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WP No. 7049 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-06-2025

CORAM

THE HONOURABLE MRS.JUSTICE N. MALA

WP No. 7049 of 2022

and

WMP No.7083 of 2022

Manjula.S

Petitioner(s)

Vs

1. The Revenue Divisional Officer,
Tambaram Kadaperi, Tambaram,
Chennai-600 045.

2.R.Pandiarajan

3.P.Boomavathy

Respondent(s)

PRAYER

This writ petition has been filed under Article 226 of the Constitution of India to issue of writ of certiorari to call for the records and quash the Order dated 17/02/2022 bearing Ref. No. O. Mu. 3098 / 2021 / A passed by the 1st Respondent. The Revenue Divisional Officer, Tambaram.



For Petitioner(s): MR.C.MANO HAR GUPTA
FOR M/s.Gupta and Ravi

For Respondent(s): Mr.K.Suresh, GA, for R1
M/s.V.P. Rajan, for R2 and R3

ORDER

This writ petition is filed for issuing a writ of certiorari to quash the order passed by the first respondent dated 17.02.2022 bearing Ref.No.O.Mu.3098/2021/A.

2. The petitioner got married on 27.11.2006 and out of the wedlock, she gave birth to a son. Whiles, the 2nd respondent, vide settlement deed dated 12.07.2007, settled the property to an extent of 2510 sq.ft, at Door No.17, Chozhan street, Muthamizh Nagar, Pammal, Chennai, in favour of the petitioner's husband, thereby conferring full rights upon him, to effect transfer of all government, electricity and revenue records in his name, from the date of the settlement. Thereafter, the petitioner and her husband jointly availed loan from the bank, demolished the old house therein and constructed a new house.



After the demise of the petitioner's husband on 10.08.2018, she obtained a legal heirship certificate on 21.11.2018, whereunder, her minor son, her mother in law, the 3rd respondent herein and she were shown as legal heirs of her deceased husband.

3. According to the petitioner, after the demise of her husband, the 2nd and 3rd respondents, along with her sister in law subjected her to ill-treatment and forcibly evicted her from the subject property. Subsequently, the petitioner was diagnosed with cancer on 30.06.2019, underwent a surgical operation and continues to undergo medical treatment for said illness. Meanwhile, IBM India Private Limited, the employer of the petitioner's deceased husband, disbursed a sum of Rs.38,02,959/- towards the death and terminal benefits, which were released to the petitioner as she was the nominee of the deceased. The petitioner appropriated a substantial portion of the terminal benefits for her treatment. Whiles, the petitioner approached the 2nd respondent with a proposal for an amicable partition of her 2/3 share (1/3 each for herself and her minor son) in the subject property, with an assurance that, simultaneous with the



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execution of the partition, she would pay a sum of Rs.12,67,653/- to the third respondent towards her claim. Soon after the petitioner's aforesaid proposal, the 2nd respondent, filed a petition for cancellation of the settlement deed dated 12.07.2007, before the first respondent, invoking Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (herein after referred as Act) alleging false and baseless claims against the petitioner. Pursuant thereto, the first respondent, passed an order on 17.02.2022, directing the petitioner to remit a sum of Rs.12,67,653/-, representing the 2nd respondent's share 1/3rd share in the terminal benefits of her deceased son, failing which it was ordered that, the settlement deed executed by the 2nd respondent would stand cancelled. Aggrieved by the said order, the present writ petition is filed by the petitioner.

4. The respondents 2 and 3 filed a counter affidavit denying the allegations raised in the writ petition. They expressed that they were ready and willing to explore an amicable resolution of the dispute; however, the petitioner was allegedly unwilling to settle the matter in a conciliatory manner. The respondents further contended that, under the facts and circumstances of the



case, the impugned order was fair, reasonable and did not warrant for any interference by this Court. The respondents therefore prayed that the writ petition be dismissed.

5. The learned counsel for the petitioner submitted that the application of the 2nd respondent, invoking Section 23 of the 2007 Act, was not maintainable because the subject settlement deed was executed prior to the commencement of the Act, which came into force on 29.12.2007. The learned counsel further submitted that in the absence of any specific condition regarding maintenance of the respondents in the settlement deed, the petition under Section 23(1) of the 2007 Act, was not maintainable and hence, prayed that the writ petition be allowed.

6. The respondents 2 and 3, initially, appeared through counsel, and filed a counter in the writ petition. They also participated in the mediation process which was ordered by this Court on 22.11.2023. Thereafter, they failed to appear before this Court. As the respondents did not appear, to give further opportunity to the private respondents, this Court directed the learned counsel

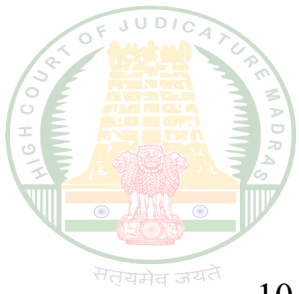


for the petitioner to issue fresh notice to the respondents 2 and 3. The counsel sent notice as directed by this Court, but the respondents inspite of service of notice, failed to appear.

7. Heard the learned counsel for the petitioner and perused the materials available on record with due care.

8. In the present case, there is no dispute as regards the relationship between the parties. The petitioner had proposed to the 2nd respondent to amicably resolve the dispute inter se by executing a partition deed in respect of her 2/3rd share, with assurance that she would pay the 2nd respondent her 1/3rd share from the terminal benefits of her deceased husband. However, the 2nd respondent without considering the petitioner's proposal, approached the 1st respondent seeking cancellation of the settlement deed under Section 23 (1) of 2007 Act.

9. The issue that arises for consideration is whether the 1st respondent has the jurisdiction to entertain the 2nd respondent's petition for cancellation of the settlement deed under Section 23(1) of the 2007 Act.



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10. Section 23 of the Act reads as follows :

“ Transfer of property to be void in certain circumstances:-

(1) where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under Sub-Sections (1) and (2), action may be taken on his behalf by by of the organisation referred to in Explanation to Sub Section (1) of Section 5.

11. Bare reading of the above provision makes it clear that the provision is prospective in operation and applies to transfers effected after the



commencement of the Act. In the present case, the settlement was executed on 12.07.2007 and the Act came into effect from 31.12.2007. As the settlement

was executed prior to the commencement of the Act, in my view, the application filed by the second respondent before the first respondent is not maintainable.

Similar view was expressed by this Court in ***W.P.No.1741 of 2015*** reported in ***2019 SCC Online Madras 31185***, and ***W.P.No.22301 of 2019*** reported in ***2019***

SCC Online Madras 36977. This Court unequivocally held that Section 23 of

the Act, will apply only to transfers made after the commencement of the Act. In

other words, any transfer made prior to the commencement of the Act, cannot

be challenged under Section 23. Under the fact situation of this case and the

law declared by this Court in the aforesaid cases, the 1st respondent had no

jurisdiction to pass the impugned order as the application itself was not

maintainable under Section 23 of the 2007, Act. Hence, the impugned order is

set aside. However, with regard to the claim of the 2nd respondent to her share

of the terminal and other service benefits of her son, she is granted liberty to

approach the appropriate forum for appropriate relief, if so, advised.



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12. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

20-06-2025

mrp

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

The Revenue Divisional Officer,
Tambaram, Kadaperi, Tambaram, Chennai-600 045.



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N.MALA J.

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