



W.P.No.20937 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM:

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

W.P.No.20937 of 2021
and
W.M.P.No.22207 of 2021

T.Prakash

...Petitioner

-Vs-

1. The District Collector,
District Collectorate Office,
Erode District.
2. The District Revenue Officer,
Erode District.
3. The Regional Divisional Officer,
Gobichettipalayam,
Erode District.
4. The Sub Registrar,
Bhavani,
Erode District.

5. T.Parvatha

...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the 1st and 4th respondent in



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Na.Ka.No.875-6/2020/Ki4 dated 10.03.2020 and in Na.Ka.No.93 of 2020 dated 21.11.2020 respectively and to quash the same as illegal, incompetent and ultravires and consequently direct the 4th respondent to restore the partition deed in Document No.3231 of 2010 dated 31.05.2010.

For Petitioner : Mr.R.Shase

For R1 to R4 : Mr.S.J.Mohamed Sathik
Government Advocate

For R5 : Mrs.V.Srimathi

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent dated 10.03.2020 and the order passed by the fourth respondent dated 21.11.2020.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The petitioner is the son of the fifth respondent herein. The land comprised in R.S.Nos.305/2, 306, 307 situated at Jambai Village, Bhavani Taluk, Erode District, ad-measuring 3 acres and 71 cents (herein



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after called as “subject property I”), the property to an extent of 0.12 ½ cents with tiled house in R.S.Nos.305/2, 306, 307 situated at Jambai Village, Bhavani Taluk, Erode District (herein after called as “subject property II”). A housing plot to an extent of 2,198 sq.ft in R.S.Nos.754/1, 755/4, 755/5B, Bhavani Village, Bhavani Taluk, Erode District and another housing plot to an extent of 2812 ½ sq.ft in R.S.Nos.754/1, 755/4, 755/5B, Bhavani Village, Bhavani Taluk, Erode District (herein after called as “subject property III”).

4. The subject property I and II were purchased by the fifth respondent herein and her brother by way a registered sale deed dated 20.08.1981 registered vide Document No.1915 of 1981. After the demise of the petitioner's father, the fifth respondent, the petitioner and his sisters had entered into a partition deed dated 31.05.2010 registered vide Document No.3231 of 2010. Accordingly, the subject property III was allotted in favour of the petitioner. While being so, the fifth respondent had executed a settlement deed dated 03.09.2010 in favour of the petitioner registered vide Document No.5388 of 2010 in respect of half



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share in the subject property I and II. However, the fifth respondent had cancelled the settlement deed unilaterally vide cancellation deed dated 23.07.2012 registered vide Document No.3047 of 2012.

5. While being so, the petitioner's sisters filed a suit for declaration declaring that the settlement deed executed in favour of the petitioner by the fifth respondent herein as null and void, seeking separate possession of half share of the subject property I and II which was settled in favour of the petitioner and also for partition. However, the said suit was dismissed, on the ground that already the fifth respondent cancelled the settlement deed by unilateral cancellation deed dated 23.07.2012.

6. While being so, the fifth respondent submitted a complaint before the first respondent stating that she was not maintained by the petitioner and as such, sought for cancellation of the settlement deed dated 03.09.2010 registered vide Document No.5388 of 2010. The said petition was allowed by an order dated 10.03.2020 and in pursuant to the



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same, the fourth respondent recorded the cancellation of settlement deed.

Unfortunately, the fourth respondent recorded that as if the partition deed dated 31.05.2010 vide Document No.3231 of 2010 which was executed between the family members was cancelled by the first respondent.

7. The learned counsel for the petitioner would submit that the first respondent is not an authority to consider the application submitted by the fifth respondent under Section 23 of the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007. Further, the first respondent cancelled the settlement deed. Whereas, the fourth respondent recorded that as if the first respondent cancelled the partition deed which was entered between the family members of the petitioner registered vide Document No.3231 of 2010 dated 31.05.2010.

8. It is relevant the extract the provision under Section 7 of the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007 as follows:-



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“ 7. Constitution of Maintenance Tribunal

1. The State Government shall within a period of six months from the date of the commencement of this Act, by notification in the Official Gazette, constitute for each Sub-division one or more Tribunals as may be specified in the notification for the purpose of adjudicating and deciding upon the order for maintenance under section 5.

2. The Tribunal shall be presided over by an officer not below the rank of Sub-Divisional Officer of a State.

3. Where two or more Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them.”

9. Thus, it is clear that the Tribunal shall be presided over by an officer not below the rank of Sub-Divisional Officer of a State. Here the first respondent is the superior Officer than the Sub Divisional Officer of the State. Therefore, he has jurisdiction to entertain the petition filed under Section 23 of the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007.

10. Further, the settlement deed dated 03.09.2010 registered vide Document No.5388 of 2010 was already cancelled by the fifth respondent by the deed of cancellation dated 23.07.2012 vide Document



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No.3047 of 2012. Therefore, once again, the first respondent need not pass any order to cancel the settlement deed executed by the fifth respondent in favour of the petitioner. In fact, the petitioner did not file any suit as against the cancellation of settlement deed, in the manner known to law. Therefore, the cancellation of settlement deed already became final.

11. In view of the order passed by the first respondent, the fourth respondent had wrongly recorded that as if the first respondent cancelled the partition deed entered between the petitioner and his family members registered vide Document No.3231 of 2010 dated 31.05.2010.

12. In view of the above, the order passed by the fourth respondent cannot be sustained and is liable to be quashed. Accordingly, the order passed by the fourth respondent in Na.Ka.No.93 of 2020 dated 21.11.2020, is hereby quashed. The fourth respondent is directed to record the cancellation deed dated 23.07.2012 vide Document No.3047 of 2012 in the record.



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13. Accordingly, this writ petition is partly allowed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

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Internet: Yes

Index : Yes/No

Neutral Citation: Yes/No

Speaking/Non Speaking order
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To

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G.K.ILANTHIRAIYAN. J.

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