



W.P.No.29929 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.29929 of 2023

and

W.M.P.No.29543 of 2023

P.Ramalingam

... Petitioner

Vs.

1.The District Collector,
Namakkal District, Namakkal.

2.The Revenue Divisional Officer,
Tiruchengode, Namakkal District.

3.Senbagavalli

4.R.Balasubramanian

5.R.Ganesan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned orders dated 07.08.2023 made in Na.Ka.No.1390/P.Pa.Act/2022 passed by the first respondent confirming the order dated 11.03.2022 made in Mu.Mu.No.1802/2021/C passed by the second respondent, quash the same by



W.P.No.29929 of 2023

consequently direct the first and second respondents to cancel the Settlement Deed dated 23.08.2010 (Doc.No.5285/2010) executed by the petitioner in favour of the third respondent.

For Petitioner : M/s.M.Adhishree
For Respondents :
For R1 and R2 : Mr.P.Gurunathan
Additional Government Pleader
For R3 : Appeared in person
For R4 : Mr.M.Guruprasad
For R5 : Mr.Naveenkumar Murthi

ORDER

This Writ Petition has been filed by the petitioner seeking for issuance of a Certiorarified Mandamus, to call for the records relating to the impugned orders dated 07.08.2023 made in Na.Ka.No.1390/P.Pa.Act/2022 passed by the first respondent confirming the order dated 11.03.2022 made in Mu.Mu.No.1802/2021/C passed by the second respondent, quash the same by consequently, direct the first and second respondents to cancel the Settlement Deed dated 23.08.2010 (Doc.No.5285/2010) executed by the petitioner in favour of the third respondent.

2. The petitioner is a 84 year old pensioner. His wife is aged about 77



W.P.No.29929 of 2023

years, who worked in the Post Office, had retired in the year 2000. Two sons and one daughter were born to them and the daughter is the third respondent herein. The fourth and fifth respondents are the sons. The third respondent is working as a Sub-Divisional Engineer in BSNL, Trichy Road, Namakkal District.

3. The petitioner purchased a house site measuring to an extent of 2160 sq.ft., under a Sale Deed registered as Doc.No.2221 of 1979 situated at Komarapalayam Agraharam Village, Tiruchengode Taluk, Namakkal District and built a house therein in the year 1989 leaving half portion as vacant. As the third respondent is the only daughter, she approached the petitioner with a request to settle the remaining vacant portion measuring 1020 sq.ft., in her favour. The petitioner got retired from the Post Office in the year 2000 and due to his old age and ill-health, he yielded to the pressure given by the third respondent, who also promised to take care of the petitioner and his wife by giving shelter in the same house. Believing the same, the petitioner executed a Settlement Deed dated 23.08.2010 (Doc.No.5285/2010) by settling an extent of 1020 sq.ft., out of 2160 sq.ft., to the third respondent.



W.P.No.29929 of 2023

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4. The third respondent constructed a house in the year 2012-2013 and provided a room for the petitioner and his wife. Accordingly, the petitioner and his wife are living there from the year 2013. But, due to various health issues, the petitioner spent Rs.3,84,000/- towards medical expenses for his wife's ailment and done surgery in the year 2014. The petitioner could not continue to make the payment to the third respondent. On 04.08.2021, the petitioner and his wife were forcibly sent out of the house by the third respondent and she locked the room and also snatched away all the original Sale Deed and Settlement Deed from the petitioner.

5. The petitioner purchased the house property besides educating his children. One of the sons of the petitioner, is not having source of income. The third respondent is working in BSNL and earning handful of salary. While executing the Settlement Deed on 23.08.2010, the third respondent assured that she will take care of her parents. Thereafter, the third respondent betrayed her parents and sent them out of the house. Under such circumstances, the act of the third respondent constrained the petitioner to file a petition on 11.08.2021 under Section 23 of the Maintenance and Welfare of Parents and Senior



W.P.No.29929 of 2023

Citizens Act, 2007 before the first respondent, seeking to cancel the Settlement Deed dated 23.08.2010. On receiving the petition, the first respondent called upon the petitioner to attend the inquiry on 14.09.2021. On 14.09.2021, the petitioner appeared and his statement was recorded. Again, the petitioner was asked to appear on 06.12.2021. Accordingly, he appeared before the first respondent and submitted his statement in writing on 06.12.2021. However, no order was passed. While so, surprisingly, the first respondent forwarded his petition to the District Social Welfare Officer, Namakkal and the said Officer had also issued notice on 21.01.2022 for his appearance on 28.01.2022.

6. The petitioner appeared before the District Social Welfare Officer, Namakkal on 28.01.2022 and gave his statement. Both the petitioner and his wife were facing various health issues and crippled with the movements. They are in the evening stage of life and suffering a lot without proper food, clothes and shelter. Earlier, the petitioner filed a writ petition in W.P.No.2853 of 2012 seeking for a direction to the second respondent to pass order on his complaint dated 11.08.2021. By order dated 18.02.2022, the second respondent was directed to pass orders within 90 days. Thereafter, the second respondent has passed the impugned order dated 11.03.2022 in Mu.Mu.No.1802/2021/C



W.P.No.29929 of 2023

holding that the Settlement Deed was executed out of love and affection and not imposed with any condition for revocation.

7. Aggrieved by the said order passed by the second respondent, the petitioner filed an appeal before the first respondent on 16.05.2022 and the same was also dismissed by order dated 07.08.2023 in Na.Ka.No.1390/P.Pa.Act/2022 holding that the third respondent had already mortgaged the property with the State Bank of India (SBI), Komarapalayam Branch, Namakkal District and obtained loan of Rs.14,00,000/-. Hence, challenging the impugned orders dated 11.03.2022 and 07.08.2023 passed by the second and the first respondent respectively, the petitioner has approached this Court by way of filing the present writ petition.

8. Learned counsel for the petitioner would submit that the petitioner is now aged about 84 years and suffering from various ailments and having believed that the third respondent will look after him and his wife, the petitioner executed a Settlement Deed in favour of the third respondent, who is none other than his daughter in respect of his owned property and the third respondent, in turn, availed home loan and constructed a house and initially she provided



W.P.No.29929 of 2023

accommodation to the petitioner and his wife in a separate room.

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9. Learned counsel for the petitioner would further submit that the petitioner is a retired employee used to give financial assistance to the third respondent from and out of his pension, but due to excess medical expenses incurred by him, he could not provide the financial assistance to the third respondent, which evoked the third respondent to send the parents out of the house and denied the accommodation to the petitioner and his wife.

10. Learned counsel for the petitioner would also submit that the petitioner filed a petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the first respondent seeking to cancel the Settlement Deed executed by the petitioner in favour of the third respondent on the ground that the third respondent having obtained the property, failed to look after them.

11. The said petition came to be dismissed by the second respondent holding that the Settlement Deed executed by the petitioner was out of love and affection without any condition there of and for revocation. The learned counsel



W.P.No.29929 of 2023

would also submit that the second respondent has not considered the predicament undergone by the age old parents due to the acts of the 3rd respondent and his sons were unemployed and not in a position to look after them and the third respondent is working in BSNL and receiving handful salary, however, after obtaining the property from the petitioner on the promise that she would look after them, but failed to maintain them. Therefore, the learned counsel for the petitioner would contend that the impugned order passed by the second respondent, cannot be sustained and liable to be set aside.

12. Learned counsel for the fourth respondent, who is one of the sons of the petitioner, would submit that the petitioner under the influence of the fifth respondent has filed this petition in order to cast the fourth respondent in negative light. The fourth respondent is always ready and willing to support the petitioner and his wife. Despite being unemployed, the fourth respondent along with the third respondent has provided the petitioner and his wife with financial and emotional support for the past several years. The fourth respondent asserts that the petitioner executed the Settlement Deed dated 23.08.2010 freely and out of genuine love and affection in favour of the third respondent. The fifth respondent has taken advantage of the petitioner's old age, instigated the



W.P.No.29929 of 2023

petitioner to file the writ petition with false and vexatious averments in order to wrongfully obtain the said property from the third respondent. It is submitted that the petitioner also owned another house near the third respondent's residence equipped with all the essential amenities. Therefore, the petitioner does not require the third respondent's house for accommodation. In addition, the petitioner also receives sum of Rs.22,000/- towards his pension which meets his personal needs. It is further submitted that the present writ petition filed by the petitioner is devoid of all merits and unfounded allegations. Hence, the writ petition is liable to be dismissed.

13. Learned counsel for the fifth respondent, who is also a son of the petitioner, would submit that the fifth respondent was served with the notice and interim orders from this Court. Due to financial situation, the fifth respondent is unable to engage a counsel to represent him and he was also unable to appear before this Court on earlier hearings. The fifth respondent was served with the notice issued by the District Mediation and Conciliation Center, Namakkal. The fifth respondent duly appeared before the District Mediation and Conciliation Center, Namakkal on 15.12.2023 and 04.01.2024 and gave his statement. The fifth respondent submits that the petitioner is residing with him



W.P.No.29929 of 2023

since the fourth respondent under the instigation of the third respondent, had assaulted the petitioner and his wife and demanded to settle the properties in their names. Therefore, the fifth respondent is taking care of the petitioner and his wife. The fifth respondent pleads this Court to consider the above facts and condone his absence in the earlier hearings in the present writ petition.

14. Heard both sides and perused the materials available on record.

15. On going through the documents of Settlement Deed dated 23.08.2010 in Doc.No.5285/2010, it is stated as follows:-

“இனியும் தொடர்ந்து என் ஆயுள் பரியந்தம் செய்து வருவாய் என்ற நம்பிக்கையின் பேரிலும் எனக்கும் உனது பெயரில் உள்ள அன்பினாலும் அபிமானத்தாலும் பிரியத்தாலும் பாசத்தாலும் எனக்கும் நான் ஏதாவது சொத்து ஆதரவு செய்து வைக்க வேண்டுமென விரும்புவதாலும் இப்பவும் எனக்கு குமாரபாளையம் சார்பதிவாளர் அலுவலகத்தில் பதிவான 1 புத்தகம் 120 தொகுதி 427 முதல் 431 வரை பக்கம் 1979-ம் ஆண்டின் 2221 நெம்பராக பதிவான சுயார்ஜித கிரைய வகையில் பாத்தியப்பட்டு என் சுவாதீன அனுபவத்தில் இருந்து வருகிற இதன் கீழ்க்கண்ட சொத்துக்களை உனது பெயருக்கு தான செட்டில்மெண்டாக எழுதி வைக்க வேண்டுமென விரும்புவதாலும் இதன் கீழ்க்கண்ட சொத்தை உனது பெயருக்கு தான செட்டில்மெண்டாக எழுதி வைத்து தான செட்டில்மெண்ட் சொத்துக்களையும் இன்றே உன்னுடைய சுவாதீனத்தில் ஒப்படைத்துவிட்டேன்.”

16. Even though the other terms and conditions are there in the



W.P.No.29929 of 2023

Settlement Deed, it is seen that only on the ground that the third respondent will take care of the parents till their life time, the Settlement Deed was executed by the petitioner in favour of the third respondent. It is also seen that the third respondent has not come forward to take care of the parents and even in spite of sending summons, she did not appear before this Court. Thereafter, pursuant to the directions of this Court, the police officials have brought the third respondent before this Court and after inquiry, it appears that the third respondent is not willing the take care of the parents.

17. In the earlier order dated 25.04.2024, this Court recorded that *suo motu* contempt proceedings were initiated against the third respondent in Cont.P.No.1060 of 2024 and the contempt petition was closed on 23.04.2024. It is also recorded that “if the third respondent fails to appear in person, orders will be passed in the absence of the third respondent.” Even today also, when the Court enquired the third respondent about the maintenance of her parents, she is not willing to pay any amount. Hence, this Court is inclined to pass appropriate orders in this writ petition.

18. It is pertinent to note that the The Maintenance and Welfare of



W.P.No.29929 of 2023

Parents and Senior Citizens Act, 2007, has a pivotal role in Indian Societal frame work. The Act, in fact, comprehends a Scheme of welfare provisions for senior citizens. The Act contemplates right of senior citizens beyond right of maintenance. The word 'welfare' means provision for food, health care, recreation centres and other amenities necessary for the senior citizens. Section 23 of the Act gives right to senior citizens to approach the Tribunal to declare any transfer of property, by way of gift or otherwise, after the commencement of the above Act, as void, in certain circumstances. It stipulates that such transfer must be with the condition that (a) transferee shall provide the basic amenities and basic physical needs to the transferor and (b) such transferee refuses or fails to provide such amenities and physical needs. The Act as its objects not only maintenance and welfare of the parents and citizens but also to order such maintenance.

19. In the present case, both the sons of the petitioner are not working and they are struggling for their livelihood, whereas, the third respondent who is working as Sub Divisional Engineer in BSNL and drawing monthly salary of Rs.2,00,000/- and the petitioner herein, having believed that his daughter would look after him and his wife, executed the Settlement Deed in respect of his



W.P.No.29929 of 2023

property in favour of the third respondent and admittedly, the third respondent also availed home loan and constructed the house also.

20. Therefore, it is bounden duty on the part of the third respondent, being the daughter of the petitioner and his wife, who are senior citizens, to provide basic amenities and maintenance and physical needs to her parents but unfortunately she constrained them to approach the first respondent seeking for maintenance of the Settlement Deed and as rightly contended by the petitioner, the second respondent without considering the predicament undergone by the senior citizens, dismissed the application, which in the opinion of this Court, cannot be sustained.

21. Section 9 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, provides maintenance to the senior citizens, who were neglected or refused to maintain by their children. It reads as under:-

“9. Order for maintenance:

(1) If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior



W.P.No.29929 of 2023

citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.

(2) The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.

22. Here is the case wherein, the said recital in the Settlement Deed would show that the petitioner was on the hope that his daughter the third respondent herein will take care of him and his wife throughout their lifetime. Hence, this Court is of the view that the transfer of property had taken place only based on the hope that out of love and affection, the daughter will take care of them through out their life time.

23. This Court is of the view that in all the matters, there could not be any straight jacket formula to apply the rules and law and to declare anything illegal or upheld the validity and legality of the action by the statutory authorities. Here is the case where the parents are the put to suffer by their own daughter, who had obtained the property on the promise that she would look after the parents, however, later, after getting the property, had forcibly sent out the parents out of her house, which prompted the petitioner to approach the authorities and finally



W.P.No.29929 of 2023

this Court.

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24. This Court when inquired the third respondent, she is not inclined even to listen the Court and not even interested to pay anything to her parents by saying that her parents are healthy at the age of 84 and 77 and the petitioner is getting pension, therefore, they can take care of themselves and there is no need to maintain them. This is not appropriate on the part of the third respondent having obtained the property from the petitioner on promise and later pledged the same and availed a home loan of Rs.14,00,000/- from the State Bank of India (SBI).

25. Therefore, considering the facts and circumstances of the case and in the light of the above discussion, this Court feels it appropriate to pass the following order:-

- i. The impugned orders dated 11.03.2022 and 07.08.2023 are set aside.
- ii. The third respondent is directed to pay a sum of Rs.20,000/- (Rs.10,000/- each to the petitioner and his wife) to the parents towards their maintenance at every month.
- iii. The third respondent is also directed to provide accommodation in her



W.P.No.29929 of 2023

house in a separate room and provide basic necessities to them.

iv. The third respondent shall comply these directions without fail in letter and spirit, failing which, the petitioner is at liberty to move a petition before the second respondent for cancellation of the Settlement Deed and on such petition being filed, the second respondent is directed to inquire and in case the third respondent fails to pay the monthly maintenance as ordered by this Court, dispose of the petition by ordering cancellation of the Settlement Deed/Gift Deed.

26. This Writ Petition stands allowed with the above directions. No costs. Connected Writ Miscellaneous Petition is closed.

24.07.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To

1.The District Collector,



W.P.No.29929 of 2023

Namakkal District, Namakkal.

2. The Revenue Divisional Officer,
Tiruchengode, Namakkal District.

V.BHAVANI SUBBAROYAN, J.

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W.P.No.29929 of 2023

W.P.No.29929 of 2023
and
W.M.P.No.29543 of 2023

24.07.2024