



W.P(MD)Nos.15073 of 2022 & 13526 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 18.03.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.15073 of 2022 & 13526 of 2023

and

W.M.P(MD)Nos.11423, 11424 & 21621 of 2023
& 10784 of 2022

W.P(MD)No.15073 of 2022:

A.Abbas

... Petitioner

Vs.

1.The District Collector,
Madurai District.

2.The Revenue Divisional Officer,
Melur, Madurai District.

3.A.S.Abdul Majid

4.P.Karpagam
*(R.4 is impleaded vide order of
this Court dated 09.11.2022 in
W.M.P(MD)No.16273 of 2022)*

... Respondents



W.P(MD)Nos.15073 of 2022 & 13526 of 2023

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Na.Ka.No.(C5)3460/2022 dated 25.06.2022 on the file of the first respondent and to quash the same.

For Petitioner : Mr.V.Meenakshi Sundaram
for Mr.G.Karuppasamy Pandian

For Respondents : Mr.S.Kameswaran
Government Advocate
for R.1 & R.2

Mr.K.Mohamed Sirajudeen for R.3

Mr.K.Sudalaiyandi for R.4

W.P(MD)No.13526 of 2023:

P.Karpagam

... Petitioner

Vs.

1.The District Collector,
Madurai District.

2.The Revenue Divisional Officer,
Melur, Madurai District.

3.A.S.Abdul Majid

4.A.Abbas

... Respondents



W.P(MD)Nos.15073 of 2022 & 13526 of 2023

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent dated 25.06.2022 in Na.Ka.No.(C5)3460/2022 and to quash the same as illegal.

For Petitioner : Mr.K.Sudalaiyandi

For Respondents : Mr.S.Kameswaran
Government Advocate
for R.1 & R.2

Mr.K.Mohamed Sirajudeen for R.3

Mr.V.Meenakshi Sundaram
for Mr.G.Karuppasamy Pandian for R.4

COMMON ORDER

Heard both sides.

2.Thiru.A.S.Abdul Majid is the father of Thiru.A.Abbas. He executed settlement deed dated 17.07.2013 (Document No.3528/2013) on the file of SRO, Y.Othakadai in favour of Thiru. A.Abbas settling 1 ½ cents of land. Thiru. A.Abbas subsequently sold the property in favour of one Nazima Begum on 06.07.2021. Nazima Begum in turn sold the property in favour of Karpagam on 18.08.2021.



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3. Thereafter, Thiru.A.S.Abdul Majid filed petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 for cancelling the settlement deed dated 17.07.2013 before the Maintenance Tribunal (Revenue Divisional Officer, Melur). The Maintenance Tribunal vide proceedings dated 24.12.2021 rejected the petition but granted relief of maintenance as well as residence. Challenging the same, the parent filed appeal under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the appellate Tribunal (District Collector, Madurai). The appellate Tribunal vide order dated 25.06.2022 declared the settlement made by Thiru.A.S.Abdul Majid in favour of his son Thiru.A.Abbas as void and cancelled the document dated 18.07.2023. Challenging the same, the settlee (Thiru.A.Abbas) filed W.P(MD)No.15073 of 2022. The subsequent purchaser Thiru.Karpagam filed W.P(MD)Nos.15073 of 2022 & 13526 of 2023.

4. The counsel on either side projected the stand set out in the respective pleadings. The settlement deed dated 17.07.2023 contains a recital to the effect that the settlement deed was executed since the settlee



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was maintaining the settlor and since the settlor fondly hoped that the settlee will continue to maintain him. The only question that calls for consideration is whether this recital would amount to stipulation of condition as envisaged under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

5.The Hon'ble Supreme Court in the decision reported in **2022 SCC OnLine SC 1684 (Sudesh Chhikara Vs. Ramti Devi & another)** had held that if the condition has stipulated under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is not incorporated in the deed of conveyance, the Maintenance Tribunal will not have jurisdiction in the matter. The settlor may have to move the jurisdictional civil Court in that event.

6.The expression of hope is one thing, stipulation of condition is another. It is like Part III and Part IV of the Constitution of India. Part III which catalogues the fundamental rights is enforceable. Article 37 of the Constitution of India states that Part IV containing the Directive Principles of State Policy is not justiciable.



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7.In my view, a mere expression of hope will not constitute a condition for the purpose of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The Maintenance Tribunal rightly negated the prayer for cancellation of the document. The appellate Tribunal was under the impression that a mere allegation by the parent that the settlee has not maintained was sufficient to render the document as void. There has been a misdirection in law. Respectfully applying the ratio laid down in ***Sudesh Chhikara Vs. Ramti Devi & another's*** case, the order passed by the appellate Tribunal is set aside. The order passed by the Maintenance Tribunal is restored. In addition it is declared that the parent A.S.Abdul Majith is entitled to the right of residence. It is stated that he is at present residing in the ground floor portion of the house settled in favour of the petitioner by her mother. Thiru.A.S.Abdul Majid can continue to reside therein till his lifetime. The maintenance order that has been passed by the Tribunal shall be complied with scrupulously by all the sons.

8.The impugned order will have to be set aside on yet another ground. It is a matter of record that the property had changed hands in



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the year 2021. Abbas had sold the property to Nazima Begum and Nazima Begum had sold the property to one Karpagam. Only after Karpagam became the owner of the property, petition under Section 23 of the Act was filed by the Settlor. It is relevant to note that Karpagam was not put on notice before the impugned order was passed. This would not have happened if the encumbrance certificate had been directed to be filed along with the petition under Section 23 of the Act.

9.The learned counsel appearing for the petitioner points out that this Court had already held that the authority has to call upon the applicant to file the encumbrance certificate. The question as to whether Section 23 of the Act can be invoked after the settlee had alienated the property is a moot question that can be dealt with in another case. The impugned order has to be set aside on the ground of violation of principles of natural justice also. With the aforesaid declaration in favour of the parent (Thiru.A.S.Abdul Majid), the impugned order passed by the appellate Tribunal is set aside.



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10. These writ petitions are allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

18.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To

1. The District Collector,
Madurai District.
2. The Revenue Divisional Officer,
Melur, Madurai District.



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G.R.SWAMINATHAN, J.

MGA

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