

Janaki vs Suresh

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Court : Kerala

Decided On : Sep-19-2023

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/22975/2023

Appellant : Janaki

Respondent : Suresh

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN TUESDAY, THE 19TH DAY OF SEPTEMBER 2023 / 28TH BHADRA, 1945 WP(C) NO. 22975 OF 2023 PETITIONER: JANAKI, AGED 92 YEARS, W/O LATE PADMANABHAN, VADAKKEVELLIPPARAMBIL, PERUMBALAM (PO), CHERTHALA, ALAPPUZHA, PIN - 688570 BY ADVS. G.P.SHINOD GOVIND PADMANAABHAN AJIT G ANJARLEKAR ATUL MATHEWS GAYATHRI S.B. RESPONDENTS:

1 SURESH, KARITHALAKKAL HOUSE, PANACHIKKAD VILLAGE, POOVANTHURUTHU.P.O, KOTTAYAM, PIN - 686012 2 SUBHA

SURESH, KARITHALAKKAL HOUSE, PANACHIKKAD VILLAGE,
POOVANTHURUTHU.P.O, KOTTAYAM, PIN - 686012 3 THE
MAINTENANCE AND WELFARE OF PARENTS AND SENIOR
CITIZENS APPELLATE TRIBUNAL, COLLECTORATE, KOTTAYAM,
PIN - 686002 4 THE MAINTENANCE TRIBUNAL, COLLECTORATE,
KOTTAYAM, PIN - 686002 BY ADVS J.OM PRAKASH VIDYA
KURIAKOSE - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19.09.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

The petitioner impugns Exts.P2 and P4 orders, issued by the Maintenance Tribunal and Appellate Authority respectively, whereby, her request for cancellation of a document executed by her in favour of respondents 1 and 2, have been rejected on the ground that she must approach the competent Civil Court for such relief.

2. Sri.Govind Padmanabhan - learned counsel for the

petitioner, pointed out that, as evident from Ext.P1 Settlement Deed, transfer of the property covered by it was effected strictly within the confines of Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act (hereinafter referred to as Act for short); but that, even without considering this in any manner, both the afore Authorities have rejected her claim, issuing Exts.P2 and P4 orders. He thus prayed that the said impugned orders be set aside.

3. Sri.Omprakash - learned counsel appearing for

respondents 1 and 2, in response, argued that Exts.P2 and P4 orders are without error because, Ext.P1 document does not contain any endorsement that the transaction under it comes within the sweep of Section 24(3) of the Act. He submitted that, therefore, as long as there is no such stipulation, the ratio in Subhashini v. District Collector, Kozhikode and Others [2020(5) KHC 195] will

apply and hence that the Authorities are without error in having issued the impugned orders.

4. Smt.Vidya Kuriakose - learned Government Pleader, appearing for respondents 3 and 4, also adopted the afore submissions of Sri.Omprakash.

5. I must say that, if this Court is to countenance the afore submissions of Sri.Omprakash, supported by the learned

Government Pleader, then the orders must reflect some consideration by the afore Authorities on the question whether the document in question contains any recital, which would bring it within the ambit of the Act. It is only in such perspective, that the declarations of this Court in Subhashini (supra) would become applicable.

6. However, when one goes through Exts.P2 and P4, it is

evident that there is not even a mention about the afore aspects; but the Authorities have gone mechanically to conclude that since the parties are in dispute with respect to the property, it is civil in nature and hence that the petitioner must invoke civil remedies.

7. I am afraid that the afore stand of the Authorities cannot find my favour and am certainly of the view that the entire matter will require a reconsideration by the Maintenance Tribunal.

8. Presumably, being aware of the mind of this Court as afore, Sri.Omprakash and Smt.Vidya Kuriakose also submitted that the matter can be left to be reconsidered by the Maintenance

Tribunal; however, praying that the specific declarations in Subhashini (supra) be directed to be kept in mind by the said Authority, while issuing fresh orders. In the afore circumstances, I allow this Writ Petition and set

aside Exts.P2 and P4; consequentially directing the 4 th respondent - Maintenance Tribunal, to reconsider the claim of the petitioner, adverting specifically to Ext.P1, as also the declarations of law in Subhashini (supra), after affording both sides

necessary opportunity of being heard; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than two months from the date of receipt of a copy of this

judgment.

Sd/- RR DEVAN RAMACHANDRAN JUDGE APPENDIX OF WP(C) 22975/2023
PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF SETTLEMENT DEED NO.
299 OF 2015 DATED 2.2.2015 OF THE SRO, AROOKUTTY Exhibit P2 A TRUE
COPY OF THE ORDER NO. E-5504/18/K.DIS DATED 16-11-2018 Exhibit P3 A
TRUE COPY OF THE APPEAL MEMORANDUM DATED 18.07.2019 Exhibit P4 A
TRUE COPY OF ORDER NO. DCKTM/6907/2019-K1(H5)/KDIS DATED 19-05-

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