

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.Nos.638, 643 and 647 of 2020 and
C.M.P.No.3321 of 2019 in C.R.P.No.638 of 2020

1. Ashok Vargheese
2. Anand Jacob Vargheese ... Petitioners in all the petitions

Vs.

1. Darmendran
2. Duraivelu
3. Dilliraj
4. Sonny George
5. Lalitha
6. Kumar
7. Inbaroja
8. Yesudoss
9. Stephen
10. Renuka Abraham ... Respondents in all the petitions

Civil Revision Petitions are filed under Article 227 of the Constitution of India to set aside the Fair and Final Decretal orders dated 06.09.2019 passed in I.A.Nos.359 of 2019; 360 of 2019; 358 of 2019 in O.S.No.658 of 2006 on the file of learned Additional District Munsif, Alandur respectively and allow the present Civil Revision Petitions.

For Petitioners : Mr.D.Selvaraju

For Respondents : Mrs.R.Gowri for R1 to R3
R4 to R10 - Given up.

COMMON ORDER

Since the issues involved in these Revision Petitions are one and the same and pertains to the same O.S.No.658 of 2006, they are taken up together and a common order is being passed.

2. These Civil Revision Petitions have been filed against the orders passed in I.A.Nos.358, 359 and 360 of 2019 in O.S.No.658 of 2006 by the learned Additional District Munsif at Alandur dated 06.09.2019 by raising various grounds.

3. The respondents 1 to 3, who are the plaintiffs in the suit in O.S.No.658 of 2006 are the petitioners in I.A.Nos.358, 359 and 360 of 2019 and the petitioners herein are the 7th and 8th respondents to the said I.A and defendants 7 and 8 in the said suit.

4. The case of the plaintiffs / respondents 1 to 3 is that they had filed a suit for declaration and injunction against the respondents 1 to 9 therein

restraining from interfering with peaceful possession of the property and further to declare the 'A' Schedule property, which belongs to the plaintiffs and declare 'B' schedule property as a public lane to enable the plaintiffs to use the way to ingress over the suit property and the 7th and 8th respondents had filed a patta as their exhibits stating that the subject property has been mutated in their name and as against the said patta, the plaintiffs had given a representation to the Tahsildar, Sholinganallur for cancellation of above patta on the ground that the said patta has been obtained by misrepresentation of facts by the 7th and 8th respondents. As the said Tahsildar has not taken any steps to call for an enquiry for cancelling the patta, the plaintiffs had filed a Writ Petition before this Court for a direction to the said Tahsildar to conduct and cancel the patta. This Court directed the said Tahsildar as well as the Revenue Divisional officer, Guindy to conduct enquiry for cancellation of the patta on issuing notice to the petitioners herein in W.P.No.27458 of 2018 dated 25.10.2018.

5. In consequence, I.A.No.358 of 2019 was filed by the plaintiffs for permitting them to receive additional documents of the order passed in Writ Petition and other revenue documents; I.A.No.359 of 2019 was filed by the plaintiffs to re-open their side witness; I.A.No.360 of 2019 was filed by the

plaintiffs to recall the plaintiff's side witness. To the said three petitions, before the court below, the 1st petitioner herein filed counter, which was adopted by the 2nd petitioner herein / 8th respondent before the trial court, wherein they have denied the said allegations as not maintainable; the suit property was purchased by the petitioners herein / 7th and 8th respondents by different sale deeds and the plaintiffs/respondents have managed to encroach the suit property after breaking open the compound wall constructed by the petitioners herein and the suit was posted for arguments on 10.08.2018 after a long duration wherein the examination of witnesses were running for months together and the patta with respect to the suit property was mutated in their name as if they are the absolute owners of the suit schedule property. The Tahsildar has not issued any such notice regarding the representation sent by the plaintiffs and this steps taken by them are abuse of process of law only for protracting the proceedings and the same has to be dismissed.

6. The court below after considering the arguments on both sides, had allowed the said petitions, even though the suit is in the stage of arguments, the plaintiffs / respondents have to be given an opportunity to put forth their case to meet the ends of the justice and no prejudice will be

caused to the petitioners by way of allowing these applications and allowed all the said I.As. Assailing the said orders of the court below, the petitioners herein, who are the 7th and 8th defendants in the suit had filed the present Civil Revision Petitions raising various grounds.

7. Heard the learned counsels on either side and perused the documents placed on record.

8. On perusing the typed set of papers filed before this Court, it could be seen that I.A.No.358 of 2019 in O.S.No.658 of 2006 is filed by the respondents 1 to 3 / plaintiffs under Order VII Rule 14(3) 2 of 151 Civil Procedure Code to permit the petitioners / plaintiffs to receive additional documents of order in Writ Petition. I.A.No.359 of 2018 in O.S.No.658 of 2006 is filed by the respondents 1 to 3 / plaintiffs under Section 151 of CPC for reopening the plaintiffs' side witness and I.A.No.360 of 2018 in O.S.No.658 of 2006 is filed by the respondents 1 to 3 / plaintiffs under Order 18 Rule 17 of CPC to recall the plaintiffs' side witness. By order dated 06.09.2019, the above applications were allowed by the learned Additional District Munsif, Alandur. As against which, the present Civil Revision Petition Nos.638, 643 and 647 of 2020 have been filed. The suit

filed by the plaintiffs is for declaration injunction restraining the defendants therein from interfering with peaceful possession of the suit property and further declaring the 'A' schedule property belonging to the plaintiffs / respondents 1 to 3 and further to declare 'B' schedule property to declare as public lane to enable the plaintiffs to use the way ingress over the suit schedule property.

9. The suit has been filed by the respondents 1 to 3 / plaintiffs as early as in the year 2006 and now, it is in the stage of arguments after a full fledged trial. The reasons stated by the respondents 1 to 3 / plaintiffs before the trial court in the applications seeking for receiving the additional document and reopen and recall the plaintiff side evidence is that they have filed W.P.No.27458 of 2018 and this Court by order dated 25.10.2018 had directed the Tahsildar to conduct enquiry for cancellation of patta; the order copy made in W.P.No.27458 of 2018 is sought to be marked as additional document on the side of the plaintiffa and further to reopen and recall the plaintiffs' side evidence. The learned Additional District Munsif, Alandur has allowed the petition.

10. It is clear that the additional document, which is sought to be introduced is an order passed by this Court in W.P.No.27458 of 2018, wherein a direction was issued to the Revenue Divisional Officer, Guindy to conduct an enquiry for cancellation of patta. This order copy is inconsequential to the suit filed by the respondents 1 to 3 / plaintiffs, as it is only a direction to conduct an enquiry for cancellation of patta. That apart, it is also clear from the records that the trial has commenced and concluded and it is posted for arguments, at this stage, the I.A.s have been filed to recall and reopen the plaintiffs' side evidence is nothing but tactics to delay the suit proceedings.

11. It is seen from order passed by the learned Additional District Munsif, Alandur, that though holding that the suit is filed as early as on 2006 and it is ripe for arguments on completion of full fledged trial, the court below had allowed the applications by granting sufficient opportunity to the respondents 1 to 3 / plaintiffs to put forth their case to meet the ends of justice. The court below failed to see that the document purported to be introduced as additional documents is only an order passed by this Court, which was not culminated to any final order passed by the Revenue Divisional Officer and the said order is only a mere direction to conduct an

enquiry. The Court below has not given any valid reason for allowing the applications filed by the respondents 1 to 3 / plaintiffs, but had merely stated that the parties should be given an opportunity to put forth their case to meet the ends of justice, is not sufficient. The court below ought to have seen the stage at which the recall and reopen petition was filed. Despite the knowledge that the suit is of the year 2006 and is posted for arguments, such applications should have been rejected at the threshold.

12. On going through the order passed by the court below, this Court finds that the reasons stated by the learned Additional District Munsif, Alandur in I.A.Nos.358, 359 and 360 of 2019 is not sufficient for allowing those petitions. That apart, the learned counsel for the respondents 1 to 3 / plaintiffs relied on the Judgment of the **Hon'ble Supreme Court, [M/s Bagai Construction, through its proprietor Lalit Bagai Vs. M/s Gupta Building Material Store] reported in AIR 2013 Supreme Court 1849** to substantiate their case, wherein the Hon'ble Supreme Court has held that reopening and recalling of witnesses to be allowed only on compelling situations. The relevant portion of the said Judgment is extracted hereunder:-

"12. After change of various provisions by way of amendment in the CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 of CPC."

13. In the present case on hand, there is no such compelling situations for re-opening and recalling the plaintiffs' side evidence, the court below had failed to see that the applications filed by the plaintiffs / respondents 1 to 3 are only to delay the conclusion of the suit.

14. Under these facts and circumstances, the orders passed by the the learned Additional District Munsif, Alandur has to be set aside. Accordingly, all the three orders passed in three I.A.s, viz., I.A.Nos.358, 359 and 360 of 2019 dated 25.09.2019 are set aside and the present Civil Revision Petitions are hereby allowed. No costs. Consequently, connected miscellaneous petition is closed.

04.02.2021

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order

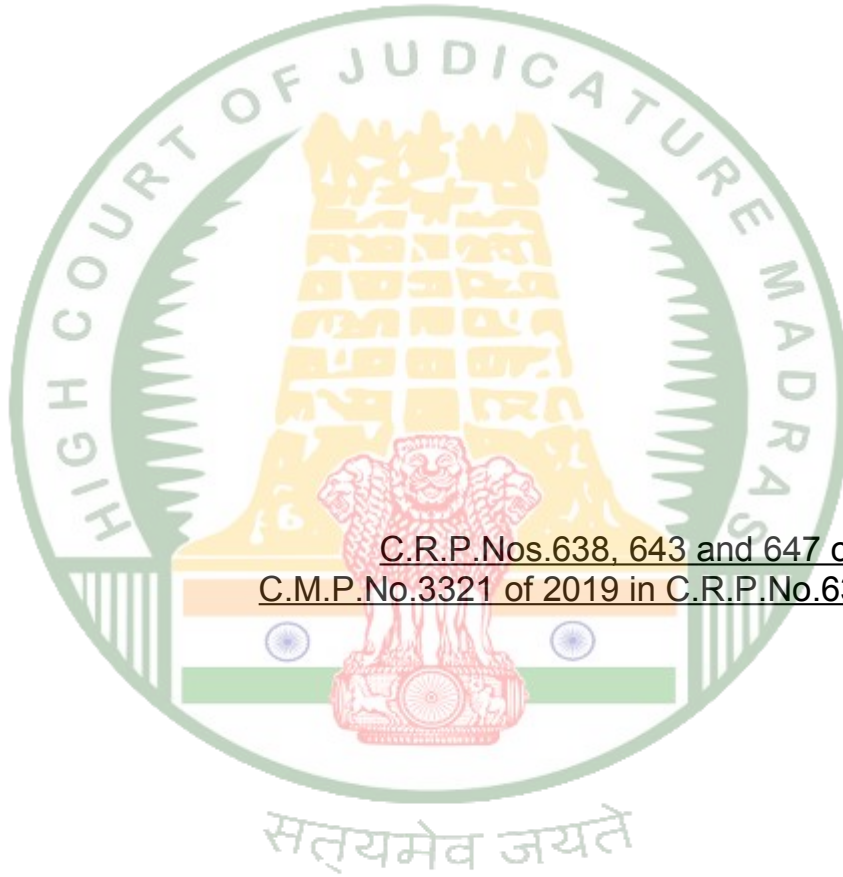
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To

1. The Additional District Munsif,
Alandur
2. The Section Officer,
V.R.Section,
High Court, Madras

V.BHAVANI SUBBAROYAN, J.,

ssd



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