



W.P.(MD)Nos.15574&16900 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)Nos.15574 & 16900 of 2022
and WMP(MD)Nos.11215 & 11216 of 2022

1.M.Sharinnath

2.Minor M.Kishor Kumar

... Petitioners in both petitions

[Minor 2nd petitioner is represented through his mother and natural guardian M.Sugumari)

Vs.

1.The Revenue Divisional Officer cum Executive Magistrate,
Ramanathapuram.

2.The Joint Sub Registrar No.1,
Ramanathapuram

3.Shanmugam

.. Respondents
in WP(MD)No.15574 of 2022

1.The Revenue Divisional Officer cum Executive Magistrate,
Ramanathapuram.

2.The Joint Sub Registrar No.1,
Ramanathapuram.

3.Shanmugam

4.Amutha



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5. Thenmozhi

.. Respondents

in WP(MD)No.16900 of 2022

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned order dated 23.05.2022 in Moo.Mu.(A4)/2589/2022 passed by the first respondent and quash the same.

In both petitions:

For Petitioners : Mr.J.Barathan

For R1 & R2 : Mr.M.Siddharthan
Additional Government Pleader

For R3
in WP(MD)No.15574 of 2022 : Mr.D.Balamurugapandi

For R3 to R5
in WP(MD)No.16900 of 2022 : Mr.D.Balamurugapandi

COMMON ORDER

WP(MD)No.15574 of 2024:

In WP(MD)No.15574 of 2024, challenge has been made to the order dated 23.05.2022 passed by the first respondent cancelling the settlement deed executed by the 3rd respondent in favour of the petitioner on 09.12.2015.



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2. Heard both side and perused the materials placed before this Court.

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3. It is the case of the writ petitioners that the 3rd respondent is the grandfather of the petitioners. The property was originally purchased by the 3rd respondent on the basis of the amount sent by the petitioner's father who was working in foreign country. Thereafter, the 3rd respondent has settled the property in favour of the petitioners. The settlement is irrevocable and there is no condition whatsoever attached. Thereafter, the 3rd respondent has filed a suit in O.S.No. 17/16 on the file of the Additional District Court, Ramanathapuram, to declare the settlement deed is null and void. After contest, the suit filed by the 3rd respondent was dismissed on 06.08.2021. It is reached finality and no appeal has been filed. Thereafter, an application has been given before the first respondent under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The first respondent has cancelled the document invoking the provision of Section 23 of the Act. Challenging the same, this writ petition has been filed.

WP(MD)No.16900 of 2024:

4. In WP(MD)No.16900 of 2024, challenge has been made to the impugned order dated 23.05.2022 passed by the first respondent cancelling the



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settlement deed executed by the 3rd respondent in favour of the petitioners on 09.12.2015 based on which the 3rd respondent executed a gift settlement deed dated 05.07.2022 in favour of the respondents 4 & 5, daughters of the 3rd respondent.

5. Since the issue is related to a settlement in both the writ petitions, both are disposed of by way of this common order.

6. It is the contention of the learned counsel for the petitioners that the 3rd respondent having executed absolute settlement deed and failed in his attempt to cancel the same in a Civil suit, has filed an application before the first respondent. The first respondent, even without understanding the provision of law, has cancelled the document. According to him, the settlement deed has not been executed with a condition to maintain the 3rd respondent. Hence, the very order cancelling the settlement deed cannot be valid in the eye of law. Further, subsequent settlement deed executed in favour of his daughters also is not valid in the eye of law.



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7. Whereas the learned counsel for the respondents 3 to 5 would submit that though it is admitted that the suit filed by the 3rd respondent is dismissed, according to him, the property was purchased by him out of his own income and he has gifted the property to the minors expecting that the minors' father will maintain the 3rd respondent. However, they are not provided any maintenance. Therefore, he has filed an application before the authorities. The authority, after considering the evidence adduced in this regard, has cancelled the document. Hence, he opposed the writ petition.

8. The fact that the settlement deed executed by the 3rd respondent in favour of the minors is not disputed. Similarly, the 3rd respondent filed a suit and the same has been dismissed after full contest is also not disputed. After that civil suit in O.S.No.17 of 2016 was dismissed, an application has been given before the first respondent. The first respondent has cancelled the document invoking the provisions under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

9. On perusal of the settlement deed dated 09.12.2015, the same clearly indicates that the settlement is an absolute settlement and there is no condition that



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the transferees shall provide the basic amenities and basic physical needs to the settler. Only when the settlement carries the above conditions and in the event of the settlees failed to fulfil the conditions, the provision under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 will come into force.

10. Therefore, in the absence of any conditions in the settlement, mere on the basis of application, as a matter of right, the authorities cannot cancel the registered settlement deed. In this regard, the Hon'ble Apex Court in ***Sudesh Chhikara v. Ramti Devi*** and another reported in ***2002 SCC Online SC1684***, held that mere refusal to maintain the senior citizen cannot be a ground of cancelling the deed in the absence of specific conditions of providing a maintenance for the senior citizen. It is relevant to note that the property has been absolutely transferred in this case in favour of the minors. Therefore, the question of minors have to maintain the 3rd respondent will not arise at all. That apart, the third respondent already filed a comprehensive suit which was also went against him. To bypass the decree and judgment which is binding on the parties, an application has been given before the first respondent to cancel the document. From choosing the first respondent's jurisdiction after suffering the Civil Court decree and



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judgment itself indicates that the petitioner some or other way bent upon to annul the documents, which cannot be permitted in the eye of law. Therefore, the very order of the first respondent cancelling the document in the absence of any condition as stated above is not valid in the eye of law and hence it is liable to be quashed.

11. In the result,

(1) WP(MD)No.15574 of 2022 is allowed and the impugned order dated 23.05.2022 stands quashed. No Costs. Consequently, connected miscellaneous petitions are closed.

(2) WP(MD)No.16900 of 2022 is disposed of and the impugned order dated 23.05.2022 stands quashed. Therefore, any subsequent transfer made by the 3rd respondent will not convey any title to the transferee. No Costs. Consequently, connected miscellaneous petition is closed.

(3) At this juncture, the learned counsel for the petitioners fairly submitted that as far as the maintenance of the 3rd respondent is concerned, the petitioners are prepared to give necessary maintenance for his sustenance. The same has been recorded.

16.08.2024

NCC : Yes/No
Index : Yes/No
PJJ



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To

1.The Revenue Divisional Officer cum Executive Magistrate,
Ramanathapuram.

2.The Joint Sub Registrar No.1,
Ramanathapuram



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N.SATHISH KUMAR, J.

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