

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.10.2018

Coram

The Honourable Ms.Justice P.T.ASHA

C.R.P(PD)No.3864 of 2012

and

M.P.No.1 of 2012

1.V.Chengalvarayan
2.C.Murali
3.C.Thirumurthy
4.C.Sathyamurthy
5.C.Parthiban

...Petitioners

Versus

1.M.Prakash
2.G.Chandrasekaran
3.G.Sankar
4.The Sub-Registrar
Registration Department
Pallavaram Registration Office.

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order and decreetal order dated 24.07.2012 passed in I.A.No.1098 of 2012 in O.S.No.248 of 2008 on the file of Additional District Munsif Court, Alandur.

For Petitioner	:	Mr.V.Srikanth
For Respondents - 1 to 3	:	Ms.Harini
Respondent - 4	:	Not ready in notice

ORDER

This Civil Revision Petition is filed challenging the order by the learned Additional District Munsif, Alandur in I.A.No.1098 of 2012 in O.S.No.248 of 2008 dated 24.07.2012, in and by which the learned Additional District Munsif had allowed the Interlocutory Application filed by the respondents 1 to 3 herein, who are plaintiffs in O.S.No.248 of 2008, for amending the plaint.

2. The brief facts of the case are as follows:

The respondents 1 to 3 herein had filed a suit for the following reliefs:

"(a) for a permanent injunction, restraining the defendants 1 to 5, their men, agents, servants, etc. from in any manner interfering with the first plaintiffs' peaceful possession and enjoyment of the suit 'A' Schedule property and plaintiffs 2 and 3's peaceful possession and enjoyment of the suit 'B' Schedule property respectively.

(b) for a permanent injunction restraining the defendants 1 to 5, their men, agents, servants, etc. from in any manner alienating or encumbering their suit properties;

(c) for a permanent injunction, restraining the 6th defendant, his men, agents, servants, subordinates, superiors, etc. from in any manner registering any

documents that may be presented by the defendants 1 to 5, their men, agents, servants, etc., in respect of the suit properties."

3. In the pleadings, the respondents 1 to 3 themselves have narrated as follows:

"The plaintiffs state that having kept quite without contributing anything to safeguard the suit properties and having remained silent throughout for the past more than 35 years, the first defendant has now created a settlement deed in favour of the defendants 2 to 5, who are all his sons. The said settlement deed is neither valid nor binding on the plaintiffs. The first defendant has no right to execute any settlement deed in favour of the defendants 2 to 5 in as much as the first defendant himself has lost his title to the suit properties and also possession in respect of the suit properties. Therefore, possession of the suit properties could not have been delivered to the settlees by the settlor and the said settlement deed is created wantonly with a view to snatch away the suit properties from the plaintiffs."

4. The respondents 1 to 3 had filed a suit O.S.No.428 of 2008 on the plea that the revision petitioners herein were interfering with their possession and enjoyment of the suit properties. The suit was filed on 08.08.2008. The revision petitioners herein had filed a written

statement wherein they had countered the allegations contained in the plaint and also stated as follows:

"8. The defendants submit that from the inception of the settlement in the year 1968 the property mentioned in the Schedule 'B' of the Settlement Deed which is inclusive of 'A' and 'B' property of the suit is in continuous possession of the First Defendant till his execution of the Settlement and in favour of his sons defendant 2 to 5 in the year of 2008 and more than 40 years."

5. The petitioners herein would contend that they have been in possession and enjoyment of the suit property for over four decades. They would also contend that the respondents 1 to 3 are attempting to grab the property which has been settled in favour of their father. Along with the written statement, the revision petitioners had filed 14 documents and the second document was the Settlement Deed dated 26.02.1968 and the fourth document was the Settlement Deed dated 22.01.2008.

6. While so, the respondents 1 to 3 have filed I.A.No.1098 of 2012 seeking to amend the plaint and the particulars of the amendment was narrated in the schedule to the Application.

7. In the affidavit filed in support of the said Application, the respondents 1 to 3 would contend that the first petitioner had executed a registered deed of settlement dated 22.01.2008 in favour of petitioners 2 to 5 herein. According to the respondents 1 to 3, this fact came to their knowledge only during the pendency of the suit and therefore, they had to have the deed declared null and void for which purpose, the amendment was necessitated.

8. The revision petitioners herein resisted the said Application *inter alia* contending that the respondents were very much aware about settlement deed even when the suit was filed and the Application was filed only to drag on the proceedings. Further, the said settlement deed had been marked as Exhibit since trial had already commenced in the said proceedings.

9. The learned Additional District Munsif, Alandur had allowed I.A.No.1098 of 2012 only on the ground that an opportunity should be given to respondents 1 to 3. Challenging the said order, the revision petitioners are before this Court.

10. Heard Mr.V.Srikanth, learned counsel for the petitioners and Ms.Harini, learned counsel for the respondents 1 to 3.

11. As rightly pointed out by the learned counsel for revision petitioners even in June 2008 when the suit was filed, the respondents 1 to 3 were having knowledge about the settlement deed that had been executed by the first petitioner in favour of the petitioners 2 to 5 and the same had been pleaded by them in the plaint (the statement has been extracted *supra*). Further, even in the written statement filed by the revision petitioners, they had not only pleaded about the settlement deed but also the documents as early as in August 2008. Even thereafter, no steps had been taken by the respondents 1 to 3 to amend the plaint. It was only when the first respondent had been examined as P.W.1 and the document as Settlement Deed dated 22.01.2008, which was marked as Ex.A.7 on 18.07.2011 and that a year later, the Amendment Application has been filed on 03.07.2012. Pending trial and that too with reference to an issue which was within their knowledge and pleaded by them as early as in June 2008. The only attempt on the part of the respondents 1 to 3 appears to be to drag on the proceedings. The learned District Munsif, Alandur had committed an error by allowing the said Application only on the ground

that an opportunity should be given to the plaintiffs/respondents 1 to 3. This shows the non application of mind on the part of the learned District Munsif, Alandur. The condonation of delay is not a mere ritual and it can be ordered only when cogent and convincing reasons are put forward. Therefore, the order passed by the learned District Munsif, Alandur in I.A.No.1098 of 2012 is liable to be set aside.

12. In the result, this Civil Revision Petition is allowed and the order passed by the learned District Munsif, Alandur in I.A.No.1098 of 2012 in O.S.No.248 of 2008 dated 24.07.2012 is set aside. Considering the fact that the suit is of the year 2008, the learned District Munsif, Alandur is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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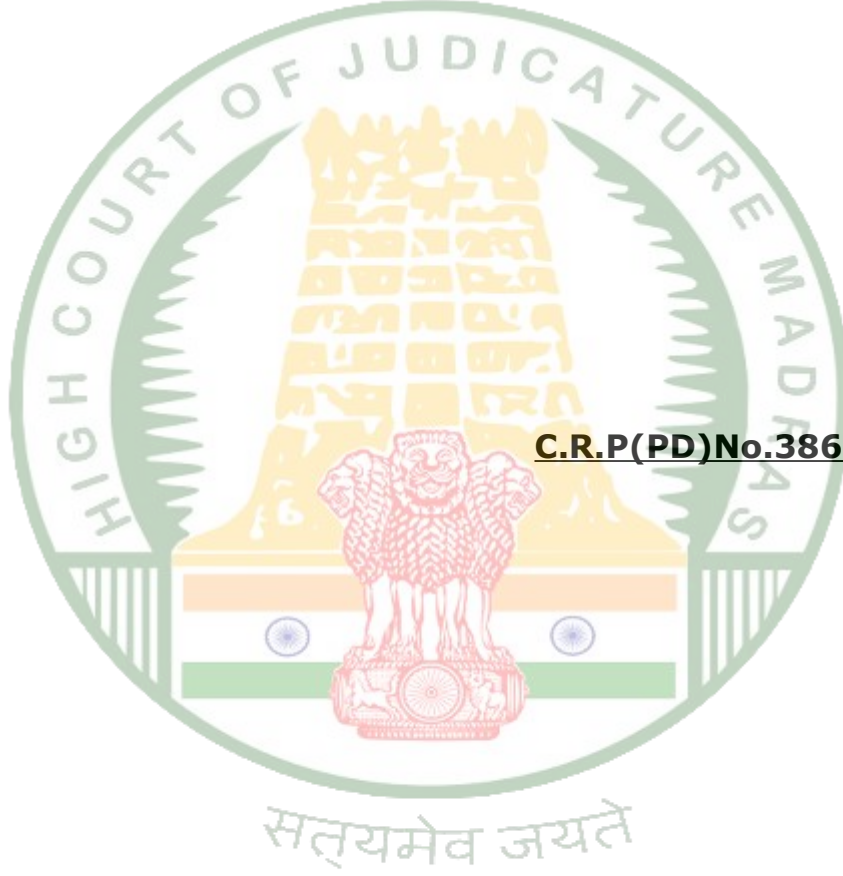
Index : Yes/No

P.T.ASHA, J.,

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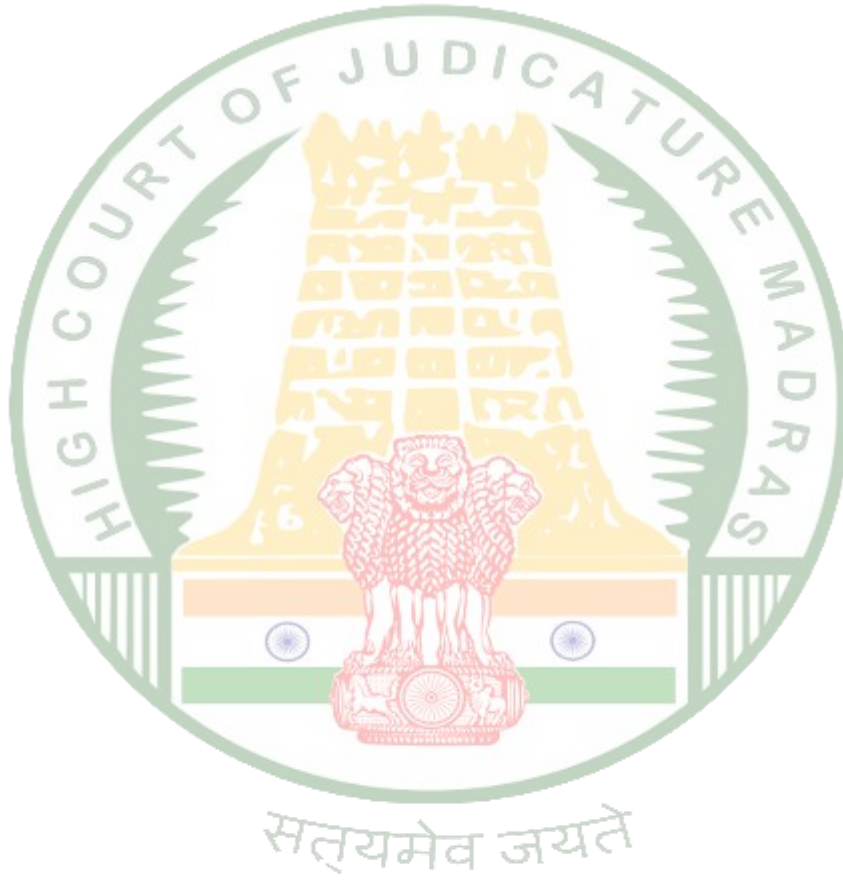
To

The Additional District Munsif Court,
Alandur.



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