

W.P.(MD) No.2888 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.04.2025

CORAM

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

W.P.(MD) No.2888 of 2023

AND

W.M.P.(MD) No.2675 of 2023

Bose

... Petitioner

Vs

1.The Revenue Divisional Officer-cum-
The Senior Citizens Maintenance and Welfare Tribunal
Madurai District

2.Azhagu

3.Palaniyandi

4.Pitchai

5.Muthumani

6.Gowtham

7.Murugan

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in Muu.Mu.No.499/2022/J dated 21.06.2022 and quash the same.



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For Petitioner : Mr.B.Muthukarthikeyan
For R1 : Mr.A.Kannan
Additional Government Pleader
For R2 to 7 : Mr.T.K.Gopalan

ORDER

The petitioner seeks the following relief :

“To quash the order dated 21.06.2022 passed by the 1st respondent in Muu.Mu.No.499/2022/J.”

2. The petitioner states that on 28.07.2003, his father Sothan executed a settlement deed in his favour for the following properties situated in Paraipatti Village, Vadipatti Taluk, Madurai District.

<i>R.S. No.</i>	<i>Extent of the property</i>
106/3C	60 cents
107	12 cents
2/1A	7 cents
3/2	33 cents
2/3B	10 cents

3. The said Sothan had purchased the properties by way of a registered sale deeds dated 29.07.1987, 30.12.1989 and 16.03.1994. The petitioner pleads that the private respondents had abandoned the said Sothan, and it was the petitioner

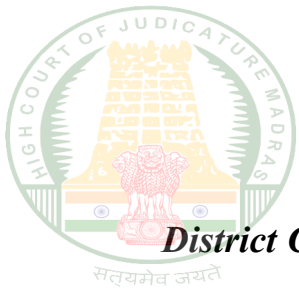


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who took care of his father Sothan till his death. Despite the same, the petitioner alleges that the said Sothan, on account of the ill advice given by the private respondents, gave a petition to the 1st respondent to cancel the settlement deed in document No.1088/2003 dated 28.07.2003. He states that the 1st respondent, without even issuing a notice to him, proceeded and cancelled the document. He filed an appeal before the District Collector against the said order. The District Collector did not entertain the appeal and hence, he has challenged the same by way of present writ petition.

4. This Court entertained the writ petition and issued notice to the respondents. Mr.A.Kannan, learned Additional Government Pleader has entered appearance for the 1st respondent, and Mr.T.K.Gopalan, learned counsel appeared for the private respondents.

5. The simple plea of Mr.Muthukarthikeyan is that the settlement deed has been executed in the year 2003 and the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short “the Act”), had come into force in the State w.e.f. 29.09.2008 and therefore, it cannot be given retrospective effect. He relies upon the judgment of this Court in ***S. Neelavathi Vs. District Magistrate-cum-***



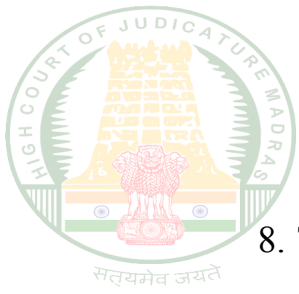
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District Collector and Others [2018 (7) MLJ 196] (Per T.Raja, J.), to substantiate

WEB the said plea.

6. *Per contra*, Mr.T.K.Gopalan appearing for the private respondents urges that the purpose of the legislation was to prevent a senior citizen who has alienated the property in favour of his children, hoping to be maintained, and on the same being belied, to approach the authorities and get the document cancelled. He relies upon the judgment of this Court in ***S.Mala Vs. The District Collector, Namakkal and Others (W.A.No.3582 of 2024 decided on 06.03.2025)*** to press home this point. He urges that Sothan had passed away on 02.12.2022 and it is only thereafter, the writ petition came to be filed. Hence, he pleads that the order of the 1st respondent be sustained and the writ petition to be dismissed.

7. I have carefully considered the submissions made on the side of the petitioner as well as the respondents and also gone through the records.



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8. The power to cancel a document has been vested with the 1st respondent, pursuant to Section 23 of the Act. A reading of Section 23(1) of the Act shows that the authorities constituted under the Act are entitled to declare any document executed “*after the commencement of the Act as null and void*”. The Act has not been given retrospective effect. Hence, with respect to documents executed prior to the enactment, the remedy is to approach the jurisdictional civil Court. Hence, despite the fervent pleas of Mr.T.K.Gopalan, I am not inclined to take a different view from the one taken by Hon'ble Mr.Justice T.Raja (as he then was).

9. During the course of arguments, it has come to the notice of this Court that the writ petitioner has presented O.S.No.103 of 2019, seeking partition and separate possession, on the file of the District Munsif Court, Vadipatti. The respondent 2 to 7 are merely representing the estate of the deceased Sothan and they have been arrayed in the writ petition as his legal representatives. Had Sothan been alive, despite this writ petition being allowed on this technical point, he would have been entitled to move to the civil Court and seek for declaration that the document executed for maintenance has to be declared as inoperative as the writ petitioner had not maintained him. Since the respondents 2 to 7 represent the estate of the deceased Sothan, the plea that could have been taken by Sothan



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can also be taken by his legal representatives. Therefore, leaving it open to the respondents 2 to 7 to move the jurisdictional civil Court either by way of an independent suit or by moving a counter claim in pending suit in O.S.No.103 of 2019 on the file of the District Munsif Court, Vadipatti, this writ petition is allowed.

10. Needless to add, the right to be maintained accrues month on month and therefore, the cause of action too accrues month on month. It is not in dispute that Sothan died on 02.12.2022. A suit for declaration can be filed within three years from the date of death of Sothan. Further more, Sothan had been strengthened by the impugned order on 21.06.2022. Hence, there is enough time for the respondents to move the civil Court.

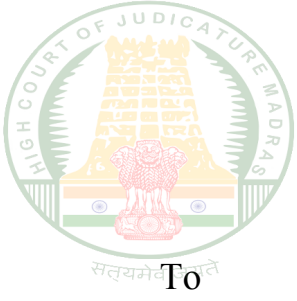
With the aforesaid observation, the present writ petition is allowed.
No costs. Connected W.M.Ps are closed.

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Index : Yes/No

Neutral Citation : Yes/No



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Madurai District



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V.LAKSHMINARAYANAN, J.

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