



*C.R.P.(MD)No.3349 of 2023*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 22.12.2023

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

C.R.P.(MD)No.3349 of 2023

and

C.M.P.(MD)No.17327 of 2023

1.T.S.Rajendran

2.T.S.Nagaraj

V.Amirthavalli (died)

3.Velusamy

4.Gomathi

5.Balamurugan

: Petitioners/Petitioners/Plaintiff 1, 2 and 4 to 6

Vs.

1.Jeyaraman

2.Dhanalakshmi

3.Mohammed Asiq

4.Mohammed Askar

5.Sheik Kadhar

6.Nishar Ahammed



C.R.P.(MD)No.3349 of 2023

7.The Tahsildar,  
Kodaikanal Town,  
Dindigul District.

8.The Revenue Divisional Officer,  
Kodaikanal Town,  
Dindigul District.

9.The District Revenue Officer,  
Dindigul Town, Dindigul District.

10.The District Collector,  
Dindigul Town, Dindigul District.

11.The Sub Registrar,  
Kodaikanal Town,  
Dindigul District.

: Respondents/Respondents/Defendants

**Prayer :** This Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records relating with the fair and decreetal order, dated 23.06.2023 made in I.A.No.1 of 2023 in O.S.No.160 of 2014 on the file of the Principal Sub Judge, Palani and set aside the same.

For Petitioners : Mr.R.Suriya Narayanan

For Respondents : Mr.A.Baskaran,  
Additional Government Pleader,  
for R7 to R11.

: Mr.M.P.Senthil, for R3, R5 and R6.

### **ORDER**

The Civil Revision Petition is directed against the order passed in I.A.No.1 of 2023 in O.S.No.160 of 2014, dated 23.06.2023 on the file of the Principal Sub Judge, Palani, dismissing the petition filed under Section 151 C.P.C., to recall P.W.1 for



*C.R.P.(MD)No.3349 of 2023*

further cross examination.

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2. It is seen from the records that the plaintiffs have filed three applications in I.A.Nos. 1 to 3 of 2023, one to recall P.W.1, second application to recall D.W.2 and the third application to receive the written statement filed by the defendants 1 and 2 as additional document. The learned trial Judge has passed the impugned order in I.A.No.1 of 2023, by observing that the above petition is filed only to drag on the proceedings, dismissed the petition. But, with respect to other interlocutory applications in I.A.Nos. 2 and 3 of 2023, the learned trial Judge has passed the order that since the petition in I.A.No.1 of 2023 was dismissed, these applications are also dismissed.

3. The above petition was filed only to recall D.W.2, but the learned trial Judge by observing that there is no necessity to recall P.W.1 to receive the document (written statement of D1 and D2) as additional evidence, has mechanically dismissed the petition, as if it is consequent to the order in I.A.No.1 of 2023. Hence, the impugned order is hereby set aside and the matter is remitted back to the learned trial Judge and the learned trial Judge is directed to restore the same to his file and proceed with the enquiry and pass order in accordance with law within a



*C.R.P.(MD)No.3349 of 2023*

period of ten days from the date of receipt of copy of this order. The learned trial Judge is further directed to complete the trial and dispose of the suit within a period of two months thereafter.

4. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

**Sd/-**

**22.12.2023**

This petition having been posted on Thursday, the Twenty second day of March Two Thousand Twenty Four "For Being Mentioned" In pursuance to the order of this court dated 22/12/2023 and made herein in the presence of the above said Advocates, this Court made the following order:

**C.R.P(MD)No.3349 of 2023**

**K.MURALI SHANKAR,J.**

This matter is listed today under the caption for 'being mentioned' at the instance of the learned counsel for the petitioner stating that this Court by order, dated 22.12.2023, has dismissed C.R.P(MD)Nos.3349 and 3351 of 2023 and allowed C.R.P.(MD)No.3350 of 2023, but there is an inadvertent error to the effect that C.R.P. (MD)Nos.3350 and 3351 of 2023 are dismissed and C.R.P.(MD)No.3349 of 2023 is allowed and hence, he prays for appropriate orders.

<https://www.mhc.tn.gov.in/judis>



C.R.P.(MD)No.3349 of 2023

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2. Heard both sides and perused the orders passed in C.R.P.(MD) Nos.3349, 3350 and 3351 of 2023, dated 22.12.2023.

3. Considering the submissions, paragraph Nos. 1 to 4 in the order, dated 22.12.2023 in C.R.P.(MD)No.3349 of 2023, shall be substituted by the following :

*“ The Civil Revision Petition is directed against the order passed in I.A.No.1 of 2023 in O.S.No.160 of 2014, dated 23.06.2023 on the file of the Principal Sub Judge, Palani, dismissing the petition filed under Section 151 C.P.C., to recall P.W.1 for further cross examination.*

*2. The revision petitioners as plaintiffs have filed the above suit to declare that the suit properties are belonging to them and for permanent injunction restraining the defendants 3 to 6 and their men from in any manner interfering with their peaceful possession and enjoyment of the suit property, mandatory injunction for cancellation of patta issued in favour of the defendants 1 to 6 and for granting of patta in favour of the plaintiffs and to declare that the sale deeds as null and void.*

*3. It is evident from the records that after closure of the plaintiffs side*



C.R.P.(MD)No.3349 of 2023

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*evidence and defendants 3 to 6 side evidence and when the case was pending for the defendants 7 to 10 side evidence, the plaintiffs have filed three applications in I.A.Nos. 1 to 3 of 2023, one to recall P.W.1, second application to recall D.W.2 and third application to receive the written statement filed by the defendants 1 and 2 as additional document.*

*4. The learned trial Judge has passed a detailed order in I.A.No.1 of 2023 and by observing that the above petition came to be filed only to drag on the proceedings, dismissed the said petition. But, with respect to the second application in I.A.No.2 of 2023, the learned trial Judge has passed an order stating that since the petition in I.A.No.1 of 2023 was dismissed, this application is also dismissed. But, with respect to the other application in I.A.No.3 of 2023, the learned trial Judge by holding that since the petition in I.A.No.1 of 2023 to reopen the case is dismissed as not maintainable, there is no necessity to recall P.W.1 for marking additional document, dismissed the said application.*

*5. The main contention of the revision petitioners is that the defendants 7 to 10 have taken a stand that the patta bearing No.12/73 issued in the name of one T.N.Subbaiah was already cancelled and the same was subsequently issued in the*



C.R.P.(MD)No.3349 of 2023

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*name of defendants 1 and 2; that the plaintiffs have then issued a notice to the defendants 7 to 10 to produce the said document before the Court, but they have not produced the same; that the Deputy Tahsildar, Kodaikanal has already been examined as D.W.2, but the said documents were not exhibited; that the Tahsildar in the meantime has sent a letter to the Revenue Divisional Officer recommending to cancel the patta issued in favour of the defendants 1 and 2 and to issue patta in favour of the plaintiffs; that the defendants 1 and 2 have already filed written statement before this Court and that since ex-parte order against the defendants 1 and 2 was not set aside, the written statement filed by the defendants 1 and 2 has to be exhibited and for that purpose, P.W.1 has to be recalled.*

*6. The defence of the defendants 3 to 6 is that the defendants 1 and 2 have already filed a petition in I.A.No.13 of 2019 for setting aside the ex-parte order passed against them on 10.06.2015 and the said petition was subsequently dismissed; that the plaintiffs cannot adduce evidence to mark the above said written statement and that the above petition has been filed only to drag on the proceedings.*

*7. The defendants 7 to 10 have also taken a stand that the above petitions have been filed only to drag on the proceedings.*

*8. It is evident from the records that the plaintiffs side evidence was closed*



C.R.P.(MD)No.3349 of 2023

on 11.07.2017; that after examination of D.W.2, the plaintiffs filed an application to recall P.W.1; that D.W.1 was reexamined on 03.12.2018 and despite sufficient opportunities, P.W.1 has not turned up for cross examination; that since the counsels for the defendants reported that they did not want to cross examine P.W.1 further, the case was posted for arguments and at that stage, the above applications came to be filed. The learned trial Judge, taking note of 'B' diary has specifically observed that the petitioners are lethargic in conducting the case and they have been filing petition after petition in a casual manner to drag on the proceedings.

9. It is not in dispute that the defendants 1 and 2 were set ex-parte; that they have filed an application to set aside the ex-parte order along with written statement and that thereafter, since the defendants 1 and 3 have not pressed their applications, the application for setting aside the ex-parte order was ordered to be dismissed as not pressed. The revision petitioners\plaintiffs have filed the above petition to recall P.W.1 for the purpose of marking additional written statement of D1 and D2. The learned trial Judge in the impugned order in I.A.No.1 of 2023 has specifically observed that the counsel for the respondents has rightly pointed out that the written statement of D1 and D2 is available in the case bundle, then it will be a part of Court records and becomes part and parcel of the case and that moreover, the pleadings of the parties could not be marked as exhibits and for that



C.R.P.(MD)No.3349 of 2023

*purpose, the case could not be reopened to recall P.W.1 and dismissed the petition.*

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*10. Considering the entire facts and circumstances of the case and also the above observations of the learned trial Judge and taking note of the fact that the plaintiffs have been attempting to protract the proceedings, as evident from the records, this Court is not inclined to interfere with the impugned order passed in I.A.No.1 and 3 of 2023. Consequently, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.*

*11. In the result, the Civil Revision Petition is dismissed. No costs."*

4. Registry is directed to carry out the necessary corrections and issue fresh order copy to the parties concern.

Sd/-

Assistant Registrar( )

// True Copy //

/04/2024

Sub Assistant Registrar  
(CS-I/II/III/IV)

das

**(\*)To be substituted to the order already despatched on 21.02.2024.**



C.R.P.(MD)No.3349 of 2023

1. The Principal Subordinate Judge, Palani.

2. The Tahsildar,  
Kodaikanal Town,  
Dindigul District.

3. The Revenue Divisional Officer,  
Kodaikanal Town,  
Dindigul District.

4. The District Revenue Officer,  
Dindigul Town, Dindigul District.

5. The District Collector,  
Dindigul Town, Dindigul District.

6. The Sub Registrar,  
Kodaikanal Town,  
Dindigul District.

Copy to:  
The Section Officer,  
V.R. Section,  
Madurai Bench of Madras High Court. Madurai.(2 Copies).

+1 CC to M/s.M.P.SENTHIL, Advocate ( SR-58424[F] dated 22/12/2023 )

+1 CC to M/s.R.SURIYANARAYANAN, Advocate ( SR-58413[F] dated 22/12/2023 )

C.R.P.(MD)No.3349 of 2023  
and



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*C.R.P.(MD)No.3349 of 2023*

C.M.P.(MD)No.17327 of 2023

Dated : 22.12.2023

MGJ(02.02.2024) 11P 11C

SI (25.04.2024) 11P 11C

Madurai Bench of Madras High Court is issuing certified copies in this format from  
17.07.2023