

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (PD) NOS.3442 AND 3444 OF 2018
AND
CMP NOS.19321 AND 19327 OF 2018

The Managing Trustee
Sri Aurobindo Ashram Trust
Pondicherry
Having office at
Sri Aurobindo Ashram Trust
Pondicherry - 2.

... Petitioner
in both CRPs'

VS.

R.K.Selvarajan (Died)
1.Krishnakumari
2.Aishwarya Lakshmi
3.Jeyendiran
4.Murugavel

... Respondents 1 to 4
in both CRPs'

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order dated 26.07.2018 passed in I.A.No.536 of 2018 and I.A.No.537 of 2018 respectively in O.S.No.298 of 2001 by the Principal District Munsif at Pondicherry and to allow I.A.No.536 of 2018 and I.A.No.537 of 2018 respectively in O.S.No.298 of 2001.

For Petitioner : Mr.C.A.Diwakar
For Respondents : Mr.S.Vadivel

COMMON ORDER

These Civil Revision Petitions are preferred against the common order dated 26.07.2018 passed in I.A.No.536 of 2018 and I.A.No.537 of 2018 respectively, in O.S.No.298 of 2001 to permit the petitioner/ first defendant to pursue the defence raised by the second defendant in his written statement, without prejudice to the plea of the petitioner that they are the bonafide purchaser and to permit them to file an additional written statement under Section 151 CPC.

2. Originally, the father of the second defendant filed a suit against the petitioner and the second defendant, to declare 12 nos. of settlement deeds as null and void and the consequential sale deed executed in favour of the petitioner / first defendant as also null and void. Though the second defendant / fourth respondent herein, filed a written statement, after the demise of the plaintiff, who is his father, he remained exparte in the proceedings throughout. Initially, there was animosity and misunderstanding between the father and son.

After the demise of the father, the second defendant appears to have colluded with the other legal representatives. The petitioner being the bonafide purchaser of the property, has been left without the support of the second defendant. Therefore, he filed I.A.Nos.77 and 78 of 2018 before the Trial Court to reopen and recall the defendant for the purpose of marking of certain documents. The said petitions were allowed on 14.02.2018. Thereafter also, the second defendant remained exparte and apparently colluded with the respondents and hence, he filed the present petition as mentioned above. The Trial Court proceeded on the basis that the previous petitions filed by the petitioner vide I.A.Nos.77 and 78 of 2018 were dismissed and hence, the present petition cannot be filed and if the petitioner is permitted to bringing the subsequent developments, during trial, there will be no end to litigation and hence, dismissed the petitions. Aggrieved over the same, the petitioner is before this Court, contending that unless they are permitted to take the defense taken by the second defendant and contest the case, their valuable right will be deprived of.

3. The learned counsel appearing for the respondents would contend that it is mere apprehension that the second defendant is

colluding with the legal representatives of the plaintiff. Therefore, on apprehension, the petitions are not maintainable.

4. I have heard the submissions made on either side and perused the materials available on record.

5. The learned counsel appearing for the petitioner would rely on a judgment of the Hon'ble Supreme Court in **JAI PRAKASH GUPTA VS. RIYAZ AHAMAD AND ANOTHER [2009 (10) SCC 197]** in support of his contention. Paragraph nos.22 to 25 of the said judgment reads as follows:

"20.It is true that a suit or an original proceeding is to be tried in all its stages on the cause of action as it existed on the date of its commencement. The only exception to this rule is that a Court may take notice of events, which have happened since the institution of the suit or the original proceeding and grant relief to the parties on the basis of the altered conditions, is applied in cases where it is shown that the original relief claimed has, by reason of subsequent change of circumstances,

become inappropriate or that it is necessary to base the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties. [See Rai Chand Mandal and another Vs. Biswa Nath Mandal and others; XX CLJ 107]. This was the view expressed by Sir Ashutosh Mukherjee, J. (as His Lordship then was) on this question when subsequent developments should be taken into consideration by the Court during the pendency of a proceeding or of a suit or even at the appellate stage.

21. *The same view has been expressed yet in a later decision of the Calcutta High Court to the effect that where it is shown that the original relief claimed by reason of subsequent change of circumstances become inappropriate or that it is necessary to base the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties. [See Nuri Mian Vs. Ambica Singh and another 24 CLJ 140]*

22. *Again in Pratap Rai Tanwani Vs. Uttam Chand (2004 (8) SCC 490), this Court also held that subsequent developments can be taken into consideration*

to afford relief to the parties, provided only when such developments had a material impact on those rights and obligations.

23. Similar was the view expressed in Ramesh Kumar Vs. Kesho Ram [1992 Supp. (2) SCC 623 where this Court observed as follows : -

"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief."

(Emphasis supplied).

24. It also reminds us of a celebrated Judgment of a Full Bench decision of the Nagpur High

Court in Chote Khan Vs. Mohammad Obedalla Khan [AIR 1953 Nagpur 361], in which the view of the Court to take note of the subsequent developments specially at the appellate stage was taken up for consideration. Hidayatulla, J (as His Lordship then was) held as under :

"7....on a review of judicial opinion, that an action must be tried in all its stages on the cause of action as it existed at the commencement of an action. No doubt, Courts 'can' and sometimes 'must' take notice of subsequent events, but that is done merely 'inter partes' to shorten litigation but not to give to a defendant an advantage because a third party has acquired the right of the plaintiff. (Emphasis supplied)"

25. In view of the discussions made hereinabove, it is therefore, a settled proposition of law that subsequent developments of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the Court, even at any stage of the proceeding, is not precluded from taking a cautious

cognizance of the subsequent developments of fact and law to mould the relief. "

6. Further, in the judgment of the Hon'ble Supreme Court in **RAMESH KUMAR VS. KESHO RAM [1992 SUPP (2) SCC 623]** it is observed as under:

"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief. In Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhari Chief Justice Sir Maurice Gwyer observed:

"But, with regard to the question whether the court is entitled to take into

account legislative changes since the decision under Appeal was given, I desire to point out that the rule adopted by the Supreme Court of the United States is the same as that which I think commends itself to all three members of this Court. In (1934) 294 US 600 at p. 607, Hughes C. J. said :

We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.

And in Pasupuleti Venkateswarlu v. The Motor & General Traders Justice Krishna Iyer said :

"We feel the submissions devoid of substance. First about the jurisdiction and

propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justified bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice-subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation

pends, the power exists, absent other special circumstances repelling report to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. "

These principles have since been reiterated and reaffirmed in [Hasmat Rai v. Raghunath Prasad](#) .

7. The contention of the appellant's learned Counsel is that the subsequent events pleaded would require to be proved as otherwise it would amount to granting a decree on pleadings alone without more and without evidence to prove the alleged subsequent factual events. It is urged that the High Court accepted the averments themselves as their own proof and proceeded straightway to reverse the decree of dismissal and to grant possession for the first time in revision."

7. The learned counsel appearing for the petitioner would also rely on a judgment of the Hon'ble Supreme Court in **GAIV DINSHAW IRANI AND OTHERS VS. TEHMTAN IRANI AND OTHERS [2014 (8) SCC 294]** wherein it is held as under:

"48. Considering the aforementioned changed circumstances, the High Court taking note of the subsequent events moulded the relief in the appeal under Section 96 of the Code of Civil Procedure and the same has been challenged by the appellants before us. In ordinary course of litigation, the rights of parties are crystallized on the date the suit is instituted and only the same set of facts must be considered. However, in the interest of justice, a court including a court of appeal under Section 96 of the Code of Civil Procedure is not precluded from taking note of developments subsequent to the commencement of the litigation, when such events have a direct bearing on the relief claimed by a party or one the entire purpose of the suit the Courts taking note of the same should mould the relief accordingly. This rule is one of ancient vintage adopted by the Supreme Court of America in *Patterson vs. State of Alabama*[11] followed in *Lachmeshwar Prasad Shukul vs Keshwar Lal Choudhury*[12]. The aforementioned cases were recognized by this Court in *Pasupuleti Venkateswarlu vs. The Motor and General Traders*[13] wherein he stated that:

“4....It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances.

Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course

in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

8. It is seen from the records that in the deed of Memorandum of Agreement dated 18.04.2016, the second defendant assigned certain rights to participate in the acquisition proceedings in favour of the legal representatives of the plaintiff by itself makes it apparent that the apprehension of the petitioner is not baseless, but has some force in it.

9. From the materials produced before this Court, it is

crystal clear that the second defendant is acting harmoniously with the legal representatives of the plaintiff giving up the interest of his purchasers. Once the vendor defects to the other side, ignores and neglects the interest of his purchasers, it is for the purchaser to step into the shoes of his vendor and defend his case. From the pleadings and the documents produced before this Court, it is clear that the petitioner is not in a position to defend himself without the support of the vendor. In such circumstances, the prayer of the petitioner to file additional written statement and to pursue the defense raised by the second defendant in his written statement during trial is just *bonafide*. Under such circumstances, this Court is of the considered opinion that the order passed by the Trial Court on the premise that the previous I.A.Nos.77 and 78 were dismissed, is erroneous.

10. In similar circumstances, the Trial Court has allowed the petitions filed by the petitioner. The findings of the learned Trial Judge in I.A.Nos.77 and 78 of 2018 dated 14.02.2018 is more plausible and acceptable. Therefore, the common order dated 26.07.2018 passed in I.A.Nos.536 and 537 of 2018 respectively in O.S.No.298 of 2001 is set aside.

11. In fine, the Civil Revision Petitions are allowed. No costs.

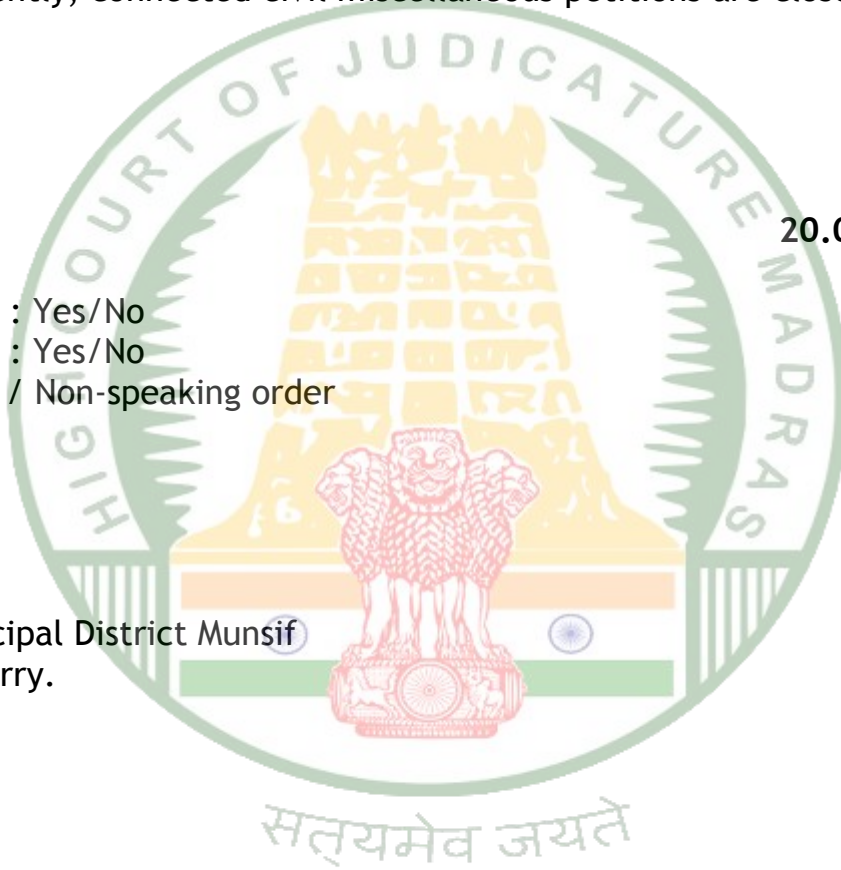
Consequently, connected civil miscellaneous petitions are closed.

20.08.2019

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
TK

To

The Principal District Munsif
Pondicherry.

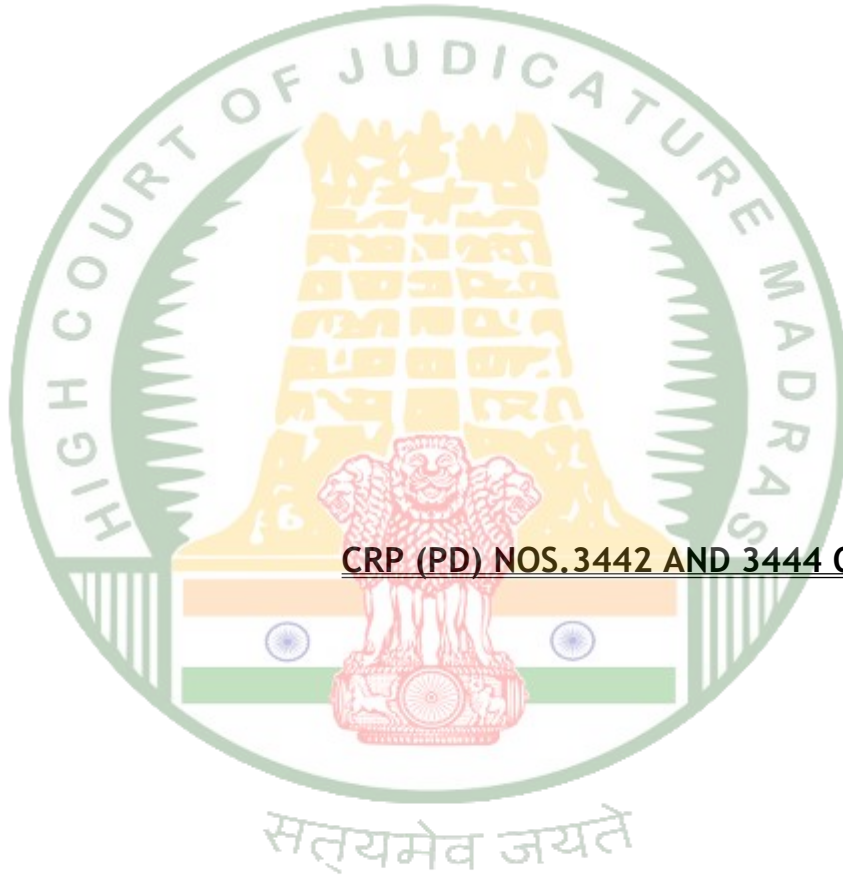


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M.GOVINDARAJ, J.

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