



C.R.P.No.358 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 13.02.2023

Delivered On : 24.03.2023

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.358 of 2023

and

C.M.P.Nos.2985 and 2987 of 2023

E.Thiyagarajan : Petitioner/Appellant/Petitioner/
Respondent/Obstructor/(Third Party)

-VS-

1.Hariharan
2.Baby : Respondents 1 & 2/Respondents 1 & 2 /
Respondents 1 & 2/Petitioners/
Decree Holders (Plaintiffs)

Mohan (died)
Kala (died) : Judgment Debtors in EP/Defendants 1 & 2

3.M.Thiyagarajan
4.M.Lingamoorthy : Respondents 3 & 4/Respondents 5 & 6 /
LRs of deceased Defendants 1 and 2

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, praying to set aside the order in C.M.A.No.48 of



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2021, dated 19.10.2022 on the file of Sub Court, Alandur confirming the order passed in E.A.No.6 of 2018 in E.A.No.227 of 2017 in E.P.No.49 of 2010 in O.S.No.392 of 1997 on the file of the District Munsiff Court, Alandur, allow the revision.

For Petitioner : Mr.R.Shenbagaraman

For Respondent 1 : Mr.S.Mohana Sundara Rajan

ORDER

This Civil Revision Petition has been filed seeking to set aside the order in C.M.A.No.48 of 2021, dated 19.10.2022 on the file of Sub Court, Alandur, confirming the order passed in E.A.No.6 of 2018 in E.A.No.227 of 2017 in E.P.No.49 of 2010 in O.S.No.392 of 1997 on the file of the District Munsif Court, Alandur.

2.The learned Counsel appearing for the Civil Revision Petitioner Mr.R.Shenbagaraman submitted his arguments. As per his submissions, the Revision Petitioner had filed E.A.No.6 of 2018 to set aside the *ex parte* order passed in E.A.No.228 of 2017 on the file of the learned District Munsif Court, Alandur. It is the contention of the learned Counsel



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appearing for the Petitioner that the Petitioner is a third party to the proceedings in O.S.No.392 of 1997 on the file of the learned District Munsif, Alandur. He had filed E.A.No.6 of 2018 as a third party stating that the property stated in the decree in O.S.No.392 of 1997 is different from the property owned and alienated by the deceased Mohan and Kala in different survey numbers. The identification and the lie and location of both the properties are made, the issue will be settled and injustice would arise out of misapplication of the decree against the different property, shall be prevented. Therefore, he seeks appointment of an Advocate Commissioner to survey the landed properties of both parties to note down the physical features regarding the boundaries with the assistance of the Surveyor of Revenue Department otherwise, the Revision Petitioner will suffer injustice. In support of his contention, the learned Counsel appearing for the Petitioner placed reliance on the sketches which reads as under:

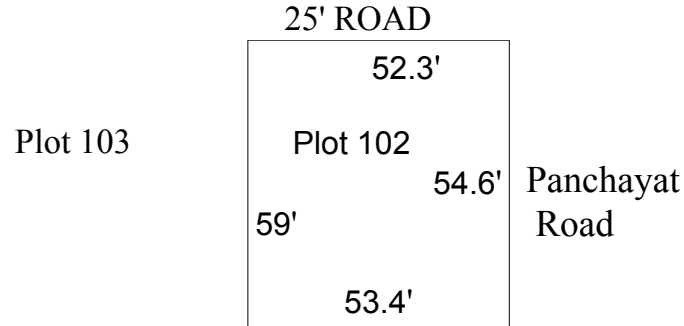
“3. I state that the Respondents 1 and 2 herein claimed that they purchased an extent of 2986 sq. ft. in Plot No.102, in S.No.68/2 and 68/3 of Puzhuthivakkam Village in Madipakkam, under a Sale Deed dated 23.06.1962 bearing Document No.2146 of 1982 of Sub Registrar, Alandur in layout No.63/1974.



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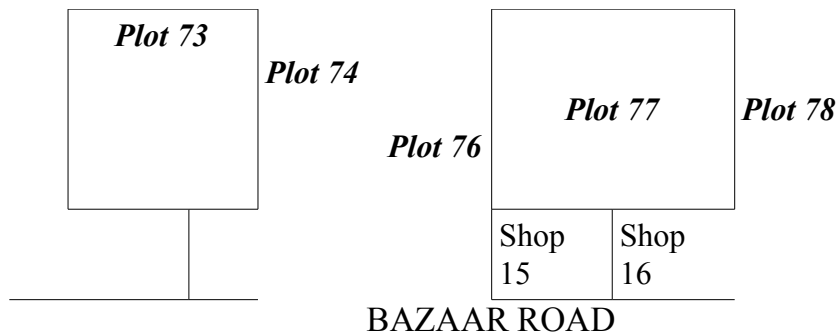
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Plot 101

4. I state that one V.Srinivasa Iyer purchased two residential plots bearing Plot Nos.73 and 77 and also one shop plot No.10 in S.No.69 of Puzhuthivakkam Village, Madipakkam having area of 4770 sq. ft. 4770 sq. ft. and 1200 sq. ft. (totally 10740 sq. ft.) under a Registered Sale Deed dated 29.03.1961 from one Lakshmi Bai Ammal and her husband and children, under a registered Document bearing No..... dated 07.08.1963.

2nd MAIN ROAD

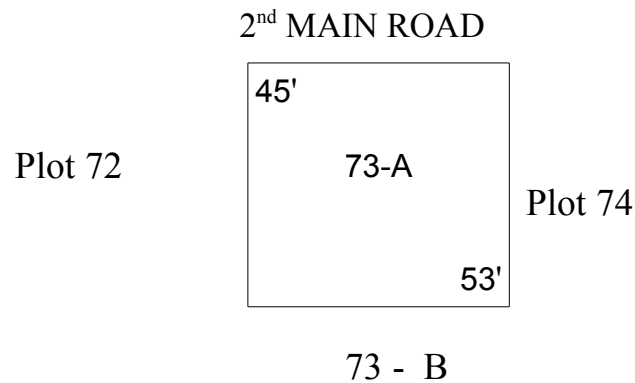


5. I state that after the demise of V.Srinivasa Iyer his wife Mohambal along with other legal heir alienated the aforesaid Plot No.73 into two house Plots as 73-A and 73-B. I state that the



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northern portion 73-A having an extent of 2411 sq. ft. was purchased by the deceased (2nd defendant) Kala under a registered sale deed dated 08.10.1986 bearing Document No.3181 of 1986 of Sub Registrar, Alandur.



3.The learned District Munsif, Alandur, dismissed the Petition filed by the third party in E.A.No.6 of 2018 filed by the Revision Petitioner as third party in E.A.No.228 of 2017 in E.P.No.49 of 2010 in O.S.No.392 of 1997.

4.Aggrieved by the order passed by the learned District Munsif, Alandur, the Revision Petitioner herein had filed C.M.A.No.7 of 2018 on the file of the learned Sub Judge, Alandur which was re-numbered as C.M.A.No.48 of 2021 on the file of the learned Sub Judge, Alandur. The said Civil Miscellaneous Appeal was dismissed. It is the contention of the



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Revision Petitioner that in E.A.No.228 of 2017 for removal of obstruction by the decree holder in E.P.No.49 of 2010 notice was sent through private mode which was returned with an endorsement “No such person”. The Decree-holders filed affidavit of service with returned RPAD notice stating that the appellant unclaimed the notice. Therefore, the Revision Petitioner herein who was the Respondent in E.A.No.228 of 2017 was set *ex parte*.

5.The learned Counsel appearing for the Respondents/Decree-holders submitted that the suit is of the year 1987 which was originally filed before the learned District Munsif, Poonamallee, seeking the relief of declaration of title to the suit property and for permanent injunction. Subsequently, the suit was transferred to the file of the learned District Munsif, Tambaram on the formation of the Court of the learned District Munsif, Tambaram as O.S.No.519 of 1993. Subsequently, the suit was transferred to the file of the learned District Munsif, Alandur on formation of the Court of the learned District Munisif, Alandur and re-numbered as O.S.No.392 of 1997. The Petitioner herein who claims to be the third party was a purchaser from the Defendants 1 and 2 viz., Mohan and Kala. Therefore, he has knowledge of



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the pendency of the suit. Hence, he cannot claim to be a third party. He had purchased the property with risk and he has to face the risk, as per the principles of *lis pendens*. Therefore, he has no right of audience. He had wantonly filed E.A.6 of 2018 to set aside the *ex parte* order in E.A.No.228 of 2017 which was filed by the Decree-holders to remove the obstruction.

6.Point for consideration:

Whether the order passed by the learned District Munsif, Alandur, dismissing E.A.6 of 2018 seeking to set aside the ex parte order passed in E.A.No.228 of 2017 in E.P.No.49 of 2010 in O.S.No.392 of 1997 is to be set aside?

7.On consideration of the rival submissions, the valuable rights of the Petitioner herein, who is the purchaser of the property, had to be agitated by way of E.A.No.228 of 2017 in E.P.No.49 of 2010 in O.S.No.392 of 1997. The E.A.No.228 of 2017 had been filed by the Respondents/Decree-holders to remove the obstruction in which the third Party/the Petitioner herein was set *ex parte* by order dated 05.12.2017. Against which, the third Party/Petitioner herein had filed E.A.No.6 of 2018 to set aside the *ex parte* order passed in E.A.228 of 2017, dated 05.12.2017. It is the contention of



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the learned Counsel for the Revision Petitioner that before disposing of the obstruction petition the Revision Petitioner has to be heard. It is the further contention of the learned Counsel for the Revision Petitioner that the property has to be identified as to whether the property stated in the decree in O.S.No.392 of 1997 is the property of the Decree Holders or it is different from the properties of the third Party/Obstructor. In the light of the above, the order passed by the learned District Munsif, Alandur, dismissing E.A.No.6 of 2018 dated 05.03.2018 is liable to be set aside and to hear the obstruction petition on merits and in accordance with law. E.A.No.228 of 2017 is to be heard on merits and in accordance with law as the valuable rights of the Petitioner herein/Third Party is at stake. Therefore, the Petition filed by the Petitioner to set aside the *ex parte* order in E.A.No.228 of 2017 is to be restored and an opportunity is to be afforded to the Petitioner herein/third Party/Obstructor to put forth his claim over the property and adduce evidence. Therefore, the point for consideration is answered in favour of the Petitioner and against the Respondents/Decree-holders.



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8.In the light of the above discussion, this **Civil Revision Petition** is **allowed.**

The order passed by the learned District Munsif, Alandur, dismissing E.A.No.6 of 2018 as per the order dated 05.03.2018 and the order passed by the learned Sub Judge, Alandur in C.M.A.No.48 of 2021 dated 19.10.2022 are set aside. The learned District Munsif, Alandur, is directed to proceed with the enquiry in E.A.No.228 of 2017 after affording opportunity to the Respondent in E.A.No.228 of 2017 and to pass appropriate orders within a reasonable period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

24.03.2023

SRM

Index : Yes / No

Internet : Yes / No

To

1.The Sub Court,
Alandur.

2.The District Munsif Court,
Alandur.

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SATHI KUMAR SUKUMARA KURUP., J.

SRM

**Order made in
C.R.P.No.358 of 2023**

24.03.2023