



WEB COPY



W.P.No.19754 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.19754 of 2024

S.Thiyagarajan

... Petitioner

Vs

1. The District Collector,
Villupuram District,
Villupuram.

2. The Revenue Divisional Officer-cum-
Sub Divisional Magistrate,
Villupuram.

3. Navaneetham

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent's proceedings Ref. No. Na. Ka. No. 516/A2/2023 dated 24.05.2023 and affirming the second respondent's proceeding in Ref. No. Na. Ka. A3/2591/2021 dated 07.02.2023 and quash the same.

For Petitioner : Mr. D.Senthil Kumar

For Respondents : Mr. S.J. Mohamed Sathik,



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Government Advocate (for R1 & R2)

No appearance (for R3)

ORDER

This Writ Petition challenges the order dated 24.05.2023, passed by the first respondent, ordering the petitioner to pay Rs.3,000/- maintenance to the third respondent and restraining the petitioner from disturbing the third respondent's peaceful possession and enjoyment of the petitioner's residence.

2. Though notice was served on the third respondent and the name is also printed in the cause list, no one appeared on behalf of the third respondent. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the first and second respondents.

3. The third respondent owned the properties situated at P.Pudur Village, Villupuram District, comprised of Survey No. 593/2A (5 cents) and Survey No. 594 (measuring 1682 sq.ft.). While that being so, the said properties were sold to the petitioner's wife by registered sale deed dated 09.09.2008, vide Document No. 2105 of 2008. Thereafter, the petitioner



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provided for the third respondent's physical needs, allowing her to reside in the same premises, and solely maintained her. While that being so, acting on legal advice from a third party, she lodged a complaint under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act' for short) before the second respondent.

4. It is relevant to extract under Section 23 of the Act, which reads as follows:-

“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. (2) Where any



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senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right. (3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.”

5. Pursuant to Section 23 of the Act, the third respondent ought to have fulfilled the conditions. One of the conditions is that the deed shall be executed after the commencement of the Act. The Act was implemented in the State of Tamil Nadu with effect from 29.08.2008. Since the sale deed was executed in favour of the petitioner's wife prior to the implementation of the Act in the State of Tamil Nadu, the complaint itself is not maintainable under Section 23(1) of the Act. Considering the relationship between the petitioner and the third respondent, the petitioner alone has been taking care



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of her by providing shelter. However, the second respondent ought not to have ordered the petitioner to pay maintenance of Rs.3,000/-.

6. In view of the above, the order directing payment of maintenance of Rs.3,000/- payable by the petitioner alone is quashed. Insofar as the other directions are concerned, they remain intact. Accordingly, this Writ Petition is partly allowed. No costs.

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Index:Yes/No
Neutral Citation/Yes/No
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To

1. The District Collector,
Villupuram District,
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G.K.ILANTHIRAIYAN, J.

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