

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2016

CORAM

THE HONOURABLE **Dr. JUSTICE. S.VIMALA**

Civil Revision Petition (NPD) No.4067 of 2014
and M.P.No.1 of 2014

A.S.Athiyaman

... Petitioner / D-10

Vs.

A.C.Ramasamy Gounder (Deceased)

1. R.Umadevi
2. The Manager, Indian Oil Dealer,
S.R.P.Agencies, Adhiamankottai & Post,
Dharmapuri Taluk
3. Jadayatchi @ Janaki
4. Kalaiselvi
5. Kalaiammal
6. Sivakami
7. R.Parimelazhagan
8. Palaniammal
9. Jansirani
10. Priya Gandhi
11. Uma Janani
12. Mahalakshmi

... Respondents

Prayer :- Civil Revision Petition (NPD) filed under Section 115 of the Code of Civil Procedure, 1908, against the order, dated 02.07.2014 made in R.E.P.No.47 of 2001 in O.S.No.274 of 1986 on the file of the District Munsif, Dharmapuri.

For Petitioner : Mr. C.Munusamy

For Respondents : Mr. S.Chandrasekaran, for R-1
R-2 to R-12-Given up

ORDER

This Civil Revision petition has been filed by the third respondent / tenth defendant, challenging the order passed by the Executing Court, dated 02.07.2014.

2. The decree-holder / A.C.Ramasamy Gounder (deceased) has taken out an Execution Petition in R.E.P.No.47 of 2001 in O.S.No.274 of 1986. In the said Execution Petition, notice has been ordered to the respondents, returnable by 07.01.2002. The notes paper of the Executing Court, dated 07.01.2002, reads that the third and fourth respondents have been served and batta for fresh notice has to be paid for R-1 and R-2. Subsequently, nearly by ten months' time, the third respondent has filed counter, on 23.10.2002. The copy of the counter filed by the third respondent is also placed on record.

3. The decree, dated 23.10.1997, ordering delivery of possession, has been executed and delivery by 08.08.2014, has been ordered on 02.07.2014. This order is under challenge in this Civil Revision Petition.

3.1. The contention of the learned counsel for the Revision Petitioner / third respondent in the Execution Petition is that,

mandatory provisions of Order 21 Rule 22 of the Code of Civil Procedure has not been followed by the Executing Court and therefore, the order under challenge is liable to be set-aside. In support of the said contention, the learned counsel relied upon the decision reported in **2006 (2) CTC 639 (Ubaidullah, J.B. v. Adhilakshmi)** where-under this Court has held that in order to afford sufficient opportunity to the parties concerned, including the party in the Civil Revision Petition, notice is mandatory as per the provisions and therefore, for non-giving of notice, the matter has to be remanded back.

4. There is no quarrel over the said proposition / dictum laid down in the above case. In order to show cause as to why the decree should not be executed, the parties are entitled to a notice under the provisions of under Order 21 Rule 22 of the CPC.

Order 21 Rule 22 of the CPC reads as under:-

"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."

5. From a perusal of the provisions of Order 21 Rule 22 of the CPC, it is evident that notice is not indispensable at all occasions. Only in cases where the Execution Petition is filed beyond two years, against the Legal Representatives of the deceased or against the

assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent. In this case, the question of issuing notice would arise, as the Execution Petition has been filed beyond the period of two years, after the passing of the decree. Even under such contingency, the Court is empowered to dispense with notice, if the Court comes to the conclusion that issuance of notice would cause unnecessary delay or it would defeat the ends of justice.

6. But, here is a case, where the Court has ordered notice to all the respondents and the Revision Petitioner herein, as third respondent in the Execution Petition, has entertained appearance and filed the counter. Therefore, the opportunity of hearing has not been deprived to the Revision Petitioner herein by the Executing Court. But, for the reasons best known, may be due to negligence, the Court has observed that no notice was served upon the respondents. However, in the latter part of the order, there is an observation that the third respondent has entered appearance, through the counsel, on 07.01.2002 and filed the counter. Therefore, there is no violation of the mandatory provisions mandating issuance of notice. Therefore, there is no violation of the provisions of Order 21 Rule 22 of the CPC. Therefore, this Civil Revision Petition has absolutely no merits and hence, it is dismissed.

7. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed.

22.02.2016

Index: Yes / No
Web : Yes / No
srk

S.VIMALA, J.,

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To

1. District Munsif, Dharmapuri
2. The Section Officer, V.R.Section,
Madras High Court, Chennai - 104

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& M.P.No.1 of 2014

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