
(2015) 04 MAD CK 0286

In the Madras High Court

Case No : C.R.P.(PD)(MD) No. 437 of 2015 and M.P.(MD) Nos. 1 and 2 of 2015

Balamurugan

APPELLANT

Vs

Rukmani

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2015) 04 MAD CK 0286

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : R. Suriya Narayanan, for the Appellant; S. Ramesh, Advocates for the Respondent

Final Decision : Disposed off

Judgement

K.K. Sasidharan, J—This Civil Revision Petition is directed against the order dated 20 January, 2015, whereby and whereunder, the Revenue Divisional Officer, in his capacity as Presiding Officer of the Tribunal for Maintenance and Welfare of the Parents and Senior Citizens, Madurai, declared the gift deed dated 21 February, 2014, as null and void.

BRIEF FACTS:

2. The respondent is the mother of the petitioner. The respondent filed an application before the constituted authority, under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [hereinafter referred to as "the Senior Citizens Act, 2007") to declare the gift deed executed in favour of the petitioner as null and void, besides other incidental reliefs. The petitioner entered appearance in the said petition. The Tribunal allowed the application, by order dated 20 January, 2015. Feeling aggrieved by the said order, the petitioner is before this Court.

SUMMARY OF SUBMISSIONS:

3. The learned counsel for the petitioner contended that the Revenue Divisional Officer, in his capacity as Presiding Officer of the Tribunal, passed a cryptic order, setting aside the gift deed. According to the learned counsel, no such power is vested on the Tribunal. The learned counsel contended that the Civil Revision Petition is maintainable before this Court, in view of Section 16 of the Senior Citizens Act, 2007, restricting appeal only to a senior citizen or parent.

4. The learned counsel for the respondent supported the impugned order. The learned counsel, while justifying the impugned order, submitted that the very revision petition is not maintainable, in view of the remedy of appeal provided under Section 16 of the Senior Citizens Act, 2007.

THE ISSUE:

5. The primary question that arises for consideration is as to whether an appeal would lie under Section 16 of the Senior Citizens Act, 2007, at the instance of the petitioner, challenging the order passed by the Tribunal under the provisions of Senior Citizens Act, 2007.

DISCUSSION:

6. It is the contention of the petitioner that appeal, at the instance of a senior citizen or parent alone, is maintainable. According to the learned counsel, the appeal, at the instance of opposite party, is not maintainable and as such, the only remedy is to file Civil Revision Petition.

THE RELEVANT PROVISION:

7. Section 16 of the Senior Citizens Act, 2007 reads thus:

"16. Appeals.- (1) Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal:

Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.

(3) The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal is preferred.

(4) The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.

(5) The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final:

Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a duly authorised representative.

(6) The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7) A copy of every order made under sub-section (5) shall be sent to both the parties free of cost."

8. A plain reading of Section 16 would appear as if appeal is maintainable only at the instance of the senior citizen. However, the said provision, taken in the light of the related provisions, would make it clear that appeal, at the instance of both sides, is envisaged under Section 16 of the Senior Citizens Act, 2007.

9. The very same question was raised before the High Court of Punjab and Haryana at Chandigarh in C.W.P. 7282 of 2010. The Division Bench of Punjab and Haryana High Court considered the Parliamentary debates and opined that there has been no debate in relation to Section 16(1) of the Senior Citizens Act, 2007. The Division Bench made the following observation:

"The right to file an appeal is not excluded specifically by the provisions of Section 16(1) of the said Act, but it fails/omits to mention. We may also usefully refer to Sub-section (5) of Section 16 which provides finality to the order of the Tribunal. Such finality can only be achieved after hearing grievances of both the sides. If the appeal is confined to only one party, then the finality can only be qua the rights of that party which has preferred the appeal and cannot be envisaged qua the opposite party which would have to take recourse to Article 227 of the Constitution of India. Thus, another sub section of the same Section gives credence to the plea that Section 16(1) of the said Act should be read in a manner as to provide for appeal to both the parties. The proviso to Sub-section (5) further stipulates that an appeal cannot be rejected unless an opportunity has been given to both the parties of being heard. The reference of right to both the parties has to be in the context of an appeal by either of the parties as otherwise it would have envisaged that no order could be passed without hearing the child or the other party."

10. The Division Bench of Punjab and Haryana High Court was of the view that a purposive interpretation should be given to Section 16(1) of the Senior Citizens Act, 2007 and the only interpretation is that the right of appeal is conferred on both sides. The Bench observed that it is a case of an accidental omission and not of conscious exclusion and in order to give a complete effective meaning to the statutory provision, the Court should read the words into it and ultimate conclusion is that an appeal from both sides is envisaged under Section 16(1) of

the Senior Citizens Act, 2007.

11. In view of the proviso to Section 16(1) of the Senior Citizens Act, 2007 and the judgment rendered by the High Court of Punjab and Haryana at Chandigarh, in C.W.P. 7282 of 2010, I conclude that an appeal, at the instance of an opposite party, would lie before the appellate authority under Section 16(1) of the Senior Citizens Act, 2007.

12. The petitioner is given time till 11 May, 2015 to file appeal before the appellate authority under Section 16(1) of the Senior Citizens Act, 2007. The interim stay granted by this Court would be in operation till such an appeal is filed by the petitioner.

13. The Civil Revision Petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.