



W.P(MD)No.17302 of 2022

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)No.17302 of 2022

and

W.M.P(MD)Nos.12620 to 12621 of 2022

S.Gracelin Juliana

... Petitioner

Vs.

1.The District Collector,
Thoothukudi District.

2.The Revenue Divisional Officer,
Tiruchendur,
Thoothukudi District.

3.Rev.Dr.M.Fredrick Rathinaraj,
S/o.Rev.Manuvel Raj,
No.53.Vedha Cottage Thoothukudi Road,
Tiruchendur District – 628 215.

... Respondents

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 of the impugned order in Na.Ka.C.1/16786/2022 dated 19.07.2022 (mistakenly referred as 19.07.2021) on the file of the first respondent and quash the same.



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For Petitioner : Mr.S.Selva Adithya
for Mr.G.Prabhu Rajadurai

For Respondents : Mr.T.Villavan Kothai
Additional Government Pleader
for R.1 & R.2
Mr.M.Saravanan for R.3

ORDER

Heard both sides.

2.The third respondent herein executed release deed dated 29.04.2010 in favour of Bailey Samuel, who had been treated as an adoptive son. Subsequently, Bailey Samuel executed settlement deed in favour of the petitioner / his wife on 23.05.2022. During the intervening period, the third respondent herein filed petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the second respondent on 01.06.2022. The Maintenance Tribunal declined to cancel the document. Challenging the said order dated 18.11.2021, the third respondent herein filed appeal before the appellate tribunal (District Collector, Tuticorin). The appellate tribunal vide order dated 19.07.2021 cancelled the document dated 29.04.2010. Challenging the same, the present writ petition came to be filed.



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3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The learned counsel appearing for the third respondent submitted that the document executed in favour of Bailey Samuel was actually a settlement deed, though it has been considered as a release deed for consideration. He also stated that the petitioner obtained settlement deed from her husband after the third respondent had already initiated proceedings under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. He stated that a very valuable property in Trichendur Town had been given gratis and that the petitioner had been thrown out subsequently. He is now residing in the property that is standing in the name of the petitioner only on account of intervention of the local elders. He called upon this Court for sustaining the impugned order and dismiss the writ petition.



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5.I carefully considered the rival contentions and went through the materials on record.

6.The petitioner is said to be working as a Professor. Her husband Bailey Samuel is working abroad. The petitioner wanted to inform this Court through her counsel that the third respondent herein can continue to reside in the subject property till his life time. The Maintenance Tribunal had directed Bailey Samuel to pay a sum of Rs.7,500/- per month towards the maintenance of the third respondent. The said order had not been challenged. Therefore, it will hold good since Bailey Samuel is obliged to maintain the third respondent herein.

7.The question that calls for consideration in this writ petition is whether the jurisdiction of the Maintenance Tribunal under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 could have been invoked. The categorical answer is “No”. The document in question does not contain any condition as envisaged by Section 23 of the Act. The Hon'ble supreme Court in the decision



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reported in **2022 SCC Online SC 1684 (Sudesh Chhikara Vs Ramti**

Devi) already clarified the legal position. That is why the Maintenance Tribunal rightly refused to cancel the document. The appellate tribunal failed to take note of the legal possession. For this reason, the impugned order passed by the first respondent is set aside. The order passed by the second respondent is restored subject to the aforesaid declarations in favour of the third respondent.

8.This writ petition is 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,
Thoothukudi District.
- 2.The Revenue Divisional Officer,
Tiruchendur,
Thoothukudi District.

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G.R.SWAMINATHAN, J.

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