific clause that the settlement deed has been executed on condition that the settlee should maintain the settlor. In the case on hand, in order to maintain the petitioner, the second respondent who is being the husband, had executed the settlement deed in favour of the petitioner. In turn, the petitioner had executed settlement deed in favour of her one of the daughter and received money. Now the petitioner is maintaining herself with the sale proceeds. Further, it is not



W.P.Nos.11798 & 12453 of 2024

the case of the second respondent that the settlee failed to maintain him.

The second respondent executed settlement deed only for maintaining the petitioner herein. Therefore, the settlement deed was executed in order to maintain the petitioner and it was not executed on condition that the petitioner shall maintain the second respondent. Further the second respondent is also now living with another lady. That apart, the second respondent owns other property also. Therefore, the complaint itself is not maintainable and the first respondent ought not to have allowed the complaint.

7. In view of the above, the complaint lodged by the second respondent is dismissed and the impugned order of the first respondent dated 11.03.2024 is quashed. Accordingly, the writ petition in WP.No.11798 of 2024 is allowed.

8. In view of the above order, the writ petition in WP.No.12453 of 2024, which has been filed challenging the order passed by the first respondent dated 11.03.2024, is also allowed and the



W.P.Nos.11798 & 12453 of 2024

impugned order of the first respondent dated 11.03.2024 is quashed. As such, the settlement deed executed by the petitioner in WP.No.11798 of 2024 in favour of the her daughter is valid.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

19.08.2024

Neutral citation: Yes/No

Index: Yes/No

Speaking/Non-speaking order

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W.P.Nos.11798 & 12453 of 2024

To

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W.P.Nos.11798 & 12453 of 2024

G.K.ILANTHIRAIYAN, J.

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W.P.Nos.11798 & 12453 of 2024

19.08.2024



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W.P.Nos.11798 & 12453 of 2024