

W.P.(MD)No.26878 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 12.02.2025

Delivered On : 28.04.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.26878 of 2024
and
W.M.P.(MD)No.22774 of 2024

R.Mejil Danie

... Petitioner

Vs.

1.The District Collector Cum,
Appellate Authority under
Parents and Senior Citizen Protection Act,
Kanyakumari District.

2.The Sub Collector,
Padmanabhapuram,
Kanyakumari District.

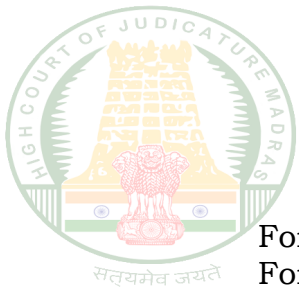
3.The Sub Registrar,
Karungal Sub Registrar Office,
Kanyakumari District.

4.Chella Nadar

5.Ezhil Arasi

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the documents relating to the order passed by the first respondent dated 19.10.2024, vide Moo.Mu.C3/2037249/2024 and may set aside the same as erroneous.



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For Petitioner : Mr.K.P.Narayanakumar
For Respondents 1 to 3 : Mr.S.P.Maharajan
Special Government Pleader
For Respondents 4 & 5 : Mr.S.Louis

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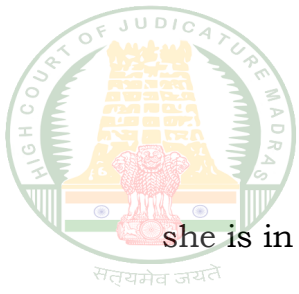
ORDER

This Writ Petition is filed, seeking to quash the order passed by the first respondent in Moo.Mu.C3/2037249/2024, dated 19.10.2024, in a petition filed by a senior citizen in an appeal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007(hereinafter to be mentioned as Act, 2007).

2.The petitioner is the daughter-in-law of the fourth respondent senior citizen. The fourth respondent senior citizen is the father of the writ petitioner's husband. The fifth respondent is the sister-in-law, that is, the sister of the petitioner's husband.

Gist of the case:-

3.The claim of the petitioner is that, she was not a party to the entire proceedings, which was initiated by the second respondent at the first instance under Section 5 of the Act, 2007, preferred by the fourth respondent senior citizen, and thereafter, in the Appeal dealt with by the first respondent preferred by the fourth respondent senior citizen. The petitioner is working as an Assistant Manager in Indian Overseas Bank and



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she is in the service of the said bank since 01.09.2014.

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4.She married the son of the fourth respondent, namely, Anbarasu, on 29.07.2015, precisely after 10 months from the date of joining her service in the said bank. Out of her wedlock with the son of the fourth respondent, she has two children, namely, Nijolin Ferraro and Hanslin Rabero. Both the fourth respondent as well as her mother in law lived with her husband and her under one roof and since the petitioner is a working woman, she had engaged a maid and a home nurse to take care of her in-laws, more particularly, for the reason that the mother in law is bedridden. The petitioner's husband has two sisters and the fifth respondent is one among them. The petitioner's father in law, that is, the fourth respondent, was a retired headmaster, and he is receiving monthly pension. Since the petitioner's sister-in-laws were given properties, sufficient jewelry, and cash, during their marriage, the fourth respondent had executed a registered settlement deed with respect to the share of the petitioner's husband on 29.04.2020 vide document No.781 of 2020, with respect to an extent of 128.868 cents land. The petitioner's husband became the absolute owner of all the 15 items of the aforesaid properties, which were cited in the schedule of property of the aforesaid settlement deed. The petitioner's husband was addicted to alcohol and hence, he was not in a sound state of mind. As a result of which, he had sold four items of properties for his medical needs without the knowledge of the family.

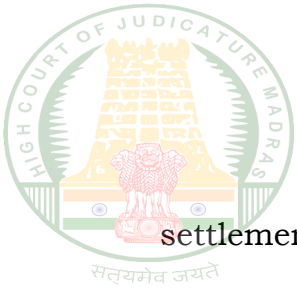


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5.Only under such circumstances, on the direction of the fourth respondent father-in-law, a settlement deed was executed by her husband in her favor vide document No.718 of 2024 dated 13.03.2024 with respect to the remaining properties which remained unsold to an extent of 96.888 cents land. Thus, the petitioner became the absolute owner in possession and title over the 11 properties which were settled in her favour and mutation was also affected in her favor and she is in possession of all those properties.

6.While the petitioner's parents-in-law were residing in one of the properties settled in favor of the petitioner's husband, which forms item No. 30 of the settlement deed executed in his favor by the fourth respondent. The fifth respondent approached her parents and convinced them and had taken the petitioner's husband to a de-addiction center at Madurai, during the month of May 2023, when the petitioner was away for work. The fifth respondent literally confined the petitioner's husband in the said de-addiction center and thereafter, she took an extreme move of taking her parents, that is, the fourth respondent and his wife to Nagercoil, wherein she was residing and instigated the fourth respondent to file a complaint under the Act, 2007, before the second respondent. The said complaint was taken for consideration by the second respondent and after appropriate inquiry, in which the fourth respondent had required to cancel the

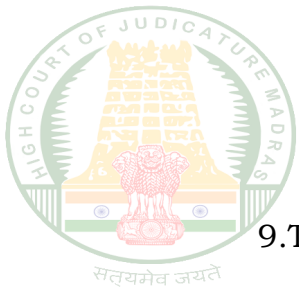


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settlement deed executed in favor of the petitioner's husband, the second respondent had dismissed the claim of the fourth respondent, by order dated 22.11.2023.

7.In the meanwhile, the petitioner took severe and sincere steps to release her husband from the de-addiction center, at Madurai, and he was released from confinement after several difficulties on 17.02.2024, and was brought back to the petitioner's house. While the petitioner's husband went to the fifth respondent's house after his release, the fourth respondent instructed his son to execute a settlement deed with respect to the remaining property in favor of the writ petitioner, and it is only under such circumstances, the said settlement deed was executed in favor of the writ petitioner on 13.03.2024. However, at the instance of the fifth respondent again the fourth respondent preferred an appeal belatedly on 19.10.2024 before the first respondent. The first respondent after inquiry, reversed the order passed by the second respondent thereby unilaterally cancelling the settlement deed executed by the fourth respondent in favor of his son bearing document No.781 of 2020 dated 29.04.2020.

8.The learned counsel appearing for the petitioner reiterated the contentions raised in the affidavit filed along with the Writ Petition.



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9.The learned counsel appearing for the fourth and fifth respondent categorically contended that, there is no need to interfere with the order passed by the first respondent and sought for dismissal of the Writ Petition.

10.Heard the learned counsel on either sides and carefully perused the materials available on record.

11.The senior citizen, who preferred to make a complaint under Section 5 of the Act, 2007, before the second respondent as against his son, Anbarasu, is a retired headmaster. Needless to state that, he is a pensioner. However, both the fourth respondent and his wife are instable due to their old age difficulties and health predicaments of their respective ages. Section 2(b) of the Act, 2007, defines “*maintenance*” as: Maintenance includes provision for food, clothing, residence, medical attendance and treatment. Hence, when the complaint under Section 5 of the Act, 2007, is made by the senior citizen obviously, the fourth respondent was residing in Nagercoil along with his daughter, who is the fifth respondent herein.

12.Interestingly, the writ petitioner herein is the daughter-in-law of the fourth respondent, who had never been a party to the proceedings either before the second respondent or before the first respondent in the Appeal. The learned counsel for the writ petitioner categorically contended that, all the properties with respect to the impugned order, which came to be passed,



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has already been settled in her favor by her husband Anbarasu, that too, at the instance of the fourth respondent, which was seriously denied by the learned counsel for the respondents 4 and 5.

13. Under such circumstances, this Court required the petitioner, her husband Anbarasu, the fourth and fifth respondents, along with the wife of the fourth respondent to appear before this Court. When the senior citizens appeared before this Court, both of them were in wheelchair and more particularly, the mother was almost in a bedridden stage, though she was able to interact. Both the senior citizens expressed their willingness to go back to their residence where they were originally residing at a house bearing door No.1-107, Midalam village panchayat, a house which was already settled by the fourth respondent in favor of Anbarasu. For which, the petitioner and her husband Anbarasu readily expressed their willingness. The settlement deed dated 29.04.2020, was executed by the fourth respondent in favor of his son Anbarasu with respect to 15 items of property, of which already four items have been sold by the said Anbarasu to third parties. Later, only at the instance of the fourth respondent, the remaining properties which stood in the name of the said Anbarasu was settled in favor of the writ petitioner.

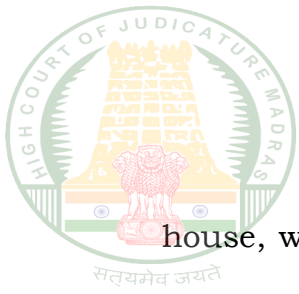
14. When the parties appeared before this Court, the fourth respondent and his wife expressed great affection towards the writ petitioner



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and their grandsons. That apart, the settlement deed executed by the fourth respondent in favor of his son on 29.04.2020, do not possess any covenant or express condition as to the fact that the fourth respondent and his wife should be maintained by his son during their lifetime. Section 23(1) makes it clear that the transfer of property made by any senior citizen in favor of their children subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferer and such transferee refuses or fails to provide such amenities and physical needs, then the said transfer of property shall be deemed to have been made by fraud and the same is void. However, in the instant case, the settlement deed executed by the fourth respondent favor of his son Anbarasu on 29.04.2020, is bereft of any such conditions requiring the transferee to provide the basic amenities and basic physical needs. However, the same would not absolve the responsibility of his son Anbarasu as well as the fifth respondent daughter from maintaining their parents during their lifetime.

15. Section 2(b) of the Act, 2007, makes it clear that maintenance is not much about money but about the provision for food, clothing, residence, medical attendance, and treatment. In the instant case, both the fourth respondent and his wife, are seriously sick and they need utmost medical attendance and treatment, for which the petitioner as well as her husband Anbarasu are readily willing to take care of them. Though they are presently residing with the fifth respondent, their willingness to go back to their



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house, where they earlier resided is very well positively received by the writ petitioner as well as her husband and children.

16.This Court has taken note of the assurance given by the writ petitioner as well as her husband that they will take care of the fourth respondent and his wife and maintain them by providing food, cloth, residence, medical attendance, treatment, care and attention, during their lifetime till they breathe their last. Though the fourth respondent is a pensioner, the aspects of residence, medical attendance and treatment should be taken care of by his children both by the writ petitioner's husband as well as the fifth respondent and the other surviving sister of the writ petitioner's husband.

17.Cancellation of the documents executed by the senior citizen would arise only in circumstances where the parties concerned are not willing to take care of the senior citizens. In the instant case, obviously it was admitted by the fourth respondent himself that, the writ petitioner's husband had been an alcoholic and he was accommodated in a de-addiction center at Madurai, at the instance of the fifth respondent. Only after giving treatment in a de-addiction center, as on today the writ petitioner's husband has turned to normalcy and almost he is returning back to his day to day affairs in a normal way. It is only under such circumstances, the writ petitioner and her husband along with their children appeared before this



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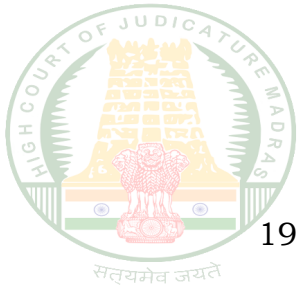
court and gave assurance that they will take care of the fourth respondent and his wife all along their lifetime.

18.In the absence of any specific condition to maintain the senior citizens in the settlement deed executed in favor of Anbarasu on 29.04.2020, by the fourth respondent giving effect to the object of the Welfare Act, 2007, recording the willingness of the writ petitioner and her husband to take care of the fourth respondent and his wife in terms of Section 2(b) of the Act, 2007, this Court hereby set aside the impugned order passed by the first respondent dated 19.10.2024. That apart, the following directions are to be followed forthwith by the writ petitioner and her husband Anbarasu:-

“1.The writ petitioner and her husband Anbarasu should immediately make necessary arrangements to bring the fourth respondent and his wife to the house bearing door No.1-107, Midalam Village Panchayat, within a week from the date of receipt of copy of this order.

2.Despite the fourth respondent being a pensioner, due care should be taken by the husband of the writ petitioner, namely, Anbarasu, for providing proper medical attendance attendance and treatment, to the fourth respondent and his wife all along their lifetime.

3.Whenever there is a deficit in the monthly budget to meet out the food, clothing, residence, medical attendance and treatment, of fourth respondent and his wife, it is for the writ petitioner and her husband to meet out the expenditure and take care of the senior citizens.”



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19. Accordingly, this Writ Petition is allowed. There shall be no order

as to costs. Consequently connected miscellaneous petition is closed.

28.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1. The District Collector Cum,
Appellate Authority under
Parents and Senior Citizen Protection Act,
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2. The Sub Collector,
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L.VICTORIA GOWRI, J.

Mrn

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