

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 11TH DAY OF JULY 2016/20TH ASHADHA, 1938

WP(C).No. 8193 of 2014 (Y)

PETITIONERS:

1. SHABEEN MARTIN, S/O WILLIAMSREE JAYAN,
AGED 40, SHAKKEENA, PULACHITHRA,
VANIAKULAM POST, OTTAPALAM TALUK,
PALAKKAD DISTRICT, PIN:679 522.
2. BEENA MARTIN, W/O SHABEEN MARTIN, AGED 37,
SHAKKEENA, PULACHITHRA, VANIAKULAM POST,
OTTAPPALAM TALUK, PALAKKAD DIST. PIN:679 522.

BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH
SMT.N.K.SHEEBA
SRI.K.K.ANIL KUMAR
SRI.BABU THOMAS (PAZHAYATHOTTATHIL)
SMT.T.N.LEKSHMI SHANKAR

RESPONDENTS:

1. MURIEL, W/O LATE REJINOLD BEEMELLO,
HOUSE NO.10, SNEHATHEERAM RESIDENCE,
POST SOUTH CHITTOOR, COCHIN-682 027.
2. SMT. SHIRLEY ROBINSON, W/O LATE ROBINSON,
HOUSE NO.10, SNEHATHEERAM RESIDENCE,
POST SOUTH CHITTOOR, COCHIN-682 027.

BY ADVS. SRI.M.NARENDRA KUMAR
SRI.C.RAMAN
SRI.V.S.ANU MON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-07-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 8193 of 2014 (Y)

PETITIONER'S EXHIBITS:

EXHIBIT P1: THE TRUE COPY OF THE FAMILY SETTLEMENT DEED NO. 661/2012 OF THE SRO OTTAPALAM EXECUTED BY THE RESPONDENT IN FAVOUR OF THE PETITIONERS DATED 8.2.2012.

EXHIBIT P2: THE TRUE COPY OF THE PLAINT IN O.S.124/2012 ON THE FILE OF OTTAPALAM SUB COURT SUBMITTED BY THE RESPONDENT.

EXHIBIT P3: THE TRUE COPY OF APPLICATION DATED 4.5.2013 SUBMITTED BY THE RESPONDENT BEFORE THE MAINTENANCE TRIBUNAL.

EXHIBIT P4: THE TRUE COPY OF THE NOTICE ISSUED BY MAINTENANCE TRIBUNAL OTTAPALAM DATED 3.4.13.

EXHIBIT P5: THE TRUE COPY OF THE COUNTER SUBMITTED BY THE PETITIONERS IN H 2142/2013 BEFORE THE MAINTENANCE TRIBUNAL AND SUB COLLECTOR.

EXHIBIT P6: THE TRUE COPY OF THE ORDER IN H 21142/2013 DATED 7.8.2013 OF THE MAINTENANCE TRIBUNAL AND SUB COLLECTOR.

EXHIBIT P7: THE TRUE COPY OF THE APPEAL MEMORANDUM AS APPEAL NO.J 4-2013/66412/9 U/S 16(1) OF THE ACT SUBMITTED BY THE PETITIONERS BEFORE THE APPELLATE AUTHORITY MAINTENANCE TRIBUNAL DATED 11.9.2013.

EXHIBIT P8: THE TRUE COPY OF THE ORDER IN APPEAL NO.J 4-2013/66412/9 DATED 20.1.2014 OF THE APPELLATE AUTHORITY MAINTENANCE TRIBUNAL.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

P.B.Suresh Kumar, J.

W.P.(C)No.8193 of 2014 Y

Dated this the 11th day of July, 2016

JUDGMENT

Exhibit P6 order passed by the Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act ('the Act' for short) and Exhibit P8 order passed by the Appellate Tribunal constituted under the Act confirming Exhibit P6 order, are under challenge in this writ petition.

2. The petitioners are husband and wife. The first respondent is the sister of the mother of the first petitioner. The first respondent had executed Exhibit P1 settlement deed in respect of a property owned by her in favour of the petitioners on 08.02.2012. Later, the first respondent has preferred a complaint before the Tribunal alleging that

Exhibit P1 settlement deed was obtained by the petitioners on an understanding that they shall take care of her and that since the petitioners have not taken care of her based on the understanding, Exhibit P1 settlement deed is liable to be declared as void under Section 23 of the Act. On a consideration of the materials on record, the Tribunal accepted the case of the first respondent and declared as per Exhibit P6 order that Exhibit P1 settlement deed is void. The petitioners took up the matter in appeal. The appellate authority, on a reappraisal of the evidence on record, confirmed Exhibit P6 order by Exhibit P8. The petitioners are aggrieved by Exhibits P6 and P8 orders.

3. Heard the learned counsel for the petitioners as also the learned counsel for the first respondent.

4. The learned counsel for the petitioners contended that a complaint under Section 23 of the Act can be filed only by the affected person and the complaint in the instant

case has been filed by the second respondent on behalf of the first respondent and therefore the complaint is not maintainable. It was also contended by the learned counsel for the petitioners that only the settlement deeds executed subject to the condition that the transferee shall provide the basic amenities and physical needs to the transferor are liable to be declared void by the Tribunal. According to the learned counsel, Exhibit P1 document does not indicate that the settlement deed was executed with the aforesaid condition. It was further contended by the learned counsel for the petitioners that the second respondent had earlier filed a suit claiming identical relief before the Sub Court, Ottapalam as the next friend of the first respondent alleging that the first respondent is not a person who is able to take care of her interest. According to the learned counsel for the petitioners, in the light of the averments made in the plaint filed before Sub Court, Ottapalam, it cannot be

contended that the complaint preferred by the first respondent before the Tribunal is a genuine one.

5. Exhibit P6 order passed by the Tribunal indicates that since the complaint was initially filed by the second respondent on behalf of the first respondent, the Tribunal insisted the first respondent herself to file a complaint and consequently, the first respondent herself has filed a complaint before the Tribunal. In the circumstances, the contention raised by the learned counsel for the petitioners that the complaint in the instant case is not one preferred by the first respondent is only to be rejected. In **Radhamani v. State of Kerala** (2016 (1) KLT 185), this Court held that it is not necessary that there should be a specific recital or stipulation as a condition in the settlement deed for the Tribunal to exercise its powers under Section 23 of the Act. In the light of the said decision, the contention of the petitioners that only the settlement

deeds which are executed with the stipulation that transferee shall provide the basic amenities and physical needs of the transferor alone are liable to be declared void under Section 23 of the Act, is also liable to be rejected. True, the second respondent had earlier filed a suit as the next friend of the first respondent to set aside Exhibit P1 settlement deed alleging that the first respondent is unable to take care of herself. Merely for the reason that somebody else had preferred a suit earlier on behalf of the first respondent stating that the first respondent is unable to take care of her interests, it cannot be said, in the absence of any materials, that the first respondent is unable to take care of her interests and therefore, the complaint is not genuine. There is nothing on record to indicate that the complaint preferred by the first respondent is not genuine. In the circumstances, I do not find any illegality in Exhibits P6 and P8 orders.

6. The learned counsel for the petitioners, alternatively, prayed for time to surrender the property covered by Exhibit P6 order. Since the petitioners are in possession of the property since 2012, I deem it appropriate to grant time to the petitioners to surrender vacant possession of the property.

In the result, the writ petition is dismissed. The petitioners are, however, granted three months time from today to surrender vacant possession of the property on condition that they shall file an unconditional undertaking before the Tribunal within three weeks from today that they will surrender the property to the first respondent within the aforesaid time.

P.B.Suresh Kumar, Judge

tkv