

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. (PD) Nos.707 & 708 of 2009
and M.P.No.1 of 2009**

**Judgment reserved on
23.11.2017**

**Judgment pronounced on
03.01.2018**

Tamil Nadu Wakf Board
Represented by its C hairman
Having its office at
1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001

... Petitioner in both CRPs

Vs

1.B.Jothi

2.The District Collector
Chennai District
Singaravelar Maligai
Chennai – 600 001

3.The Tahsildar
Mylapore – Triplicane Taluk
Greenways Road, R.A. Puram
Chennai – 600 028.

4.Nazruddin

... Respondent in both CRPs

Common Prayer : Civil Revision Petitions are filed under Article 227 of the constitution of India against the order and decretal order in I.A.No.3344/2009 in O.S.No.1716/2009 on the file of VII Court of Small Causes, Chennai dated 14.03.2009 and taking on file the suit in O.S.No.1716/2009 on the file of VII Asst. City Civil Court @ Chennai as illegal, perverse and liable to be struck off.

For Petitioner : Mr.V.Lakshmi Narayanan
in both CRPs

For Respondents : No appearance for R1 to R3
in both CRPs R4 – Died

COMMON ORDER

These Civil Revision Petitions are filed against the order and decretal order in I.A.No.3344/2009 in O.S.No.1716/2009 on the file of VII Court of Small Causes, Chennai dated 14.03.2009 and to strike off the plaint in O.S.No.1716/2009 on the file of VII Asst. City Civil Court, Chennai as illegal and perverse.

2. In both the Civil Revision Petitions, the petitioner is the first defendant, the first respondent is the plaintiff and the respondents 2 to 4 are defendants 2 to 4 in O.S.No.1716 of 2009. Since the issues involved in both the Civil Revision Petitions are one and the same, this Common order is passed.

3. The first respondent filed the above suit for declaration that the suit property is not a Wakf property and for permanent injunction restraining the petitioner and respondents 2 to 4 from interfering with her peaceful possession and enjoyment of the suit property. According to the first respondent, she has filed suit for the relief sought for therein on the ground that the land measuring 7500 sq.ft. being the suit property was in possession of her mother-in-law Nagalakshmi who has put up superstructure and subsequently, the first respondent and her husband completed the same. She is in possession of the suit property and living with her family members and also let out various portions to the tenants. It is a private property and it does not belong to the petitioner Wakf Board. Alongwith the suit, she filed I.A.No.3344 of 2009 for interim injunction, pending disposal of the suit.

4. The learned Judge, by order dated 14.03.2009, adjourned the application to 23.03.2009 for production of Directorate of Revenue Authorities document and ordered status quo to be maintained by the respondents till then.

5. Against the order of status quo dated 14.03.2009 made in I.A.No.3344/2009 in O.S.No.1716/2009, the petitioner has filed

present CRP (PD) No.707 of 2009. The petitioner has also filed CRP (PD) No.708 of 2009 to strike off the plaint in O.S.No.1716 of 2009.

6. Though notice was served on the first respondent and her name printed in the cause list, there was no representation for the first respondent in person or through counsel. Hence, this Court, on 01.11.2017 directed the learned counsel for the petitioner to serve notice privately on the learned counsel for the first respondent who is appearing in the suit before City Civil Court, Chennai. Accordingly, notice was served on Mr.Janarthanan, learned counsel appearing for the first respondent, by the learned counsel for the petitioner, as per the order of this court. The name of the said Janarthanan, learned counsel for the first respondent appearing before the lower court was printed in the cause list today but there is no representation by him or on his behalf.

7. The learned counsel for the petitioner contended that the first respondent is claiming possession of the suit property on the basis of possession of Mrs.Nagalakshmi who is her mother-in-law. It is not the case of the first respondent that Nagalakshmi or her husband Bakthavatsalam died and she had succeeded to the possession. As a third party, suit filed by her is not maintainable

and order of status quo granted by the learned Judge is not valid. The learned counsel for the petitioner further contended that the petitioner filed O.S.No.283 of 1945 on the file of City Civil Court, Chennai against one Arunachala Naicker as an encroacher and initiated proceedings against Nagalakshmi under Section 54 of the Wakf Act, 1995 on 14.09.1998 and the said Nagalakshmi gave reply on 22.10.1998.

7(a) In the proceedings before the Chief Executive Officer of the Tami Nadu Wakf Board, the husband of Nagalakshmi gave evidence on 12.10.1998, 22.10.1998 and 26.10.1998. The Chief Executive Officer of the Wakf Board passed order on 15.12.1998 under Section 54 of the Wakf Act. On 16.09.2002, the third respondent, Tahsildar issued warrant of delivery of vacant possession. The said Nagalakshmi filed W.P.No.37094 of 2002 before this Court challenging the said warrant issued by the Tahsildar. This Court, dismissed the said writ petition on the ground that appeal remedy is available before the Tribunal. The said Nagalakshmi filed O.S.No.5857 of 2002 on the file of Wakf Tribunal at Chennai and the same was dismissed on 24.03.2008. CRP (NPD) No.2862 of 2008 filed by Nagalakshmi against the order of Wakf Tribunal was also dismissed by this Court on 11.02.2009.

7(b) This Court, in M.P.No.1 of 2009 in CRP (NPD) No.2862 of 2008 granted stay for a period of 30 days on 13.02.2009. The said Nagalakshmi has stated that she has filed SLP before the Hon'ble Apex Court and furnished Diary No.7137 of 2009 but no order was passed by the Hon'ble Apex Court. The first respondent, suppressing all the above facts, filed the present suit for the very same property as though the property is a private property and she is entitled to be in possession. In the earlier proceedings, the first respondent's mother-in-law was declared as encroacher and the first respondent is not entitled to claim any right under her mother-in-law. The first respondent has played fraud on the court and she is re-litigating the entire issue.

7(c) Further, the Civil Court has no jurisdiction to entertain and decide the suit in respect of Wakf property and only a Wakf Tribunal is the competent court to decide the issue in respect of the Wakf property. The aggrieved person must approach the Wakf Tribunal within one year from the date of cause of action. The suit is barred by limitation. The learned Judge, without considering any of the above facts, granted order of status quo which is not valid and it has to be set aside and prayed for striking off the plaint.

7(d) The learned counsel for the petitioner further submitted that the possession of the suit property except residential portion was taken by the third respondent Tahsildar and was handed over to the petitioner and the petitioner is in possession and enjoyment of the entire property.

8. Heard the learned counsel for the petitioner and perused the materials available on record.

9. The learned counsel for the petitioner has substantiated his contentions by producing order of the Chief Executive Officer of Tamil Nadu Wakf Board passed against Nagalakshmi, the order of this Court dated 27.09.2002 made in W.P.No.37094 of 2002, the judgment dated 24.03.2008 dismissing O.S.No.5857 of 2002 filed by Nagalakshmi, mother-in-law of first respondent, order dated 11.02.2009 of this Court dismissing CRP (NPD)No.2862 of 2008 and relied on the following judgments -

(1) 1994 SCC (6) 322 [Bloom Dekor Limited v. Subhash Himatlal Desai]

33. This Court had occasion to lay down the principles governing the grant of injunction in such matters in *Morgan Stanley Mutual Fund*¹. At para 44 (of JT) it is stated thus: (SCC pp. 241-42, para 36) "As a principle, *ex parte* injunction could be granted only under exceptional circumstances. The facts which should weigh with the court in the grant of *ex parte* injunction are-

"(a) whether irreparable or serious mischief will ensue to the plaintiff;

(b) whether the refusal of *ex parte* injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant *ex parte* injunction;

(e) the court would expect a party applying for *ex parte* injunction to show utmost good faith in making the application.

(f) even if granted, the *ex parte* injunction would be for a limited period of time.

(g) General principles like *prima facie* case, balance of convenience and irreparable loss would also be considered by the court." In this connection reference was made to *United Commercial Bank v. Bank of India*⁶ and *Shiv Kumar Chadha v. Municipal Corpn. of Delhi*⁷.

**(2) 2002 (1) MLJ 510 [Rt. Rev Dr.V.Devasahyam,
Bishop In... v. D.Sahayadoss and Ors.]**

8.....This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party which invokes the jurisdiction of the court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. This principle was approved and accepted in well-known cases of *Toylor v. Taylor*, 1875 (1) Ch D 426: 45 LJ Ch 373 and *Nazir Ahmed v. Emperor*, AIR 1936 PC 253 (2). To make it clear that whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed. It is also relevant to note the Constitutional Bench decision of the Apex Court in *Mohinder Singh Gill v. Chief Election Commissioner*, , wherein Their Lordships have held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In the light of the specific provision, namely, Proviso to Rule 3, in the absence of recording reasons for granting ad-interim injunction even before notice to the opposite party, I hold that the impugned order of the learned

Subordinate Judge dated 29.11.2001 is liable to be interfered.

(3) Order of this Court dated 07.06.2017 made in CRP (PD) No.1236 of 2017 [Mohamed Diwan v. A.Venkatesh]

20.In the facts and circumstances of the present case, I hold that this is a fit case to exercise the extraordinary discretionary power as MP No.83 of 2017 filed by the first respondent is clear abuse of process of court. The judgments relied on by the learned Senior Counsel for the first respondent are not applicable to the facts of the present case and do not advance the case of first respondent.

10. A reading of the above judgments would reveal that the first respondent is re-agitating the issue which was already decided in O.S.No.5857 of 2002 filed by her mother-in-law Nagalakshmi which was confirmed by this Court in CRP ((NPD) 2862 of 2008. The above facts clearly show that the first respondent has suppressed all these facts and filed the present suit and obtained an order of status quo. The contention of the learned counsel for the petitioner that the first respondent has played fraud on the court and obtained an order of status quo by suppressing the material facts has considerable force.

11. From the materials on record, it is clear that the suit filed by the first respondent is clear abuse of process of court and has to be struck off as not maintainable in law. The learned Judge has granted order of status quo without giving any reason and the same is liable to be set aside. The judgments relied on by the learned counsel for the petitioner are squarely applicable to the facts of the present case. Accordingly, the order of the learned Judge dated 14.03.2009 made in I.A.No.3344/2009 in O.S.No.1716/2009 is hereby set aside and the plaint in O.S.No.1716 of 2009 is struck off.

12. In the result, both the Civil Revision Petitions are allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.01.2018

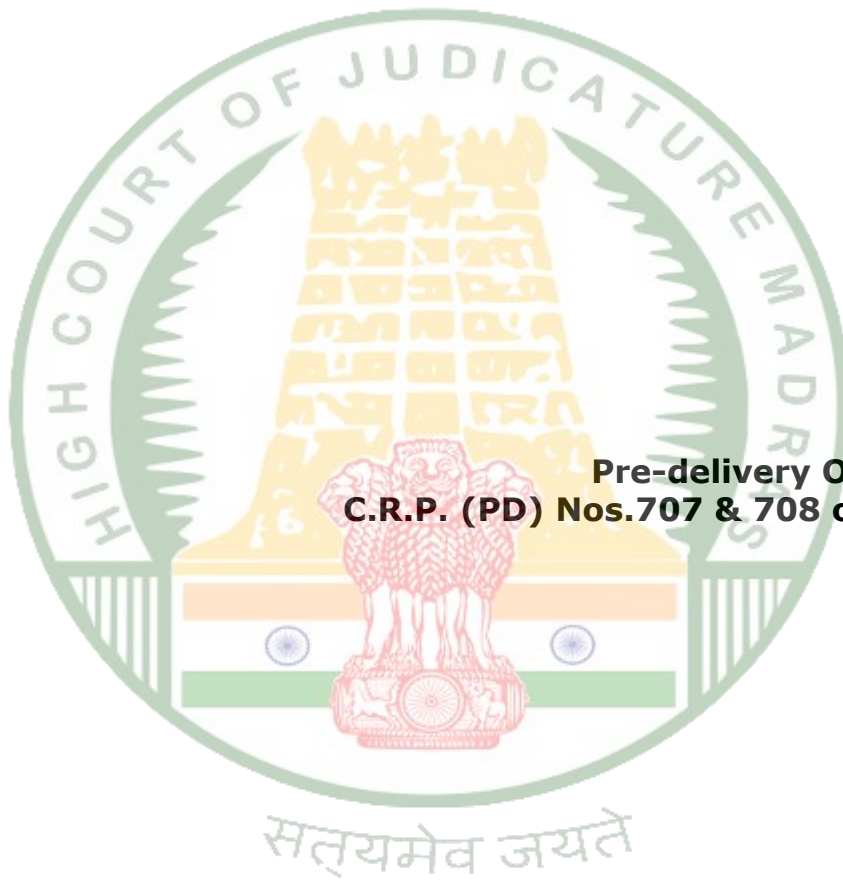
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Index : Yes/No

To

The VII Judge,
Court of Small Causes,
Chennai.

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V.M.VELUMANI, J.
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**Pre-delivery Order in
C.R.P. (PD) Nos.707 & 708 of 2009**

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