

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2015

CORAM

THE HONOURABLE MR. JUSTICE **D.HARIPARANTHAMAN**

C.R.P.(NPD)No.3745 of 2015 and
M.P.No.1 of 2015

1.S.Arunachalam
2.S.Singaravelu

... Petitioners

vs.

T.Jayalakshmi (Deceased)
A.Thiruvengadam (Deceased)

T.Mohan

...Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the petition and order passed in E.P.No.2507 of 2015 in O.S.No.7088 of 1986 dated 27.07.2015 by the IX Assistant City Civil Court, Chennai.

For Petitioners : Mr.A.Thiagarajan
For Respondent : Mr.M.Devendran

ORDER

The revision petitioners are the defendants in O.S.No.7088 of 1986 on the file of XII Assistant Judge, City Civil Court, Chennai. The respondent herein is the plaintiff therein. It is a suit for recovery of possession of the suit schedule property.

2. The suit in O.S.No.7088 of 1986 was decreed after contest, on 15.09.2014.

3. The certified copy of the judgment and decree was made available to both parties on 01.07.2015. In fact, the copy was made ready on 30.06.2015. Hence, at the most, the respondent herein could have received the copy on 30.06.2015. Immediately thereafter, the respondent herein filed E.P.No.2507 of 2015 on 02.07.2015, for delivery of the suit schedule property, based on the judgment and decree dated 15.09.2014, that was made available only on 30.06.2015.

4. The notes paper of E.P.No.2507 of 2015 is enclosed at Page 53 of the typed set of papers. It was posted to hear the respondent/decreed holder on 24.07.2015. On 24.07.2015, after hearing, the Court directed the respondent/decreed holder to file an affidavit as to whether any appeal was pending. Thereafter, the matter was adjourned to 27.07.2015.

5. On 27.07.2015, the respondent/decreed holder filed an affidavit stating that no stay was obtained.

6. Immediately, on 27.07.2015, by invoking Order 21 Rule 22 of CPC, notice to the revision petitioner was dispensed with and delivery by 03.09.2015 was ordered, that is, on 27.07.2015, Execution Petition was allowed.

7. This revision petition is against the aforesaid order, dated 27.07.2015 allowing E.P.No.2507 of 2015, without notice.

8. Heard both sides.

9. The learned counsel for the petitioner has submitted that before the expiry of the period to seek effective appellate remedy available to the revision petitioner, the Execution Court ought not to have allowed the Execution Petition. It is stated that 30 days is provided for filing appeal. Hence, before the expiry of 30 days from 30.06.2015, Execution Petition was allowed without giving opportunity to the revision petitioner to exhaust the appellate remedy.

10. On the other hand, the learned counsel for the respondent/decreed holder, by placing reliance on Order 21 Rule 22 CPC has strenuously contended that notice could be dispensed with, if Execution Petition is filed within 2 years from the date of decree. Since EP was filed within two years, no notice is necessary.

11. I have considered the submissions made by the learned counsel on either side.

12. It is true that Execution Court need not issue notice to the

Judgment Debtor, if two years is not elapsed from the date of decree. But one

D.HARIPARANTHAMAN,J.,

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cannot loss sight of the fact that the valuable statutory appellate remedy available to the Judgment debtor cannot be taken away by the Execution Court by allowing the EP before the expiry of appeal period. Hence, the Execution Court was not correct in allowing the Execution Petition on 27.07.2015 based on the affidavit filed by the Decree Holder stating that no appeal was filed.

13. Hence, I have no hesitation to quash the order dated 27.07.2015 of the Execution Court. Accordingly, the order dated 27.07.2015 made in E.P.No.2507 of 2015 is quashed and the Execution Court shall proceed with E.P.No.2507 of 2015 in the manner known to law.

The Civil Revision Petition stands allowed. No costs. Connected miscellaneous petition is closed.

16.09.2015

Index : Yes/No
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To
The IX Assistant Judge, City Civil Court, Chennai.

