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W.P. No. 34734 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. 34734 of 2023
and
W.M.P. Nos. 34696 and 34697 of 2023**

V.Rajasekaran

... Petitioner

-VS-

1. The Revenue Divisional Officer,
Coimbatore North,
Coimbatore District.

2. The Sub Registrar,
Annur Taluk,
Coimbatore District.

3. The Tahsildar,
Annur Taluk,
Coimbatore District.

4. The Inspector of Police,
Annur Police Station,
Annur,
Coimbatore District.

5. Vishwanathan

6. A.Jeyamani

... 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 records relating to the impugned order passed in Na. Ka. No. 3419/2023/A1



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dated 07.10.2023 by the First Respondent herein and quash the same as consequently directing the Second Respondent to remove the encumbrance entry of cancellation of the settlement deed dated 15.09.2017 in document number 4266 of 2017.

For Petitioner : Mr. Meenakshi Sundaram

For Respondents : Mr. S.J.Mohamed Sathik,
Government Advocate (for R1 & R3)

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

Mr. J.Subbiah,
Government Advocate (Crl. Side)
(for R4)

No appearance (for R5 & R6)

ORDER

Heard Mr. Meenakshi Sundaram, Learned Counsel for the Petitioner, Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the First and Third Respondents, Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the Second Respondent and Mr. J.Subbiah, Learned Government Advocate (Criminal Side) appearing for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.



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2. Though notice has been served on the Fifth Respondent on 28.12.2023 and the Sixth Respondent on 13.02.2024, they have not entered appearance in person or through counsel till date.

3. The Fifth Respondent had executed a settlement-deed dated 15.09.2017 registered as Document No. 4266 of 2017 in the office of the Sub-Registrar, Annur, Coimbatore District transferring his property in favour of the Petitioner, who is his son. He 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 First Respondent, which was granted by Order in Na. Ka. No. 3419/2023/A1 dated 07.10.2023 and is challenged in this Writ Petition.

4. 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



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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 Fifth 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.

5. That apart, it is reflected from the Aadhaar Card in the aforesaid settlement-deed that he was born on 27.06.1965, meaning thereby that he has not attained the age of 60 years, when the Writ Petition has been filed on 11.12.2023, in order to fall within the meaning of 'Senior Citizen' in terms of Section 2(h) read with Section 23 of the Act, which enables only a Senior Citizen to resort for such remedy under the Act.

6. In view of the foregoing discussion, the impugned order dated 07.10.2023 passed by the First Respondent treating the settlement-deed dated 15.09.2017 registered as Document No. 4266 of 2017 in the office of the Sub-Registrar, Annur, Coimbatore District 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



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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 controversy involved in the matter.

7. 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 Fifth 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 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 Petitions are closed. No costs.

26.02.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 17.04.2024.

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To

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3. The Tahsildar,
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Coimbatore District.
4. The Inspector of Police,
Annur Police Station,
Annur,
Coimbatore District.

Copy to

1. Vishwanathan,
S/o. Late. Murugasamy Gounder,
No. 1/132, Onnakkarampalayam,
Nallichettipalayam,
Karegoundenpalayam Village,
Annur Taluk,
Coimbatore District - 641 697.
2. A.Jeyamani,
W/o. Ananthbabu,
Door No. 102, Kamarajar Road,
Veerapandi Village,
Coimbatore District.



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P.D. AUDIKESAVALU, J.

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