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W.P. No. 27150 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2024

CORAM

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

**W.P. No. 27150 of 2022
and
W.M.P. No. 26369 of 2022**

Sahayaraj

... Petitioner

-VS-

1. The Sub-Collector,
Kallakurichi Revenue Division,
Kallakurichi District – 606 202.
2. The Sub-Registrar,
Sub-Registrar Office at Vadaponparappi,
Kallakurichi District – 605 702.
3. Chinnabilavendhiran @ Bilaventhiran

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned order in Na. Ka. A6/8827/2019, dated 14.02.2020 passed by the First Respondent in connection with the Settlement Deeds bearing Document No. 2142 of 2010, dated 21.09.2010 on the file of the Second Respondent/the Sub-Registrar, Vadaponparappi, Registration District at Kallakurichi and quash the same as without jurisdiction, illegal, untenable,



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arbitrary, mala fide, violation of principles of natural justice and non-est in the eye of law.

For Petitioner : Mr. J.Agni Selvaraju

For Respondents : Mr. S.J.Mohamed Sathik,
Government Advocate (for R1)

Mr. U.Baranidharan,
Additional Government Pleader (for R2)

Mr. R.Bharath Kumar (for R3)

ORDER

Heard Mr. J.Agni Selvaraju, Learned Counsel for the Petitioner, Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the First Respondent, Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the Second Respondent and Mr. R.Bharath Kumar, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent, who is a Senior Citizen, had executed a settlement-deed dated 21.09.2010 registered as Document No. 2142 of 2010 in the office of the Sub-Registrar, Vadaponparappi, Kallakurichi District transferring his property in favour of the Petitioner, who is his son. He had



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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 that settlement-deed as void before the First Respondent, which was granted by Order No. Na. Ka. A6/8827/2019 dated 14.02.2020 and 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 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-deed executed by the Third Respondent in favour of the Petitioner 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 14.02.2020



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passed by the First Respondent treating the settlement-deed dated 21.09.2010

registered as Document No. 2142 of 2010 in the office of the Sub-Registrar,

Vadaponparappi, Kallakurichi District as void, which cannot be sustained, is set aside. However, it is hastened to clarify here that it would not preclude the Third Respondent from working out his remedies under common law including Section 31 of the Specific Relief Act, 1963, for such relief. It is needless to add here that no view has been expressed by the Court on the merits of the controversy involved in the matter.

5. At this stage, Learned Counsel for the Petitioner submits that the Petitioner would pay a sum of Rs. 5,000/- per month as maintenance to the Third Respondent and he has made an endorsement to that effect in the court record, which shall be enforceable as if it is 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 Third 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.



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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

1. The Sub-Collector,
Kallakurichi Revenue Division,
Kallakurichi District – 606 202.
2. The Sub-Registrar,
Sub-Registrar Office at Vadaponparappi,
Kallakurichi District – 605 702.



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P.D. AUDIKESAVALU, J.

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