

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reservation : 27.11.2014

Date of Pronouncement : 22.01.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P(NPD)No.2410 of 2014
and M.P.Nos.1 & 2 of 2014

1. Balasubramani
2. M.Ethiraj

... Petitioners / Defendants

Vs

1.Mrs.C.Suseela
2.Mrs.P.Yamuna
3.Mrs.K.Shanti

... Respondents / Plaintiffs
... Respondent / 4th Defendant

Prayer: Civil Revision Petition is filed Article 227 of the Constitution of India against the fair and decreetal order dated 28.04.2014 made in E.P.No.2331 of 2014 in O.S.No.5297 of 1997 on the file of IX Assistant Judge, City Civil Court, Chennai.

For Petitioners : M/s.T.Gowthaman
For Respondents : M/s.V.Yamunadevi
for RR1 & RR2
Mr.C.Shankar for R3.

ORDER

This revision is directed against the order passed by the IX Assistant Judge, City Civil Court, Chennai in E.P.No.2331 of 2014 in O.S.No.5927 of 1997.

2. The petitioners are the defendants 2 and 3 in O.S.No.5927 of 1997. The suit was filed by the respondents 1 and 2 for partition claiming $1/6^{\text{th}}$ share each in the suit properties and for separate possession.

3. After contest, a preliminary decree was passed on 17.02.2011. Thereupon, I.A.No.11182 of o2011 was filed for passing final decree. The trial court passed the final decree on 18.11.2013. The first Appeal and the second appeal filed against the preliminary decree were dismissed on 05.12.2012 and 24.07.2013 respectively. The decree holders laid execution petition in E.P.No.2331 of 2014 for delivery and possession. Since the execution petition was filed within two years of passing of the final decree, the executing court dispensed with the notice to the judgment debtors and passed an order of delivery and possession. Challenging the order, the present revision is filed.

4. Heard Mr.T.Gowthaman, learned counsel for the petitioners, Mrs.V.Yamunadevi, learned counsel for the respondents 1 and 2, Mr.C.Shankar, learned counsel for the 3rd respondent and perused the records.

5. The learned counsel for the petitioners submitted that the executing court failed to send to note that dispensation of notice can only be done in exceptional cases and not as a matter of routine; that the Commissioner's report would show that the petitioners are in possession of the properties and in such circumstances, notice is necessary. The learned counsel further submitted that the decree holders have suppressed the death of their mother and secured the order of police aid and break open to take delivery of possession. It is the further contention of the learned counsel that the petitioners should be given opportunity to defend the execution petition.

6. Per contra, the learned counsel for the respondents submitted that as per Order 21 Rule 22 of CPC, if any execution petition laid within a period of two years, notice to the judgment debtors is not at all necessary. It is further submitted that the suit was filed in the year 1997 and the preliminary decree was passed in the year 2011 but the decree holders are not able to enjoy the fruits of the decree. It is further contended that there is no infirmity or irregularity in the impugned order warranting interference by this Court.

7. Order 21 Rule 22 of CPC reads as follows -

22. Notice to show cause against execution in certain cases.- (1) *Where an application for execution is made –*

- (a) more than two years after the date of the decree, or*
- (b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of section 44A, or*
- (c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent).*

the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last Order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment debtor, if upon a previous application for execution against the same person the court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the end of justice.

A plain reading of the provision would go to show that if the execution petition is laid within a period of two years, the executing court can straight away proceed with the execution and notice to the judgment debtors is not at all necessary. In view of the above provision, I do not find any merit in this revision.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

22.01.2015

Index:Yes/No
Internet:Yes/No
rgr

To

The IX Assistant Judge,
City Civil Court,
Chennai.

K.KALYANASUNDARAM,J

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Pre-delivery order in
C.R.P(NPD)No.2410 of 2014

22.01.2015