



C.R.P.(MD)Nos.1072 and 1073 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
27.04.2023	16.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)Nos.1072 and 1073 of 2023

and

C.M.P.(MD)No.5030 of 2023

1.Balakrishnan
2.Logamani
3.Mayandi
Velumurugan (Died)
4.Vanitha
5.Parthiban
6.Padmarani

... Petitioners in both the C.R.Ps.

VS.

Rukmani (Died)
Padmavathi (Died)
Thiruveni (Died)
1.R.Sudha Vasudevan
2.R.Vaidegi Kalyanasundaram
3.R.Venkatanarashiman
4.Vembu Ramesh Kumar
5.R.Sathiya Baskhar
6.Pari
7.Bharani
8.D.Soundharam
9.Latchumi Narashiman
10.S.Rosilini

... Respondents in both the C.R.Ps.

Prayer in both the C.R.Ps.:- Civil Revision Petitions filed under Section 115 of C.P.C., against the orders dated 16.02.2023, passed in E.A.Nos.1 and 4 of 2022 in

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



C.R.P.(MD)Nos.1072 and 1073 of 2023

E.P.No.52 of 2006 in O.S.No.31 of 1996, on the file of the District Munsif Court, Aundipatti, respectively.

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For Petitioners
in both the C.R.Ps.

: Mr.N.Vallinayagam

For R5
in both the C.R.Ps.

: Mr.B.Rajesh Saravanan

COMMON ORDER

By this common order, both the Civil Revision Petitions have been disposed.

2. In C.R.P.(MD)No.1072 of 2023, the petitioners are the defendants/judgment debtors and the legal representatives of some of the defendants/judgment debtors in O.S.No. 31 of 1996 (referred to as petitioners). They have challenged the impugned order dated 16.02.2023, passed by the learned District Munsif, Aundipatti, in E.A.No.1 of 2022 in E.P.No.52 of 2006 filed by the respondents/legal representatives of the decree holders in O.S.No. 31 of 1996 (referred to as respondents) pursuant to judgment and decree dated 21.10.1997.

3. E.A.No.1 of 2022 was filed by the respondents to restore E.P.No.52 of 2006, dismissed on 25.10.2013 on account of the failure of the respondents to take steps to bring the LR's of the 4th Defendant/Judgment debtor on record. The learned District Munsif, Andipatti has allowed E.A.No.1 of 2022 and thereby restored

E.P.No.52 of 2006 to its file.



C.R.P.(MD)Nos.1072 and 1073 of 2023

4. In C.R.P.(MD)No.1073 of 2023, same petitioners have challenged order dated 16.02.2023 passed by the learned District Munsif, Aundipatti, in E.A.No.4 of 2022 in E.P.No.52 of 2006. E.A.No.4 of 2022 was filed by the same petitioners to reject E.A.No.1 of 2022, E.A.No.2 of 2022 and E.A.No.3 of 2022 filed by the respondents.

5. The operative portion of the impugned orders, dated 16.02.2023, reads as under:-

E.A.No.1 of 2022	E.A.No.4 of 2022
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29.அசல் நிறைவேற்று மனுவிலும்
30.07.2009ம் தேதியிலும் steps to
amendment petition-ம் தாக்கல்
செய்யப்பட்டும் அதனைப் பொறுத்து
திருப்பப்பட்டதாகவும் வழக்கு
கோப்புகளிலும் காணப்படாத நிலையில்
25.10.2013ம் தேதியும் மேற்படி steps
தாக்கல் செய்யவில்லை என்று
சொல்லியும் தள்ளுபடி
செய்யப்பட்டுள்ளதும் நீதியின் நலன்
கருதியும் ரத்து செய்யப்பட
வேண்டியதாகவும் இருக்கிறது. மேலும்
அசல் நிறைவேற்று மனுவிலும்
25.10.2013ம் தேதி steps not filed and
dismissed for default என்று தள்ளுபடி
செய்யப்பட்ட நிறைவேற்று மனுவையும்
விசாரணைக்காக வாய்தா குறிக்கப்படாத
நிலையிலும் திருத்தம் செய்ய அனுமதி
கோரி மனுத்தாக்கல் செய்வதற்காகத்தான்
வாய்தா ஏற்பட்டும் தள்ளுபடியான
நிலையில் கட்டளை 21 விதி 106(3)ன்
படியும் 30 நாட்களுக்குள் மனுவையும்
தாக்கல் செய்ய வேண்டிய
அவசியம் இல்லை என்றே இந்நீதிமன்றம்
முடிவு செய்கிறது. முாறாக சி.பி.சி பிரிவு
151ன் கீழ் மனுவையும் உரிய காரணம்
சொல்லியும் தாக்கல் செய்தால் ஏற்றுக்
கொள்ளலாம் என்றும்
மேலே இந்நீதிமன்றத்தால் குறிப்பிட்டுள்ள
மேல்முறையீட்டுத் தீர்ப்புகளும் உள்ள
நிலையில் இம்மனுவையும் ஏற்றுக்
கொண்டு 25.10.2013ம் தேதி அசல்
நிறைவேற்று மனுவில் பிறப்பிக்கப்பட்ட
உத்தரவை ரத்து செய்து அசல்
நிறைவேற்று மனுவில் மேல்நடவடிக்கை
மேற்கொள்ள மனுதார்களுக்கு அனுமதி
வழங்குவதும் நீதியின் நலனுக்கு
உகந்ததாகவே இருக்கிறது.

30.இருந்தபோதிலும், மனுதார்கள்
தரப்பிலும் 05.11.2019ம் தேதிய சீராய்வு
மனுவில் பிறப்பிக்கப்பட்ட
உத்தரவுக்குபின்பு 31.12.2019ம் தேதியில்
நகலும் பெற்று 20.02.2020ம் தேதியிலேயே

28. மேலும் 25.10.2013ம் தேதியன்று தான்
அசல் நிறைவேற்று மனுவும் தள்ளுபடி
செய்யப்பட்டுள்ள நிலையில் 23.10.2013ம்
தேதியிலும் தள்ளுபடி
செய்யப்பட்டுள்ளதாகவும் முன்னுக்குப்பின்
முரணாகவும் மனுவையும் தாக்கல்
செய்யப்பட்டுள்ளது. மேலும் E.A.No.
54/2006 என்றும் 23.10.2013ம் தேதி
தள்ளுபடி செய்யப்பட்டது என்றும் அசல்
நிறைவேற்று மனுவின் சங்கதிகளுக்கு
எதிராகவும் மனுவும் தாக்கல்
செய்யப்பட்டுள்ளது. வழக்கு
காரணத்தலைப்புகளும் முன்னுக்குப்பின்
முரணாகவும் தாக்கல் செய்யப்பட்டுள்ளது.
மனுவில் கோரியுள்ள பரிகாரமும்
அபிடவிட்டில் கோரியுள்ள பரிகாரமும்
முன்னுக்குப்பின்
முரணாகவும் இருக்கின்றது. எனவே
மனுதார்கள் தரப்பில் தாக்கல்
செய்யப்பட்டுள்ள
அபிடவிட்டிலேயே இம்மனுவையும்
தள்ளுபடி செய்யுமாறு தான்
கோரப்பட்டுள்ளது. மேற்படி காரணங்களின்
அடிப்படையிலும் இம்மனு அனுமதிக்கக்
கூடியதாகவும் இல்லை
என்றே இந்நீதிமன்றம் முடிவு செய்கிறது.

29.மனுதார்கள் தரப்பிலும் பிரிவு 3
காலவரையறைச் சட்டத்தின்படி
மனுவையும் தாக்கல் செய்துள்ளதாகவும்
சொல்வதும் அசல்நிறைவேற்று மனுவில்
பிறப்பிக்கப்பட்ட தள்ளுபடி உத்தரவை
ரத்து செய்யக்கோரி எதிர்மனுதார்களால்
மனுவும் தாக்கல் செய்யப்பட்டுதான்,
E.A.No.1/2022 ஆகவும் கோப்புக்கும்
எடுக்கப்பட்ட நிலையில் மனுவில்
சொல்லப்பட்டுள்ள காலவரையறைச்
சட்டத்தின்படியான பிரிவும் இந்த
மனுவிற்கு பொருந்தக்கூடியதாக இல்லை
என்றே இந்நீதிமன்றம் முடிவு செய்கிறது.

30. முடிவாக, மனு தள்ளுபடி
செய்யப்படுகிறது. செலவுத் தொகை
எதுவும் விதிக்கப்படவில்லை.



6. O.S.No.31 of 1996 was filed by the following persons:-

Plaintiffs	Defendants
1. Rukmani, W/o.Rajagopal	1.Palraj @ Otcha Thevar, S/o.R.Veeranna Thevar
2. Muthulakshmi, W/o.R.Kalidoss	2.Balakrishnan, S/o.Otcha Thevar
3. Padmavathi, W/o.T.S.Kannan	3.Petchiammal, W/o.Palraj @ Otcha Thevar
4. Thirumeni, D/o.R.Kalidoss	4.Logamani, W/o.Balakrishnan
	5.Mayandi, S/o.Palraj @ Otcha Thevar
	6.Velmurugan, S/o.Palraj @ Otcha Thevar

7. During the pendency of the suit, 2nd plaintiff, namely, Muthulakshmi died and therefore, her legal representatives were impleaded as defendants 7 to 11 as formal parties.

8. The petitioners are Defendant Nos.2, 4 and 5 and legal representative of the 6th defendant in O.S.No.31 of 1996 before the District Munsif-cum-Judicial Magistrate Court, Aundipatti.

9. O.S.No.31 of 1996 was filed by the deceased respondents/plaintiffs/deed holders for redemption of mortgage and for payment of the mortgage amount of Rs.12,000/- to the petitioners/defendants/judgment debtors in O.S.No.31 of 1996. The aforesaid mortgage amount was deposited after O.S.No.31 of 1996 was decreed on 21.10.1997.



10. O.S.No.31 of 1996 was decreed on 21.10.1997 by the District Munsif-cum-Judicial Magistrate Court, Aundipatti. Aggrieved over the said judgment and decree, the petitioners filed A.S.No.14 of 1998 before the Additional District Court, Periyakulam. A.S.No.14 of 1998 was dismissed on 19.08.2005.

11. Pursuant to the dismissal of A.S.No.14 of 1998, the respondents [the decree holders in O.S.No.31 of 1996] filed E.P.No.52 of 2006 before the District Munsif Court, Aundipatti. In E.P.No.52 of 2006 the defendants 2 and 4 to 6 alone were made parties.

12. It appears that both the original plaintiffs and some of the original defendants died. During the pendency of E.P.No.52 of 2006 before the District Munsif Court, Aundipatti, collateral proceedings were initiated for bringing the legal representatives of the 1st plaintiff in O.S.No.31 of 1996/respondent herein, on record. The case also reached the corridors of this Court in C.R.P.(MD)No.2149 of 2013 filed by the respondent Nos.1 to 5 herein [legal representatives of the first plaintiff] to implead them in E.P.No.52 of 2006.

13. C.R.P.(MD)No.2149 of 2013 came to be allowed on 25.11.2019 with a direction to dispose E.P.No.52 of 2006 within a period of two months from the date of receipt of copy of that order.



14. E.P.No.52 of 2006 filed by the respondents/decreed holders/plaintiffs was however earlier dismissed by the District Munsif Court, Aundipatti, on 25.10.2013 during the pendency of C.R.P.(MD)No.2149 of 2013 for not taking steps to bring the Petitioner Nos.4 to 6 herein as the legal representatives of Velmurugan, the deceased sixth defendant/judgment debtor in E.P.No.52 of 2006 on 25.10.2013. Petitioner Nos. 4 to 6 are the legal representatives of 6th defendant.

15. The 6th defendant was arrayed as 4th respondent in E.P.No.52 of 2006. E.A.Nos.16 and 17 of 2007 were filed to bring Petitioner Nos.4 to 6, the legal representatives of the 6th defendant/4th respondent in E.P.No.52 of 2006. E.A.Nos.16 and 17 of 2007 were allowed on 26.03.2008. However, though steps were taken to file clean copy of E.P.No.52 of 2006 pursuant to the order dated 26.03.2008, the Court dismissed E.P.No.52 of 2006 on assumption that no steps were taken by the respondents pursuant to order dated 26.03.2008.

16. E.A.No.16 of 2007 filed to implead the legal representatives of the 6th defendant/4th respondent in E.P.No.52 of 2006 was dismissed on 25.10.2013 after E.A.No.15 of 2009 was dismissed on 27.6.2013, although steps had been taken on 30.07.2009 as stated in Memo dated 31.07.2009.



17. Under these circumstances, the respondents filed E.A.No.1 of 2022 to restore E.P.No.52 of 2006 dismissed on 25.10.2013. E.A.No.1 of 2022 to restore E.P.No.52 of 2006 was allowed, vide impugned order dated 16.02.2023. The petitioners herein filed E.A.No.4 of 2022 to reject E.A.No.1 of 2022 on the ground that the application was time barred in terms of Order XXI Rule 106 of C.P.C.

18. The learned counsel for the petitioners submits that the learned District Munsif, Aundiapati, has erred in allowing E.A.No.1 of 2022 and dismissing E.A.No. 4 of 2022.

19. It is further submitted that an application for restoration of E.P.No.52 of 2006 filed vide E.A.No.1 of 2022 was contrary to Order XXI Rule 106(3) of C.P.C. Consequently, it is submitted that the dismissal of E.A.No.4 of 2022 by the learned District Munsif, Aundipatti, is liable to be interfered with.

20. Per contra, the learned counsel for the 5th respondent/decree holders submits that the dismissal of E.P.No.52 of 2006 was on a misconception that no application was filed to bring the petitioners 4 to 6 herein as the legal representatives of the 6th defendant/4th respondent in E.P.No.52 of 2006. It is submitted that an



application had been filed but had not been numbered though it had been filed. In any event, the amount that was due to the deceased defendants in O.S.No.31 of 1996 has also been deposited in the Court and therefore, no prejudice would be caused by restoration of E.P.

21. That apart, it is submitted that Order XXI Rule 106 of C.P.C. is not applicable, as it applies only where an application is dismissed for non-appearance or which is set ex parte in an execution proceedings. Whereas, in this case, E.P.No.52 of 2006 that was filed by the respondents [decree holders] was dismissed on 25.10.2013 not on account of non-appearance of the respondents [decree holders] and has been thus, restored vide the impugned order dated 16.02.2023 in E.A.No.1 of 2022 filed under Section 151 of C.P.C.

22. It is submitted that the Court has inherent power to restore the Execution Proceeding. It is further submitted that E.P.No.52 of 2006 was also filed within one year after A.S.No.14 of 1998 was dismissed on 19.05.2005.

23. By way of rejoinder, the learned counsel for the petitioners referred to the amendment to Order XXI Rule 105(3) of C.P.C. for Tamil Nadu, vide Tamil Nadu Government Gazette dated 27.02.1972, Part V, Page 1523 which reads as under:-



"Provided that an application may be admitted after the said period of thirty days if the applicant satisfies the Court that he had sufficient cause for not making the application within such period"

24. It is submitted that respondents have not filed a petition under Section 5 of the Limitation Act, 1963.

25. I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the fifth respondent.

26. Issue to be answered is whether the objection of the petitioners regarding impugned order passed in E.A.No.1 of 2022 on 16.02.2023 has any merit in the facts of the case. Rule 106 of C.P.C has to be read in conjunction with Rule 105 to Order XXI C.P.C.

27. Rules 105 and 106 of Order XXI of C.P.C reads as under :-

Rule 105 of Order XXI of C.P.C.	Rule 106 of Order XXI of C.P.C.
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105.Hearing of application.-

(1) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(3) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application ex parte and pass such order as it thinks fit.

**"provided that an application may be admitted after the said period of thirty days if the applicant satisfies the Court that he had sufficient cause for not making the application within such*

106.Setting aside orders passed ex parte, etc. -

(1) The applicant, against whom an order is made under sub-rule (2) rule 105 or the opposite party against whom an order is passed ex parte under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non- appearance when the application was called on for hearing, the Court shall set aside the order or such terms as to costs, or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) No order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.

(3) An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when applicant had knowledge of the order."

vide Tamil Nadu Government Gazette dated 27.02.1972, Part V, Page 1523

28. Allusion to limitation under Order XXI Rule 105 of C.P.C read with Rule

106(3) Order XXI of C.P.C. is irrelevant.



29. Proviso to Rule 105(3) to Order XXI of C.P.C applies to a situation where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application *ex parte* and pass such order as it thinks fit. Therefore, if the petitioners had failed to appear on the date fixed for their appearance, the court could have set them *ex parte*. In such cases, only 30 days limitation in Rule 106(3) would have applied. However in Tamil Nadu and Union Territory of Puducherry by view of Local Ammendment, Section 5 of Limitation Act 1963 had been applicable.

30. Rule 106(3) of Order XXI of C.P.C applies for restoration of an application either dismissed for non-appearance under sub Rule (2) of Rule 105 of Order XXI of C.P.C. or for an application to set aside order passed under sub-rule (3) of Rule 105 of Order XXI of C.P.C. or under Rule 23 of Order XXI of C.P.C only. As far as situation contemplated in sub-rule (3) of Rule 105 of Order XXI of C.P.C for filing an application to set aside order passed the local amendment to proviso to Rule 105(3) of Order XXI will apply as stated thereon.

31. Thus, only if E.P.No.52 of 2006 that was filed by the petitioners was dismissed for their non-appearance, the application to restore the said Execution Application should have been filed within 30 days under Rule 106 (3) of Order XXI of C.P.C of its dismissal on 25.10.2013.



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32. This Court in **2011 (6) CTC 268 (N.Rajendran Vs., Shirram Chits Tamil Nadu Pvt. Ltd., rep., by its Branch Manager/Foreman)**, has also clarified that there is an amendment to Order XXI Rule 105(3) of C.P.C. by introducing a proviso, which empowers the Court to condone the delay even beyond the period of 30 days, when sufficient cause has been made out.

33. E.P.No.52 of 2006 filed on 15.07.2006 by the respondents after A.S.No.14 of 1998 filed by the petitioners was dismissed on 19.08.2005. Dismissal of E.P.No. 52 of 2006 on 25.10.2013 was not on account of non-appearance of the respondents. It was on account of misconception on the part of the Court that the respondents had failed to take steps to bring the legal representatives of 6th defendant/4th respondent in E.P.No.52 of 2006 when indeed such steps had taken on 30.07.2009 in E.A.16 of 2007. E.A.16 of 2007 filed to bring the legal representatives of the 6th defendant/4th respondent was also allowed on 26.03.2008. The respondents had also informed the Court, vide a Memo dated 31.07.2009 stating that the 1st plaintiff had also died on 25.08.2007 and steps were being taken to bring the legal representatives of the 1st plaintiff on record. Thus, E.A.15 of 2009 was filed to bring the 1st plaintiff's legal representatives on record.

34. E.A.No.15 of 2009 was taken on file on 07.08.2009. It was however dismissed earlier on 27.06.2013 as time barred. Against the order dated 27.06.2013,



C.R.P.(MD)No.2149 of 2013 was filed by the respondents before this Court and was allowed on 05.11.2019. Thus, the legal representatives of the 1st plaintiff were impleaded with a direction to dispose E.P.No.52 of 2006 within a period of two months from the date of receipt of copy of the order. However, E.P.No.52 of 2006 had already been dismissed on 25.10.2013. Relevant portion of the order dated 05.11.2019 in C.R.P.(MD) No.2149 of 2013, reads as under:-

"4.The learned counsel appearing for the petitioners submitted that the provisions of Order 22 Rule (12) of the Code of Civil Procedure make it clear that provisions in Order 22 Rule 3,4 & 8 would not apply in the case of execution proceedings and that the Court below had lost sight in considering all these provisions of law. In support of his arguments he would submit judgments reported in AIR 1932 (MAD) 73 and AIR 1990 Delhi 217.

5.A reading of the Order 22 Rule 12 C.P.C, it is clear that the provisions does not apply to the execution proceedings. Further, the respondents have not filed any counter denying that the proposed petitioners are not the legal heirs of the deceased first decree holder. In the absence of such denial, there is no necessity not to allow the petitioners to let in evidence.

6.Taking into consideration of the above factors and law in this regard, the order of the learned District Munsif cum Judicial Magistrate Court, Andipatti is perverse and deserves interference. Accordingly, this civil revision petition is allowed by setting aside the order passed in E.A.No. 15 of 2009 in E.P.No.52 of 2006 in O.S.No.31 of 1996 on the file of the learned District Munsif cum Judicial Magistrate, Andipatti. Considering the fact that the execution proceedings is of the year 2006, the learned Judge is directed to dispose of the execution proceedings, within a period of two months from the date of receipt of a copy of this order. No costs."

35. Dismissal of E.P.No.52 of 2006 in O.S.No.31 of 1996 was on account of the mistake of the Court. In this connect, Latin maxim "*Actus Curiae Neminem*



C.R.P.(MD)Nos.1072 and 1073 of 2022

Gravabit" is relevant . As per the maxim no act of the Court can cause prejudice to the parties.

36. Thus, there is no merit in the challenge to the respective impugned orders passed by the learned District Munsif, Aundipatti, on 16.02.2023, while allowing E.A.No.1 of 2022 filed by the respondents [decree holders] to restore E.P.No.52 of 2006 in O.S.No.31 of 1996, which was dismissed on 23.10.2013. Consequently, dismissal of E.A.No.4 of 2022 cannot be faulted.

37. I find no reasons to interfere with the impugned orders dated 16.02.2023, passed in E.A.No.1 and E.A.No.4 of 2022 in E.P.No.52 of 2006 in O.S.No.31 of 1996. Accordingly, the impugned orders are sustainable.

38. In the light of the above observations, these Civil Revision Petitions are liable to be dismissed. Accordingly, they are dismissed. No costs. Consequently connected Miscellaneous Petitions are closed.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
smn2
To
The District Munsif,
Aundipatti.

16.06.2023



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C.SARAVANAN, J.

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PRE-DELIVERY COMMON ORDER MADE IN
C.R.P.(MD)Nos.1072 and 1073 of 2023

DATED : 16.06.2023