



W.P. No. 24751 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 24751 of 2022

and

W.M.P. No. 23685 of 2022

M.Viswanathan

... Petitioner

-VS-

1. The Appellate Tribunal-cum-District Collector,
Vellore District,
Vellore.
2. The District Revenue Officer,
Vellore District,
Vellore.
3. The Maintenance Tribunal-cum-Revenue Divisional Officer,
Vellore.
4. The Tahsildar,
Katpadi Taluk,
Vellore District.
5. Munusamy

6. Rajan
Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to call for the records relating to Proceedings namely Pa. Mu. D3/2586/2022 dated 25.08.2022 passed by the First Respondent in reversing the order passed by the Third Respondent in Proceedings namely Mu.Mu.(A2)/416/2021 dated 23.02.2022 and to pass such



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further or other orders.

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For Petitioner : Mr. C.Prabakaran
For Respondents : Mr. S.J.Mohamed Sathik
Government Advocate (for R1 to R4)
Mr. R.Rajarajan (for R5 & R6)

ORDER

Heard Mr. C.Prabakaran, Learned Counsel for the Petitioner, Mr. S.J.Mohamed Sathik, Learned Government appearing for the First to Fourth Respondents and Mr. R.Rajarajan, Learned Counsel appearing for the Fifth and Sixth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Fifth Respondent, who is a Senior Citizen, had executed settlement-deed dated 23.09.2009 registered as Document No. 7667 of 2009, settlement-deed dated 26.03.2010 registered as Document No. 2704 of 2010 and settlement-deed dated 01.03.2019 registered as Document No. 1752 of 2019 in the office of the Sub-Registrar, Katpadi transferring his property in favour of the Petitioner, who is his son, and settlement-deed dated 12.07.2018



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registered as Document No. 4980 of 2018 in the office of the Sub-Registrar, Katpadi transferring his property in favour of the Sixth Respondent, who is his another son, which has been subsequently transferred by the Sixth Respondent to the Petitioner by settlement-deed dated 01.03.2019 registered as Document No. 1756 of 2019 in the office of the Sub-Registrar, Katpadi. The Fifth Respondent had made an application invoking Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act' for short) for treating the settlement-deeds executed by him in favour of the Petitioner and the Sixth Respondent as void before the Second Respondent, who had declined to grant such relief by Order No. Mu. Mu. (A2)/416/2021 dated 23.02.2022, but on appeal preferred by the Fifth Respondent under Section 16 of the Act, the First Respondent by Order No. Pa. Mu. D3/2586/2022 dated 25.08.2022 granted such relief, which is challenged in this Writ Petition.

3. It is clear from the plain language of Section 23 of the Act that its benefit would be applicable only when there is a specific clause in the instrument of transfer that the transferee has an obligation to provide the basic amenities and needs of the senior citizen and he has refused or failed to carry out such condition, which is fortified by the ruling of the Hon'ble Supreme Court of India



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in the decision in ***Sudesh Chhikara -vs- Ramti Devi*** (Order dated 06.12.2022

in Civil Appeal No. 174 of 2021) holding the field. In this case, the requisite clause to avail the remedy in Section 23 of the Act mentioned supra is absent and on the contrary, there is an express recital in the aforesaid settlement-deeds executed by the Fifth Respondent in favour of the Petitioner and the Sixth Respondent that it is irrevocable. *Afortiori*, the bar of jurisdiction of the Civil Court to entertain suit for such relief created under Section 27 of the Act would not arise.

4. In view of the foregoing discussion, the impugned order dated 23.02.2022 passed by the Second Respondent treating the settlement-deed dated 23.09.2009 registered as Document No. 7667 of 2009, settlement-deed dated 26.03.2010 registered as Document No. 2704 of 2010, settlement-deed dated 12.07.2018 registered as Document No. 4980 of 2018 and settlement-deed dated 01.03.2019 registered as Document No. 1752 of 2019 in the office of the Sub-Registrar, Katpadi as void, which cannot be sustained, is set aside. However, it is hastened to clarify here that it would not preclude the Fifth Respondent from working out his remedies under common law including Section 31 of the Specific Relief Act, 1963, for appropriate relief. It is needless to add here that no view has been expressed by the Court on the merits of the



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controversy involved in the matter.

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5. At this stage, Learned Counsel for the Petitioner submits that the Petitioner would pay a sum of Rs. 10,000/- per month as maintenance to the Fifth Respondent and he has made an endorsement to that effect in the court record, which shall be enforced as if it was an order passed by the Concerned Authority under Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, and shall be without prejudice to the rights of the Fifth Respondent to seek any further amount towards maintenance that he may be entitled under law.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No
NCC: Yes/No

Note: Issue order copy by 17.04.2024.

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To

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P.D. AUDIKESAVALU, J.

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