

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on : 23.04.2019

Delivered on : 24.07.2019

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**C.R.P.(PD)No.746 and C.R.P.(NPD)No.777 of 2019**

**and**

**C.M.P.Nos.4849, 5113 and 9256 of 2019**

**C.R.P.(NPD)No.746 of 2019:**

Mohamed Ali

...Petitioner

Vs

1.Thiru M.Murthy

2.Thiru M.Kanagarajan

...Respondents

**C.R.P.(NPD)No.777 of 2019:**

Mohamed Ali

...Petitioner

Vs

1.Thiru M.Murthy

2.Thiru M.Kanagarajan

3.M/s.Adhi Sivan Auto Finance,  
Represented by its Managing Partner,

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Thiru R.Prabhakaran,  
S/o.Rathinam  
No.39, Narasingapuram-North,  
Karur,  
Tamil Nadu.

...Respondents

**Prayer in C.R.P.(NPD)No.746 of 2019:** Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the docket order dated 23.05.2012 in unnumbered I.A. in O.S.No.44 of 2006 on the file of the District Judge, Nagapattinam.

**Prayer in C.R.P.(NPD)No.777 of 2019:** Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the docket order dated 29.02.2012 in E.P.No.72 of 2001 in O.S.No.44 of 2006 on the file of the Court of District Judge, Nagapattinam.

For Petitioner : Mr.M.Sricharan Rangarajan  
(Both CRPs)

For Respondent 1 : Mr.V.Raghavachari  
(Both CRPs)

For Respondent 2 : Not Ready in notice  
(Both CRPs)

For Respondent 3 : No appearance  
(C.R.P.No.777 of 2019)

**COMMON ORDER**

The above Civil Revision Petitions are filed invoking the superintending jurisdiction of this Court under Article 227 of the Constitution of India. C.R.P.No.777 of 2019 is filed challenging the order dated 29.02.2012 in E.P.No.72 of 2011 in O.S.No.44 of 2006 on the file of the District Judge, Nagapattinam. C.R.P.No.746 of 2019 is filed challenging the order dated 23.05.2012 in unnumbered I.A. in in O.S.No.44 of 2006. The unnumbered application which is the subject matter of the revision C.R.P.No.746 of 2019 is filed by a third party to the suit long after the decree has been passed and the decree executed. The suit O.S.No.44 of 2006 has been filed for specific performance of an agreement dated 29.06.2006 entered into between the plaintiff, Murthy and the 1<sup>st</sup> defendant, Kanagaraj in respect of the vehicle bearing Registration No.TN 51 B 4242 along with the route permit. It is this route permit that is the

subject matter of dispute.

2. Both the revisions emanate from the very same suit proceedings, namely, O.S.No.44 of 2006, on the file of the District Judge, Nagapattinam. Before proceeding to pass orders in the revisions, it is necessary to briefly chronicle the dates and events which has ultimately culminated in the filing of the two Civil Revision Petitions before this Court. The parties to the proceedings are referred in the same array as in the suit. The Revision Petitioner who is a third party to the suit is referred to as Revision Petitioner.

**Dates and Events:**

| <b><i>Dates</i></b> | <b><i>Events</i></b>                                                                                                                         |
|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| 01.08.2002          | The permit, subject matter of the dispute, is transferred to the vehicle TN 51 B 4242 from the vehicle TN 51 A 8686.                         |
| 24.06.2004          | Permit renewed for the vehicle till 21.07.2004.                                                                                              |
| 20.09.2005          | Hire Purchase Agreement with Athi Sivan Auto Finance (2 <sup>nd</sup> defendant) by the 1 <sup>st</sup> defendant in respect of TN 51 B 4242 |
| 29.06.2006          | Agreement between the Plaintiff (Murthy) and the 1st defendant (Nagaraj) in respect of TN 51 B 4242. Possession given.                       |

| <b>Dates</b> | <b>Events</b>                                                                                                                                                                                           |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 15.12.2006   | The 1st defendant informs the plaintiff that the 2nd defendant, Partner Athi Sivan Auto Finance was willing to purchase the vehicle and ready to repay the advance. The plaintiff turns down the offer. |
| 07.12.2006   | Application made by the 2nd defendant and the plaintiff to the RTA, Nagapattinam. Objections called for and received.                                                                                   |
| 18.12.2006   | The plaintiff lodges a complaint with the District Collector/Zonal Transport Officer about his agreement with Nagaraj. Advised to approach the Civil Court.                                             |
| 20.12.2006   | Suit O.S.No.44 of 2006 filed by the plaintiff.                                                                                                                                                          |
| 22.12.2006   | Interim Injunction obtained                                                                                                                                                                             |
| 25.12.2006   | The permit is transferred in favour of the 2 <sup>nd</sup> defendant.                                                                                                                                   |
| 26.12.2006   | The 1st defendant requests RTA not to transfer permit without notice to him.                                                                                                                            |
| 26.12.2006   | Vehicle forcibly taken away by the 1st defendant.                                                                                                                                                       |
| 27.12.2006   | The plaintiff files complaint before RTA, information about the injunction is given.                                                                                                                    |
| 28.12.2006   | The plaintiff requests RTA, Nagapattinam not to transfer permit and RTA, Nagapattinam informs RTA, Karur not to transfer permit as he intends holding a personal enquiry on 22.01.2007.                 |
| 11.01.2007   | RTO, Karur issues memo to the plaintiff.<br>W.P.No.1987 of 2007 filed by the 1st defendant and interim stay granted                                                                                     |
| 03.10.2007   | Writ Petition disposed of stating that the plaintiff can move an appeal under Section 89.                                                                                                               |



| <b>Dates</b> | <b>Events</b>                                                                                                                                                                                                    |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|              | M.V.A.No.461 of 2007 filed by the plaintiff                                                                                                                                                                      |
| 31.12.2007   | Permit transferred to vehicle No.TN 58 J 3279 expiring 21.07.2009.                                                                                                                                               |
| 20.10.2008   | Athi Sivan Auto Finance impleaded in O.S.No.44 of 2006                                                                                                                                                           |
| 08.03.2009   | Permit renewed from 21.07.2009 to 21.07.2014                                                                                                                                                                     |
| 30.01.2010   | STAT dismisses the appeal M.V.A.No.461 of 2007 Observes that the grant of injunction not conveyed to the 1st defendant or the RTA. No direction given to RTA.                                                    |
| 10.06.2010   | Permit is transferred from the 2nd defendant to Mohammed Ali.<br>Permit expires on 21.07.2010 in respect of Vehicle No.TN 58J 3279                                                                               |
| 01.02.2011   | Suit O.S.No.44 of 2006 decreed.                                                                                                                                                                                  |
| 29.02.2012   | Sale deed in respect of the vehicle given to the plaintiff.<br>Appeals moved.                                                                                                                                    |
| 10.08.2012   | Proceeding of RTA, Nagapattinam.<br>Rejects request of the plaintiff to transfer the permit in his name.                                                                                                         |
| 10.07.2014   | Permit renewed for vehicle TN 51 F 9444 from 21.07.2014 to 20.07.2019.<br>W.P.No.13042 of 2013 filed by the plaintiff challenging the proceedings dated 10.08.2012 of the RTA rejecting his request for transfer |
| 22.06.2016   | W.P.No.13042 of 2013 allowed matter remitted back to the RTA for fresh consideration. Notice to be issued to the 1st defendant and the 2nd defendant as also the revision petitioner.                            |

| <b>Dates</b> | <b>Events</b>                                                                                                                                                                     |
|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 13.10.2016   | RTA holds that the plaintiff is entitled to the transfer of permit                                                                                                                |
| 01.11.2016   | In W.P.No.37821 of 2016, the revision petitioner challenges the order dated 13.10.2016. Writ dismissed. The revision petitioner asked to file appeal under Section 89 of the Act. |
| 02.01.2019   | MVA.No.155 of 2016 filed by the 2nd defendant<br>MVA.No.156 of 2016 filed by the revision petitioner.<br>Appeals Dismissed.                                                       |

3. From the above chronology of dates and events it appears that the present revision petitioner who is a third party to the suit and execution proceedings is seeking to file the application for re-calling the Judgement and Decree in the suit O.S.No.44 of 2006 passed on 01.02.2011 to strike of the plaint and consequently the Execution Proceedings in E.P.No.72 of 2011, which has also attained finality. Though the counsels on either side have argued at length on the merits of the case this Court has only extracted the arguments relevant for disposing of the Civil Revision Petitions.

4. Mr.V.Ragavachari, who has appeared on behalf of the 1st respondent, at the outset objected to the very filing of the revision stating that the petition filed under Article 227 of the Constitution of India is not maintainable. He would argue that the revision petitioner is a third party to the proceedings and the person under whom he claims a right has chosen to remain ex parte in the suit proceedings and has also not challenged the ex parte decree to date. The revision petitioner has filed the application after the decree attained finality.

5. He would argue that though the property in question is a movable property however, the principles of Order XXI Rule 102 of the Code of Civil Procedure, would still apply and therefore a *pendente lite* purchaser cannot be permitted to question the decree which has attained finality. He would argue that the 2nd



defendant under whom the revision petitioner claims a right to the property had filed an application to implead himself in the suit O.S.No.44 of 2006 in I.A.No.82 of 2007. The said application was allowed by order dated 20.10.2008 and the 2<sup>nd</sup> defendant was brought on record. Despite being added as a party defendant to the proceedings the 2<sup>nd</sup> defendant did not choose to contest the suit and ultimately the ex parte decree was passed as early as on 01.02.2011 by the District Judge, Nagapattinam.

6. The 2<sup>nd</sup> defendant and the 1<sup>st</sup> defendant had not taken any steps whatsoever to have the ex parte decree set aside. He would further argue that the parties cannot feign ignorance about the ex parte decree since the same is being projected by the plaintiff before the Regional Transport Authority as well as before the State Transport Appellate Tribunal. He would further argue that the decree having become final, the revision petitioner cannot, at this juncture, seek to set aside the Judgement and

Decree in O.S.No.44 of 2006, passed as early as in the year 2011.

7. He would further draw the attention of this Court to the observation made by this Court in W.P.No.13042 of 2013, wherein the learned Judge observed that the issue of maintainability of the suit cannot be raised by the revision petitioner when neither the decree had been challenged nor the execution of the sale deed by the Court. The learned Judge had also observed that the first issue which has to be considered is whether the transfer in favour of the 2nd defendant was a valid transfer. It is only after the transfer in favour of the 2nd defendant was found to be valid that the revision petitioner could stake a claim. He would rely upon the Judgement reported in **1993-2-LW-430 - V.K.Elayalwar Vs. N.Govindarajulu and others.**

8. On the merits of the revision, he would contend that the

suit was very much maintainable as it was a suit seeking to enforce an agreement between the parties with relation to the vehicle and the permit issued in respect of the said vehicle. It is not the transfer of permit that was the subject matter of the suit. The injunction that was sought for was only with reference to the grant of permit and not the transfer of permit and therefore the orders that were obtained from the Civil Court was valid as it was from the Court having inherent jurisdiction to decide the issue on hand.

9. Mr.Sricharan Rangarajan, learned counsel appearing on behalf of the revision petitioner would contend that the very suit that is filed is not maintainable and the learned District Judge, Nagapattinam, lacked the inherent jurisdiction to try the suit. He would draw the attention of the Court to Section 94 of the Motor Vehicles Act, 1988, (hereinafter called the Act) which clearly states that the Civil Court will not have jurisdiction to entertain question relating to the grant of permit under the Act and no

injunction in respect of any action taken or to be taken by the authorities can be entertained by the Civil Court. He would therefore contend that the decree obtained in O.S.No.44 of 2006 is without Jurisdiction.

10. He would further argue that in the order passed by this Court in W.P.No.1987 of 2007, no direction was given to approach the Civil Court and it was only a direction to the plaintiff to approach Appellate Authority under Section 89 of the Act. He would argue that since the Judgement has been passed by the Court which inherently lacks jurisdiction, a petition under Article 227 was very much maintainable by the person who is aggrieved by the same. He would further argue that transfer of permit can be done only by the Transport Authority under Section 82 of the Act and not by the Civil Court.

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11. He would contend that the concept of lis pendens would not apply to the decree which has been obtained from a Court

which inherently lacks Jurisdiction. He therefore attacked the order on the ground of inherent lack of jurisdiction and on the ground of res judicata. In support of his arguments he would rely upon the following Judgements:

- i) 2007 (2) SCC 355 - Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and others*
- ii) 1993 SCC Online All 290 - Surendra Pal Singh Vs. Munsif Aonla, Bareilly and others*
- iii) 2011 SCC Online Mad 1238 - Amanulla Sheriff and others Vs. Fazeelath Begum and others*
- iv) 2014 SCC Online Bom 430 – Deputy Regional Transport Officer Vs. Yashwant*
- v) 2019 SCC Online 223 - Shashi Prakash Khemka Vs. NEPC Micon.*

12. Heard the counsels and perused the papers. The Civil Revision Petitions have been filed by the revision petitioner who is a third party to the suit proceedings and the applications have



been filed invoking the provisions of Section 151 of the Code of Civil Procedure to recall the Judgement and Decree in O.S.No.44 of 2006 and thereafter strike of the plaint. With the passing of the Judgement and Decree the learned Judge had become functus officio and there was no question of the learned Judge taking up the application and passing orders there on. Functus officio is a latin term meaning "*having performed his or her office*". The Honourable supreme Court in the Judgement reported in **(1999) 3 SCC 500 – Dwaraka Das Vs. State of Madhya Pradesh and another**, has held that after the passing of the Judgement and Decree the Court can entertain applications only for correcting errors arising therein on account of accidental slips or omissions. The Honourable supreme Court has held as follows:

*"The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the Judgement, decree or order.*

*The settled position of law is that after the passing of the judgement, decree or order, the Court or the tribunal becomes functus officio and thus being not entitled to vary the terms of the judgements, decrees and orders earlier passed."*

13. Admittedly the predecessor in interest to the revision petitioner, namely, the 1st defendant and the 2nd defendant were parties to the suit and they chose to remain ex parte despite the fact that simultaneously proceedings were being moved before the authorities under the Act. The two of them had not deemed it fit to file any application to set aside the ex parte decree or challenge the Judgement and Decree by filing an appeal. The revision petitioner is only a pendente lite purchaser, that too a purchaser much after the plaintiff had obtained interim orders of injunction. Further the suit O.S.No.44 of 2006 was filed only to enforce an agreement between the parties with relation to the vehicle and the permit issued in respect of the said vehicle.

It is not the transfer of permit that was the subject matter of the suit. The injunction that was sought for was only with reference to the grant of permit and not the transfer of permit and therefore the orders that were obtained from the Civil Court was valid as it was from the Court having inherent jurisdiction to decide the issue on hand.

14. It is a well established principles of law that executing Court cannot go behind the decree. The suit O.S.No.44 of 2006 having been decreed with direction to the 1st defendant to enforce the terms of agreement dated 29.06.2006, executed by him and execute the sale deed in support of the Bus bearing No.TN 51 B 4242 after receiving the sale consideration, the executing Court has executed the decree. Once again the said order has not been challenged by the defendants to the suit under whom the revision petitioner claims a right to the permit.

15. It is also seen that the third party namely the revision

petitioner has also invoked the Jurisdiction of the said State Transport Appellate Tribunal by filing an appeal challenging the order passed by the Regional Transport Authority dated 13.10.2016, holding that the plaintiff was entitled to transfer of said Carriage permit for TN 51 B 4242. The written arguments which has been submitted by the learned counsel for the petitioner relates to the proceedings which had taken place after the filing of the Civil Revision Petitions and this Court cannot go into the same.

16. In view of the fact that the District Judge, Nagapattinam had become functus officio after the passing of the Judgement and Decree, there was no question of the revision petitioner a third party reopening the proceedings. As rightly pointed out by the counsel for the respondent the Civil Revision Petitions challenging the order in unnumbered I.A. in O.S.No.44 of 2006 and execution proceedings in E.P.No.72 of 2011 in O.S.No.44 of 2006 filed under Article 227 of the Constitution of India is not

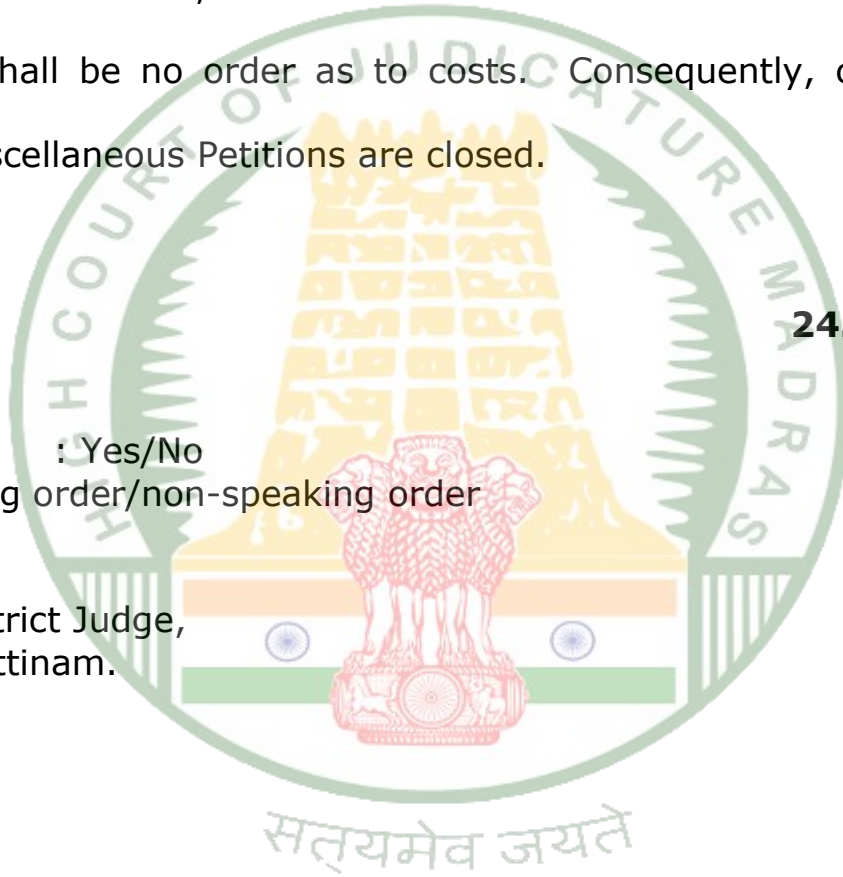
maintainable.

In the result, the Civil Revision Petitions are dismissed.  
There shall be no order as to costs. Consequently, connected  
Civil Miscellaneous Petitions are closed.

**24.07.2019**

Kan  
Index : Yes/No  
Speaking order/non-speaking order

To  
The District Judge,  
Nagapattinam.



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**P.T.ASHA, J.,**

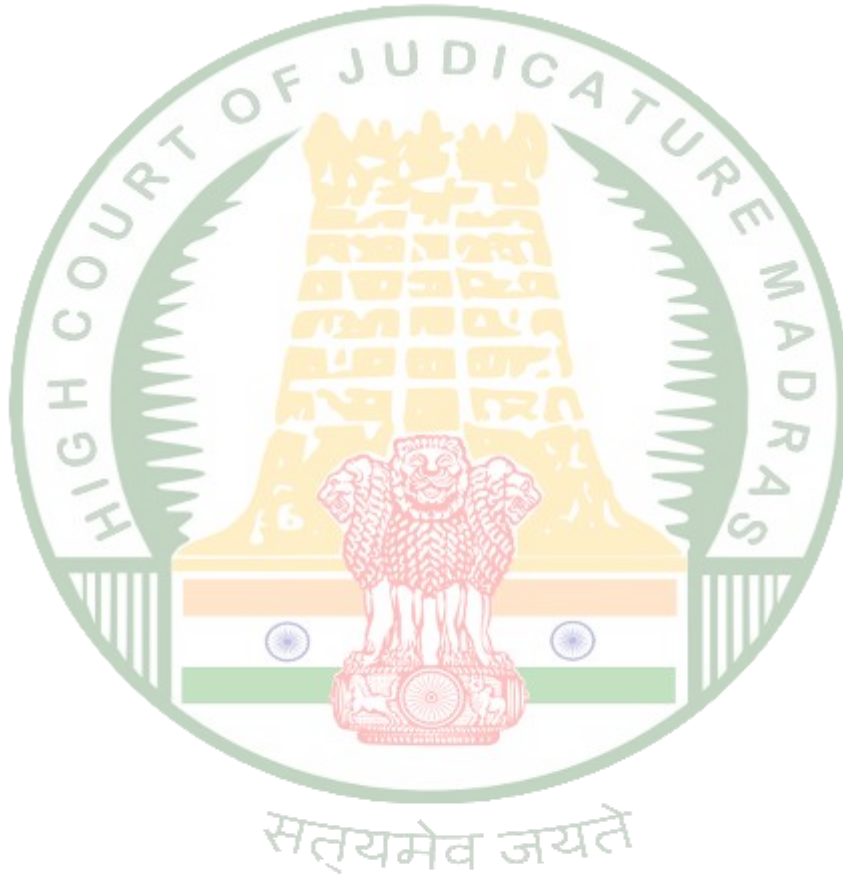
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**Pre-Delivery order in  
C.R.P.(PD)No.746 and  
C.R.P.(NPD)No.777 of 2019 and  
C.M.P.Nos.4849, 5113 and  
9256 of 2019**

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**24.07.2019**



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