



WEB COPY



W.P. No.18082 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.18082 of 2021

Ashokan Rayaroath

... Petitioner

Versus

1. Rayaroath Santha
2. Chandran Rayaroath
3. R. Pavithran Rayaroath

4. The Sub – Registrar,
The Sub-Registrar Office,
Mahe,
Civil Station,
Mahe,
Puducherry – 673 310.

5. The Maintenance and Welfare of Senior Citizens,
Tribunal represented by its Registrar,
Government House,
Mahe,
Puducherry – 673 310.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari quashing the impugned order in No.4450/SDM/C2/2020-21/15, dated 20.04.2021 on the file of the 5th respondent.

For Petitioner

: Mr.S. Dinuprashanth

For Respondents

: Mr.C. Rajan for R1 to R3
Mr.Vasanth Kumar,
Additional Government Pleader
for R4 & R5



W.P. No.18082 of 2021

ORDER

This writ petition has been filed seeking quashment of the impugned order in No.4450/SDM/C2/2020-21/15, dated 20.04.2021 on the file of the 5th respondent.

2. It is stated that the petitioner, 2nd and 3rd respondents are the three Sons of the 1st respondent. It is further stated that the 1st respondent executed gift deed in favour of the petitioner and the son of the 2nd respondent viz., grand son of the 1st respondent by name Swaroop Chandran in the year 2016. In the said Gift Deed, the 1st respondent was arrayed as Donor and the petitioner and 2nd respondent's son viz., Swaroop Chandran were arrayed as Donee. Pursuant to execution of Gift Deed, the petitioner has got 2/3rd share in the property covered in the gift deed and the grand son Swaroop Chandran got remaining 1/3 right in the schedule property. At the time of execution of the Gift Deed, the 1st respondent, who is the mother of the petitioner, reserved her right to stay in the house mentioned as item No.1 till her life time and after her death her right will devolve upon the petitioner and Swaroop Chandran, as per the ratio of apportionment, stated supra. While so, the 1st respondent filed a petition under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the Tribunal with a prayer to revoke the gift deed executed in the year 2016 registered on the file of SRO, Mahe in favour of



W.P. No.18082 of 2021

the petitioner and the 2nd respondent's son Swaroop Chandran and to declare the said deed as null and void. Subsequent to filing of the said petition, the impugned order, dated 20.04.2021 was passed by the 5th respondent, thereby the gift deed executed in favour of the petitioner and Swaroop Chandran was cancelled with a direction to the SRO, Mahe to make necessary entries about the cancellation of the said gift deed. Challenging the same, the petitioner has approached this Court

3. Learned counsel for the petitioner submitted that during the pendency of this writ petition, the 1st respondent, who was petitioner's mother and the 2nd respondent, who was the petitioner's brother died and when that be so, as per the gift deed, after the demise of the 1st respondent, the petitioner is entitled for 2/3rd share of the subject property. Further, he submitted that the order passed by the Tribunal is without authority to annul an unconditional deed of transfer besides being contrary to the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Also, he submitted that before passing the impugned order, sufficient opportunity was not afforded to the petitioner and as such the impugned order is in violation of principles of natural justice.

4. Drawing the attention of this Court to the gift deed executed by

the 1st respondent, he submits that there is no mention of any consideration



W.P. No.18082 of 2021

or condition in the said deed. Section 126 of the Transfer of Property Act, 1882 stipulates that a gift may be suspended or revoked, only if there is any consideration or violation of the condition agreed earlier upon the parties before the Transfer of Property. But in the instant case, possession and interest of the property was transferred immediately to the Donee of the Gift Deed viz., one to the petitioner and another to Swaroop Chandran, who is the son of the 2nd respondent. Further, the said Swaroop Chandran was not impleaded as necessary party before passing of the impugned proceedings. Thus, the impugned order is a non-speaking order and the same was passed in a hurried manner, during the when Covid – 19 Pandemic was at its peak.

5. Finally, he submitted that during the life time of the 1st respondent (petitioner's mother), the petitioner alone had taken care of her and she stayed in the house stated in item No.1 viz., as per clause (2) of the Gift Deed till her last breath and thereby the petitioner fulfilled the 1st respondent's dying wish. Therefore, the impugned order dated 20.04.2021 passed by the 5th respondent is non-est in law and the same is liable to be quashed. Thus, he prayed for allowing of this writ petition by quashing the impugned order.

<https://www.mhc.tn.gov.in/judis> 6. Mr. C. Rajan, learned counsel for the respondents 1 to 3 conceded



W.P. No.18082 of 2021

with the submission made by the learned counsel for the petitioner with regard to the demise of the 1st and 2nd respondent. However, he submitted that though sweet-coated words were used by the petitioner prior to execution of the gift deed by the 1st respondent, later, he changed and failed to take care of her. The 1st respondent suffered a lot to meet out her medical expenses during her life time and thereafter, only she filed the petition under Section 5 before the Tribunal for revocation of the Gift Deed. In such circumstances, the order, which is impugned herein was passed. Also, he submitted that other legal heirs of the 1st respondent would also claim their respective shares and therefore, granting 2/3rd share to the petitioner and 1/3rd share to Swaroop Chandran would result in serious injustice. Hence, he vehemently opposes for quashment of the order, dated 20.04.2021 passed by the 5th respondent and prays for dismissal of this writ petition.

7. Mr.Vasanth Kumar, learned Additional Government Pleader (Pondicherry) submitted that before passing of the order, dated 20.04.2021 by the 5th respondent, proper notices were issued to both the petitioner and the respondents in the said petition and they have also been heard. However, due to the demise of the 1st respondent, who executed the subject Gift Deed / Donor, he prays for issuance of appropriate directions.

<https://www.mhc.tn.gov.in/judis> 8. This Court gave its anxious consideration to the submissions



W.P. No.18082 of 2021

advanced by the learned counsel on either side and perused the materials available on record.

9. It is not in dispute that the 1st respondent executed the Gift Deed in favour of the petitioner and Swaroop Chandran, who is the Son of the 2nd respondent. It is an undisputed fact that during the pendency of the writ petition, the 1st respondent as well as the 2nd respondent died. From the above submissions, it is clear that the 1st respondent stayed in the house stated in Item No.1, of the Gift Deed, by which, her last wish was fulfilled. Though it is uncertain with regard to the share in the subject property to other legal heirs of the 1st respondent, it is to be noted that naturally, as per the Gift Deed executed by the 1st respondent, the petitioner is entitled for 2/3rd share and Swaroop Chandran is entitled for 1/3 share of the schedule mentioned property and they can enjoy the same. On a careful perusal of the Gift Deed, it reveals that there is no specific condition imposed by the 1st respondent for getting their share by the petitioner and Swaroop Chandran, except Sl. No.2, which was fulfilled, as stated supra.

10. Even though this Court does not find any infirmity in the order, dated 20.04.2021 passed by the 5th respondent, due to subsequent circumstances and in view of the aforesaid reasonings, the said order is to be interfered with. Therefore, the order, dated 20.04.2021, which is impugned herein, is hereby quashed and the writ petition stands allowed.



W.P. No.18082 of 2021

However, liberty is granted to other legal heirs of the 1st respondent to work out their remedy in the manner known to law. No costs.

13.08.2024

Index : Yes / No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

To
1. The Sub – Registrar,
The Sub-Registrar Office,
Mahe,
Civil Station,
Mahe,
Puducherry – 673 310.

2. The Maintenance and Welfare of Senior Citizens,
Tribunal represented by its Registrar,
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M.DHANDAPANI, J.

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