

A.V.Abraham Vs. K.M.Varkey

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SooperKanoon Citation : sooperkanoon.com/59921

Court : Kerala

Decided On : Jun-24-2015

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : A.V.Abraham

Respondent : K.M.Varkey

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN WEDNESDAY, THE 24TH DAY OF JUNE 2015 3RD ASHADHA, 1937 WP(C).No.17161 of 2012 (U)

----- PETITIONER: -----

A.V.ABRAHAM,S/O.K.M.VARKEY,AGED 54 YEARS, JOJI NIVAS,POROTTUKONAM P.O. NEAR MAR EVANIOSE COLLEGE,NALAMCHIRA, THIRUVANANTHAPURAM,NOW RESIDING AT MRC37 CHELLAM LINE,PANAM VILLA,NALAMCHIRA - 695 015. BY ADVS.SRI.REJI GEORGE SRI.GOPAKUMAR G. (ALUVA)

SRI.JOBIN.K.GEORGE RESPONDENT'S: ----- 1.

K.M.VARKEY,S/O.LATE ABRAHAM,AGED 78 YEARS, AREETHADATHIL HOUSE,MANNATHOOR KARA, THIRUMARADY VILLAGE,PIN - 686 723.

2. SOOSAMMA VARGHESE,W/O.K.M.VARKEY,AGED 68 YEARS, AREETHADATHIL HOUSE,MANNATHOOR KARA, THIRUMARADY VILLAGE,PIN - 686 723. *ADDITIONAL 3RD AND 4TH RESPONDENTS IMPEADED

Addl.R3:MAINTENANCE TRIBUNAL/REVENUE DIVISIONAL OFFICER,
VAZHAPPILLY,MUVATTUPUZHA,PIN - 686 661. Addl.R4:APPELLATE
TRIBUNAL,DISTRICT COLLECTOR, CIVIL
STATION,THRIKKAKARA,KOCHI,PIN - 682 021. *ADDL.R3 AND R4 ARE
IMPLEADED AS PER

ORDER

DATED1706.2015 IN IA725515. R1 BY ADV.SRI.BIJU ABRAHAM. R3 & R4 BY
SRI.MANOJ P.KUNJACHAN. THIS WRIT PETITION (CIVIL) HAVING BEEN
FINALLY HEARD ON2406-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING: pk WP(C).No.17161 of 2012 (U) -----

APPENDIX PETITIONER'S EXHIBITS: EXHIBITS P1:A TRUE COPY OF THE
PETITION FILED BY THE RESPONDENTS IN M.P.NO.34/2010
DATED2312.2010 ON THE FILE OF THE MAINTENANCE TRIBUNAL AND
REVENUE DIVISIONAL OFFICER, MUVATTUPUZHA. EXHIBITS P2:A TRUE
COPYOF THE WRITTEN STATEMENT DATED1805.2011 FILED BY THE
PETITIONER IN M.P.NO.34/2010 DATED2312.2010 ON THE FILE OF THE
MAINTENANCE TRIBUNAL AND REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA. EXHIBITS P3:A TRUE COPY OF

ORDER

DATED1506.2011 OF THE MAINTENANCE TRIBUNAL AND REVENUE
DIVISIONAL OFFICER, MUVATTUPUZHA IN M.P.NO.34/2010. EXHIBITS P4:A
TRUE COPYOF PROCEEDINGS NO.SW3/836/11 DATED2404.2012 OF THE
APPELLATE TRIBUNAL/DISTRICT COLLECTOR, ERNAKULAM. EXHIBITS P5:A
TRUE COPY OF SALE DEED NO.1766/2009 DATED310122009 OF S.R.O.,
KOOHATTUKULAM EXECUTED BY THE1T RESPONDENT IN FAVOUR OF
THE PETITIONER. EXHIBITS P6:A TRUE COPY OF BASIC TAX RECEIPT
NO.4694886 DATED1304.2010 ISSUED BY THE VILLAGE OFFICER,
THIRUMARADY. EXHIBITS P7:A TRUE COPY OF THE LETTER
NO.AAT/PERS/1022/3564 DATED2210.2003 ISSUED TO THE
ADMINISTRATOR, COSMOPOLITAN HOSPITAL, PATTOM BY THE ASSISTANT
MANAGER (PERSONAL) OF THE AIRPORT AUTHORITY OF INDIA,
TRIVANDRUM. EXHIBITS P8:A TRUE COPY OF LETTER

NO.AAT/PERS/1022/4423 DATED1411.2008 ISSUED TO THE
ADMINISTRATOR, LAKESHORE HOSPITAL AND RESEARCH CENTRE LTD.,
KOCHI BY THE ASSISTANT MANAGER (PERSONAL) OF THE AIRPORT
AUTHORITY OF INDIA, TRIVANDRUM. EXHIBITS P9:A TRUE COPY OF
LETTER NO.AAT/PERS/1022/2600 DATED2212.2008 ISSUED TO THE
ADMINISTRATOR, LAKESHORE HOSPITAL AND RESEARCH CENTRE LTD.,
KOCHI BY THE ASSISTANT MANAGER (PERSONAL) OF THE AIRPORT
AUTHORITY OF INDIA, TRIVANDRUM. EXHIBITS P10:A TRUE COPY OF
LETTER NO.AAT/PERS/1022/4804 DATED0606.2009 ISSUED TO THE
ADMINISTRATOR, LAKESHORE HOSPITAL AND RESEARCH CENTRE LTD.,
KOCHI BY THE ASSISTANT MANAGER (PERSONAL) OF THE AIRPORT
AUTHORITY OF INDIA, TRIVANDRUM. pto WP(C).No.17161 of 2012 (U)
----- EXHIBITS P11:A TRUE COPY OF LETTER
NO.AAT/PERS/1022/9307 DATED0112.2009 ISSUED TO THE
ADMINISTRATOR, LAKESHORE HOSPITAL AND RESEARCH CENTRE LTD.,
KOCHI BY THE ASSISTANT MANAGER (PERSONAL) OF THE AIRPORT
AUTHORITY OF INDIA, TRIVANDRUM. EXHIBITS P12:A TRUE COPY OF THE
ADMISSION CARD IN THE NAME OF THE1T RESPONDENT DATED0401.2010
ISSUED BY THE G.G.HOSPITAL, TRIVANDRUM. EXHIBITS P13:TRUE
PHOTOCOPIES OF THE POSTAL RECEIPTS EVIDENCING PAYMENT OF
MAINTENANCE BY THE PETITIONER TO THE RESPONDENTS. EXHIBITS
P14:A TRUE COPY OF THE BANK STATEMENT OF THE PETITIONER ISSUED
BY THE ERNAKULAM DISTRICT CO-OPERATIVE BANK LTD.,
KOOHATTUKULAM BRANCH FOR THE PERIOD FROM2903.2011
TO0106.2012. EXHIBITS P15:A TRUE COPY OF THE STATEMENT OF THE
LOAN A/C.NO.20019012416 ISSUED BY THE LIC HOUSING FINANCE LTD.
EXHIBIT P16:A TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER
BEFORE THE SUB INSPECTOR OF POLICE,KOOHATTUKULAM
DATED239.2012. EXHIBIT P17:A TRUE COPY OF RECEIPT NO.261/12/E3
DATED239.2012 ISSUED TO THE PETITIONER BY THE SUB INSPECTOR OF
POLICE, KOOHATTUKULAM. RESPONDENTS' EXHIBITS EXHIBIT R1(a):A
TRUE COPY OF THE DEPOSITION OF1T RESPONDENT BEFORE THE
TRIBUNAL DATED105.2011. EXHIBIT R1(b):A TRUE COPY OF THE REPORT

OF THE VILLAGE OFFICER, THIRUMARADI DATED 18.1.2011. EXHIBIT R1(c): A TRUE COPY OF THE PLAINT IN O.S. 258/2011 ON THE FILES OF MUNSIFF COURT, MUVATTUPUZHA. //TRUE COPY// P.S. TO JUDGE P.K. VINOD CHANDRAN, J.

===== W.P.(C) No.17161 of 2012 - U
===== Dated this the 24th day of June, 2015

JUDGMENT

The petitioner is aggrieved with Ext.P3 order. Admittedly the petitioner approached the appellate authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for brevity 'the Act'), which would not have been possible going by the provisions of the Act. Only a parent could maintain an appeal before the appellate authority. In any event, the appellate authority passed an order in petitioner's favour, which the petitioner is aware, is one passed without jurisdiction.

2. The petitioner having been made aware of the inconsequential order, passed by the appellate authority, challenges Ext.P3 order before this Court. The petitioner before the Tribunal was the father and mother of the petitioner being 1st 2 W.P.(C) No.17161 of 2012 - U and 2nd respondents herein. The 2nd respondent is said to be no more. The 1st respondent is a pensioner drawing pension of Rs.7,150/- per month. Hence his claim for maintenance was declined by the Tribunal. No appeal is filed from the said order. The petitioner is directed to pay Rs.7,500/- as monthly maintenance to the 2nd respondent and she having passed away, the order of the Maintenance Tribunal to that extent is also of no consequence. What remains for consideration is the issue with respect to the setting aside of the sale deed No.1766/2009 of Koothattukulam SRO.

3. The learned counsel for the petitioner submits that, that was a sale transaction between the father and son, the 1st respondent and the petitioner and could not have been interfered with under Section 23 of the Act. Section 23(1) of the Act specifically speaks of a condition in a deed that the transfer has been effected only on the promise of the transferee that basic amenities and physical needs of the transferor will be 3 W.P.(C) No.17161 of 2012 - U provided. Sub-section (1) of the

Act entitles an application before the Tribunal to set aside a document so executed with that specific condition, if transferee refuses or fails to provide such amenities and physical needs. However, sub-section(2) of the Act according to the counsel has to receive a liberal interpretation before this Court, especially since the father herein is residing in the property and is entitled to the income from the property and the same would hence relate to a right to receive maintenance out of an estate.

4. This Court however is unable to countenance such contentions. For one, the deed produced herein as Ext.P5 does not at all indicate any condition, to enable the Tribunal to exercise jurisdiction under Section 23(1) of the Act. As to the reliance placed on sub-section(2), the 1st respondent has not been able to establish any right to receive maintenance out of the estate, which herein is the property covered by Ext.P1. No such interest was retained while selling the property to the 4 W.P.(C) No.17161 of 2012 - U petitioner herein.

6. In such circumstance, it is found that setting aside of the document itself is improper. Ext.P3 hence would be set aside to that extent. The learned Counsel for the petitioner submits that it had come out in evidence before the Tribunal itself that no consideration has passed with respect to the sale deed. It is to be noticed that such a contention is after almost five years from the execution of the agreement. In any event, that would be a contention which could only be adjudicated by a competent Civil Forum. The writ petition would stand allowed. Ext.P3 is set aside. No costs. Sd/- K. VINOD CHANDRAN, JUDGE SB // true copy // P.A to Judge.

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