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W.P.No.26067 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

CORAM

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

W.P.No.26067 of 2024

and

W.M.P.Nos.28473 & 28475 of 2024

S.Pradeep

.... Petitioner

Vs

1.The Parents and Senior Citizens
Maintenance Appellate Authority-Cum-
The District Collector of Tiruvallur,
O/O.The District Collector,
Tiruvallur District, Tiruvallur.

2.The Revenue Divisional Officer-Cum-
Parents and Senior Citizens Maintenance
and Welfare Officer,
O/O.Revenue Divisional Office,
Tiruvallur.

3.The Thasildar,
O/O.The Thasildar,
Poonamallee Taluk,
Tiruvallur District.

4.S.Sumathi

5.S.Diensh

.... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India
for the issuance of Writ of Certiorari, calling for the records on the file of



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the 2nd respondent dated 30.09.2023 in proceedings in Moo.Mu. No.3099/2022/A6 confirmed by the 1st respondent dated 20.06.2024 in Na.Ka.No.1967/2024/M4 and quash the same to the extent of order to include the name of the 4th respondent in respect of the property mentioned in the Gift Deed Doc. No.557/2008 dated 28.01.2008 and further directing the petitioner not to alienate or mortgage or transfer the name in respect of the property during the life time of the 4th respondent.

For Petitioner : Mr.J.Shanmuga Sundara Babu
For R1 to R3 : Mr.P.Gurunathan
Additional Government Pleader
For R4 : Mr.Jayaprakasam
For R5 : No appearance

ORDER

This Writ Petition has been filed challenging the order passed by the second respondent dated 30.09.2023, thereby the complaint lodged by the fourth respondent was considered and the settlement deed executed in favour of her husband was set aside.

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



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3. The petitioner is the son of the fourth respondent. The fourth respondent got married to one Sadagopan and gave birth to the petitioner and the fifth respondent herein. The husband of the fourth respondent owned properties, in which, the property bearing Door No.13, Pillaiyar Koil Street, Velappanchavadi, Chennai, was settled in favour of the fifth respondent herein. The property, comprised in Door No.14, Pillaiyar Koil Street, Velappanchavadi, Chennai, was settled in favour of the petitioner by a settlement deed dated 28.01.2008 executed by his father. Thereafter, the petitioner's father died and the fourth respondent is living in the property, which was settled in favour of the fifth respondent.

4. While being so, the fourth respondent was not properly maintained by the petitioner and the fifth respondent and as such, the fourth respondent was constrained to file a complaint before the first respondent under Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter referred to as “the Act”) seeking cancellation of the settlement deed executed in favour of the petitioner as well as the fifth respondent herein. The second respondent partly allowed the complaint, thereby directing the revenue authorities to



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include the fourth respondent's name also in the patta as a joint pattador for both the properties and also ordered maintenance of Rs.1,000/- to be paid by the petitioner as well as the fifth respondent in favour of the fourth respondent. Aggrieved by the same, the fourth respondent filed an appeal and the same was also dismissed and the order passed by the second respondent was confirmed. Aggrieved by the said order, the petitioner has filed this writ petition.

5. Admittedly, the settlement deeds were executed by his father on 28.01.2008. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 came into force on 29.09.2008. It is relevant to extract the provision 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 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



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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 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. ”

6. Thus, it is clear that in order to maintain a complaint under Section 23 of the Act, the settlement deed should have been executed after the commencement of this Act i.e., after 29.09.2008. The settlement deeds, which were sought to be cancelled by the fourth respondent, executed on 28.01.2008. Therefore, the complaint itself is not maintainable. However, the second respondent entertained the complaint under Section 23 of the Act and ordered to include the fourth



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respondent's name also as a joint pattador in both the properties, which were settled in favour of the petitioner and the fifth respondent. Further, the second respondent ordered maintenance of Rs.1,000/- to be paid by the petitioner as well as the fifth respondent, each in favour of the fourth respondent. Therefore, this Court finds an infirmity in the order insofar as it directs the inclusion of the fourth respondent's name in the pattas issued in favour of the petitioner as well as the fourth respondent.

7. In view of the above, the order passed by the second respondent dated 30.09.2023, is hereby quashed insofar as it directs the revenue authorities to include the fourth respondent's name in the pattas issued in favour of the petitioner and the fifth respondent in respect of the properties settled in their favour by their father. Insofar as the monthly maintenance is concerned, it is enhanced from Rs.1,000/- to Rs.10,000/- each, payable by the petitioner and the fifth respondent to the fourth respondent per month till her life time. The fifth respondent shall not disturb the peaceful possession and enjoyment of the fourth respondent in the portion of the property which was settled in favour of the fifth respondent.



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8. In the result, this writ petition is partly allowed.

Consequently, connected miscellaneous petitions are closed. No costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To

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