

**Silver Granites Vs. Murugan and Others**

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**Court :** Chennai

**Decided On :** Jan-13-1995

**Reported in :** AIR1995Mad217; 1995(2)CTC1; (1995)IIMLJ361

**Judge :** Srinivasan, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 24 - Order 39, Rule 3A;  
[Constitution of India](#) - Article 227

**Appeal No. :** C.R.P. No. 140 of 1995

**Appellant :** Silver Granites

**Respondent :** Murugan and Others

**Advocate for Def. :** K. Govindarajan, Adv.

**Advocate for Pet/Ap. :** V.P. Venkat, Adv.

**Judgement :**

ORDER

1. The revision petition is filed by the second defendant in O.S. No. 1368 of 1994 against an order of injunction passed by the Third Additional Subordinate Judge, Madurai in I.A. No. 727 of 1994. Respondents 1 to 4 herein filed the suit O.S. No. 1368 of 1994 for a declaration that the permission granted to the petitioner herein in Rec. No. 1304/93 dated 1-11-1993 by the Government is null, void and

unenforceable and for an injunction restraining the petitioner herein from in any manner quarrying or transporting the quarried stones from the suit property. They filed I.A. No. 727 of 1994 for interim injunction till the disposal of the suit. That application was called in Court on 23-12-1994 and the Third Additional Subordinate Judge recorded his reasons for granting an interim order of injunction. However, he overlooked the provisions of Order XXXIX, Rule 3 A of the Code of Civil Procedure and posted the matter for notice and return to 2-2-1995 and granted interim injunction till that date. Under Rule 3A of Order XXXIX, C.P.C., where an injunction is granted by any Court without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted and where it is unable to do so, it shall record its reasons for such inability.

2. The Subordinate Judge cannot circumvent that provision and direct the posting of the interlocutory application beyond the period of 30 days granting injunction till that date. Unfortunately, the Subordinate Judge has not only failed to conform to the mandatory provision contained in the Code but also failed to obey an administrative Circular issued by this court in P. Dis. No. 88/90 dated 9-8-1990 that the provisions of Order XXXIX, Rule 3A of the Code of Civil Procedure should be strictly complied with by the subordinate Judiciary.

3. It is brought to my notice by learned counsel for the petitioner that this suit O.S. No. 1368 of 1994 is a third suit in a series of Suits filed by the persons claiming under the respondents. According to him, one suit was filed by one Dhanapal as O.S. No. 483 of 1994 on the file of Principal Subordinate Judge, Madurai in which he claimed to be a lessee under respondents 1 to 4 and prayed for injunction against the petitioner. Another suit O.S. 1180 of 1994 is filed by one Palanisamy, who claimed to be a sub-lessee under the said Dhanapal with a similar prayer for injunction against the petitioner. Yet another suit was filed by the petitioner herein in O.S. 540 of 1994 on the file of the third Additional Subordinate Judge, Madurai. The two suits O.S. Nos. 540 of 1994 and 1180 of 1984 which were pending on the file of the Third Additional Subordinate Judge were transferred to the file of the Principal Subordinate Judge, Madurai by an order of the District Judge on 1-12-1994. In spite of that order having been brought to the notice of the Third

Additional Subordinate Judge, he proceeded to extend the period of injunction already granted by him in O.S. 1180 of 1994 to a further date. That order of injunction was challenged before me in C.R.P. 3666 of 1994. Though I dismissed the C.R.P. taking into consideration the futility of the service of notice to the respondents and getting them to this Court, at the same time observed that the Third Additional Subordinate Judge had no jurisdiction to pass an order extending the interim order of injunction in view of the fact that there was already an order of transfer of the suit to the file of another Court. I had also stated that in the normal course, I would have set aside the order but for the fact that such a course would not be serving the purpose of the party.

4. Now, it is not in dispute that the three suits relating to the same property are already pending on the file of the Principal Subordinate Judge with the numbers O. S. Nos. 483, 540 and 1180 of 1994.

5. The present suit is filed by respondents 1 to 4 who claim to be the owners and under whom the plaintiff in O.S. No. 483 of 1994 claimed to be a lessee. The interests of justice require that this suit is also transferred to the file of the Principal Subordinate Judge and disposed of by him with the other three suits pending already before him counsel on both sides have agreed to that course. In those circumstances, I exercise my suo motu power under Article 227 of the [Constitution of India](#) and under Section 24 of the Code of Civil Procedure and transfer the suit O.S. No. 1368 of 1994 to the file of the Principal Subordinate Judge, Madurai to be tried along with O.S. Nos. 483, 540 and 1180 of 1994 on his file.

6. The interlocutory application out of which this Revision arises viz., I.A. No. 727 of 1994 is also transferred to the file of the Principal Subordinate Judge, Madurai to be disposed of by him after hearing both side's. The Principal Subordiante Judge, Madurai shall dispose of the said application on or before 25-1-1995. For that purpose, he is exempted from obeying the administrative circular of this Court directing the hearing of the interlocutory applications on Fridays only. He can post it to any date before 24th January, 1995 and after Rearing pass orders on or before 25-1-1995 and report to this Court. If for any reason the application is not disposed of by 25-1-1995, the Principal Subordinate Judge may consider whether

the order of interim injunction should be continued in the face of Order XXXIX, Rule 3A, C.P.C.

7. If for any reason the copy of this order is not officially communicated by this Court to the Principal Subordinate Judge, Madurai in time, the learned Subordinate Judge can act upon the steno copies which may be produced by either of the parties, which will bear the seal of this Court and proceed to comply with the same.

8. The Civil Revision Petition ordered accordingly. There will be no order as to costs.

9. Order accordingly.

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