



WEB COPY



W.P. No. 33701 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM

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

W.P. No. 33701 of 2023

and

W.M.P. No. 33358 of 2023

Malliga

... Petitioner

-VS-

1. The District Collector cum Appellate Tribunal Officer,
The Maintenance and Welfare of Parents and Senior Citizens Act,
Pollachi Division,
Coimbatore District.
2. The Sub-Collector cum Jury,
The Maintenance and Welfare of Parents
and Senior Citizens Redressal Forum,
Pollachi Division,
Coimbatore District.
3. The Sub-Registrar
Annamalai Taluk,
Pollachi Taluk,
Coimbatore District.
4. R.Vaishnavi (Minor)
Rep. By her mother and
natural guardian Mahalakshmi.R

... 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



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records of the First Respondent pertaining to order dated 07.08.2023 in

Na.Ka.No.5323/2021 Vu.2 and quash the same and consequently, direct the First Respondent to cancel the Dhana Settlement deed in Document No.5471/17 dated 15.11.2017 executed by the Petitioner in favour of minor Vaishnavi, Guardian of R.Mahalakshmi, Fourth Respondent on the file of Sub-Registrar, Annamalai, Pollachi Taluk, Coimbatore District.

For Petitioner : Mr. R.Chandrasekaran

For Respondents : Mr. S.J.Mohamed Sathik (R1 to R3)
Government Advocate
Mr. A.Raghupathy Raja (R4)

O R D E R

Heard Mr. R.Chandrasekaran, Learned Counsel for the Petitioner, Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the First to Third Respondents and Mr. A.Raghupathy Raja, Learned Counsel for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is a Senior Citizen, had executed a settlement-deed dated 15.11.2017 registered as Document No. 5411 of 2017 in the office of the



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Sub-Registrar, Anaimalai transferring his property in favour of the Third Respondent, who is her grand daughter. She 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 that settlement-deed as void before the Second Respondent, who had declined to grant such relief by Order in Na. Ka. No. 2904/2020 dated 11.01.2021 and has been confirmed in appeal under Section 16 of the Act by Order in Na. Ka. No. 5323/2021 dated 07.08.2023 passed by the First Respondent. The said orders are 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, which he has refused or failed to carry out, 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 invoke 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 Petitioner in favour of the Third Respondent that it is irrevocable. *Afortiori*, the bar of



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jurisdiction of the Civil Court to entertain suit for such relief created under Section 27 of the Act would not arise. In view of the same, Learned Counsel for the Petitioner seeks permission of this Court to withdraw the Writ Petition reserving the right of the Petitioner to work out her remedies under common law including Section 31 of the Specific Relief Act, 1963, for that relief claimed and he has made an endorsement to that effect in the court record.

In fine, the Writ Petition is dismissed as withdrawn with the aforesaid clarifications. It is needless to add here that nothing said in the impugned orders shall inhibit or influence while considering any relief that may be sought by the Petitioner in future legal proceedings. Consequently, connected Miscellaneous Petition is closed. No costs.

26.02.2024

Index: Yes/No

NCC: Yes/No

Note: (i) Issue order copy by 22.03.2024.

(ii) Registry is directed to return the impugned order under written acknowledgment after retaining a copy of the same for record.

gsa



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To

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P.D. AUDIKESAVALU, J.

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