



W.P.No.17267 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.17267 of 2020

And

W.M.P.Nos.21348 & 21346 of 2020

Boopathy (a) Venkatachalapathy

... Petitioner

Vs.

1.The Collector,
Erode,
State Highway 96, Opp. District Court,
Palayapalayam,
Erode – 638 001.

2.Venkatraman

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of Na.Ka.875/2020/C4 dated 16.09.2020 on the file of the first respondent and to quash the same as illegal and without jurisdiction and for consequential orders.

For Petitioner : Mr.A.M.Amutha Ganesh

For Respondents : Mr.U.Baranidharan for R1
Additional Government Pleader
Ms.Zeenath Begam for R2



W.P.No.17267 of 2020

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ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records of Na.Ka.875/2020/C4 dated 16.09.2020 on the file of the first respondent and to quash the same.

2.The learned counsel appearing for the petitioner submitted that the second respondent is the Father of the petitioner and he executed settlement deed in favour of the petitioner in the year 2014 vide document no.7804/2014 and to other legal heirs vide document no.7805/2014. Subsequently, the second respondent filed petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the Welfare and Maintenance of Parents and Senior Citizens Tribunal which was chaired by the Revenue Divisional Officer for cancellation of settlement deed on the ground that the petitioner is not taking care of second respondent and the same was allowed on 06.03.2020. Aggrieved by the same, the petitioner filed appeal before the first respondent and the first respondent confirmed the order passed by the Revenue Divisional Officer.



W.P.No.17267 of 2020

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3.The learned counsel appearing for the petitioner further submitted that the second respondent executed irrevocable settlement deed in favour of the petitioner and there is no condition in the settlement deed and further submitted that without any condition, the settlement deed cannot be cancelled, however, the Revenue Divisional Officer cancelled the settlement deed and the same was confirmed by the first respondent which is not sustainable one. The learned counsel further submitted that the Hon'ble Division Bench of the Madurai Bench of this Court in its decision reported in MANU/TN/6694/2022 [Sasikala Vs. The Revenue Divisional Officer cum Sub Collector and another], considered similar issue and held that when there is no condition in the settlement deed, an irrevocable settlement deed cannot be cancelled.

4.The learned counsel appearing for the second respondent submitted that during the pendency of the writ petition, the second respondent passed away, however, the petitioner has not impleaded the other legal heirs of the second respondent.

5.Heard the arguments advanced on either side and perused the



W.P.No.17267 of 2020

materials available on record.

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6.The issue arises in the writ petition is no longer res integra and it has already been settled by the Hon'ble Division Bench of the Madurai Bench of this Court in its decision reported in ***MANU/TN/6694/ 2022 [Sasikala Vs. The Revenue Divisional Officer cum Sub Collector and another]***, wherein, it is held that when there is no condition in the settlement deed, an irrevocable settlement deed cannot be cancelled.

7.It is relevant to extract hereunder the relevant portion of the decision of the Hon'ble Division Bench of the Madurai Bench of this Court reported in ***MANU/TN/6694/2022 [Sasikala Vs. The Revenue Divisional Officer cum Sub Collector and another]***:

"43.The donor must specifically reserves such right to suspend or revoke the gift deed with the consent of donee to attract Section 126 of the Transfer of Property Act. Unless the agreement is mutual, expressed in the recitals, the Registering Authority cannot accept the document for registration. However, the factual allegations with regard to the acceptance of gift or the issue where the gift was acted upon



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W.P.No.17267 of 2020

or not do not come under the purview of the Registering Officer. Hence, the Registering Officer is not excepted to accept the document unilaterally cancelling the gift deed, merely on the basis of the statement of the donor or the recitals in the document for cancellation.

46.The writ petition in W.P(MD)No.6889 of 2020 is filed by the daughter of the second respondent to quash the order passed by the first respondent under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007. The gift deed executed by the second respondent in favour of the writ petitioner was unilaterally cancelled by the second respondent father. The settlement deed stated to have been executed by the second respondent, dated 06.03.2015 is irrevocable and it is a deed of settlement out of love and affection. The second respondent has specifically stated that he has no right to revoke the settlement deed. From the recitals, the settlement does not attract Section 126 of Tamil Nadu Property Act. It is seen that the settlor viz., the second respondent, has not put any condition. In other words, the gift deed is not subject to any condition or terms that the transferor shall provide the basic amenities and



W.P.No.17267 of 2020

basic physical needs to the second respondent. In such circumstances, this Court is of the view that there is no scope for invoking the power provided to the second respondent under Section 23 of the Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Therefore, the order impugned is liable to be quashed. Even though we agree that the writ petition can be allowed, this Court is unable to decide the writ petition in this batch where question referred to us is different. Hence, the writ petition in W.P(MD)No.6889 of 2020 is de-linked and the Registry is directed to list the matter before the appropriate Bench."

8.In the present case, there is no condition in the settlement deed. If at all the second respondent is aggrieved, the remedy is only before the competent civil Court.

9.Applying the ratio laid down by the Hon'ble Division Bench of the Madurai Bench of this Court in the decision reported in **MANU/TN/6694/2022 [Sasikala Vs. The Revenue Divisional Officer cum Sub Collector and another]**, this writ petition is allowed. The order passed by the first respondent in Na.Ka.875/



W.P.No.17267 of 2020

2020/C4 dated 16.09.2020 is set aside. The petitioner is entitled for his share in the property as per the settlement deed.

10.The writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

06.08.2024

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

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W.P.No.17267 of 2020

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W.P.No.17267 of 2020

06.08.2024