



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.04.2018

DELIVERED ON : 03.09.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (NPD) No.2522 of 2017

and

CMP (MD) No.11821 of 2017

V.S.S.Anthonichamy

... Petitioner

vs

1.Karuppiah (died)
2.Murugan
3.Vallidevi
4.Kani

.. Respondents

Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 03.10.2017 passed in E.P.No.4 of 2016 in O.S.No.2 of 2003 on the file of the Subordinate Judge, Virudhunagar.

For Petitioner : Mr.P.Athimoolapandian

For Respondents : Mr.V.Sasikumar
for R2 to R4

ORDER

This revision is directed against the order dated 03.10.2017 passed in E.P.No.4 of 2016 in O.S.No.2 of 2003 on the file of the Subordinate Judge, Virudhunagar. The petitioner is the judgment-debtor and the respondents are the decree-holders.

2. The respondents have filed E.P.No.4 of 2016 for sale of the petition mentioned property for realisation of the decree amount in O.S.No.2 of 2003.

<https://hcservices.ecourts.gov.in/hcservices/>
3. Resisting the execution petition, the petitioner has filed counter.



4. Before the Execution Court, no oral evidence was adduced on the side of the respondents. On the side of the petitioner, the petitioner examined himself as R.W.1 and marked Exs.R1 to R9.

WEB COPY 5. Upon consideration of the oral and documentary evidence, the Execution Court ordered that the respondents are entitled to sale of the petition mentioned property for realisation of the decree amount. The Execution Court has also ordered Test qua the petition mentioned property by 03.11.2017. Challenging the same, the petitioner has filed the present revision.

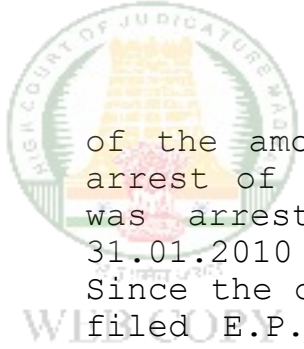
6. I heard Mr.P.Athimoola Pandian, learned counsel for the petitioner and Mr.V.Sasi Kumar, learned counsel for the respondents 2 to 4 and also perused the materials available on record.

7. The learned counsel for the petitioner submitted that when execution petition was filed two years after passing of the decree, it is mandatory on the part of the Execution Court to send notice to the respondents therein, but in the case on hand, the Execution Court has failed to send notice. He would submit that the Execution Court did not comply with the provisions contained in Order 21, Rule 22(2) of C.P.C. and has not recorded any finding or reasons before issuing notice to the judgment-debtor that issue of notice under Order 21, Rule 22 of C.P.C. will cause unreasonable delay or will defeat ends of justice. According to the learned counsel, only after recording such reasons, the Court can take further steps in the matter of execution of the decree and recording of reason was the condition precedent or sine qua non for further proceedings with the decree. The learned counsel further submitted that the Execution Court has passed an order mechanically without application of mind and prayed for setting aside the same. In support of his submissions, the learned counsel cited the following decisions:

- (i) Satyanarain Bajoria and another v. Ramnarain Tibrewal and another, reported in AIR 1994 SC 1583.
- (ii) Nachayee Ammal and others v. Pichaimuthu, reported in 1992-1-L.W. 288.
- (iii) RmP.Ar.Ramanathan Chettiar v. Pl.Ar.Lakshman Chettiar, reported in 1950 Supreme (Mad) 150.

8. Per contra, the learned counsel for the respondents submitted that the Execution Court has rightly ordered sale of the petition mentioned property for realisation of the decree amount and there is no need to interfere with the same.

9. It appears that the respondents have sought for sale of the petition mentioned property for realisation of the decree amount from the petitioner. While the first respondent was alive, he had filed E.P.No.37 of 2004 to attach and sell the petition mentioned property for realisation of the decree amount and the said execution petition was closed on 06.8.2008. Thereafter, the first respondent filed E.P.No.70 of 2008 for arrest of the petitioner for realisation



of the amount. In E.P.No.70 of 2008, the Executing Court ordered arrest of the petitioner and pursuant to the order, the petitioner was arrested and detained in civil prison from 12.01.2010 to 31.01.2010 and finally, E.P.No.70 of 2008 was closed on 11.01.2010. Since the decree amount was not realised, again the first respondent filed E.P.No.4 of 2016 praying to attach and sell the petition mentioned property. Pending E.P.No.4 of 2016, the first respondent died and his legal heirs were brought on record.

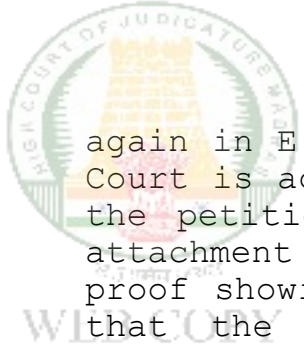
10. According to the learned counsel for the petitioner, since the present execution petition was filed after seven years from the closure of E.P.No.37 of 2004, the same is not maintainable and further, no notice under Order 21, Rule 22 C.P.C. was issued to the petitioner.

11. 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 and 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, 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. 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.

12. In the case on hand, on a perusal of the Execution Court records, it is seen that immediately, after numbering the Execution Petition No.4 of 2016, the Executing Court ordered notice to the respondent therein (petitioner herein) through Court and Post returnable by 04.04.2016. It is seen that on the first occasion itself, the Executing Court has not ordered attachment of the property or Test the property or sell the petition mentioned property.

13. It also appears from the records that after service of notice, the petitioner had entered appearance through his counsel. The contention of the petitioner that no notice under Order 21, Rule 22 C.P.C. was served on the petitioner does not merit acceptance. 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.

14. As far as attachment of the petition mentioned property in E.P.No.37 of 2004 is concerned, the Executing Court held that the petition mentioned property was found to have been already attached in E.P.No.37 of 2004 and therefore, attachment was not necessary



again in E.P.No.4 of 2016. The aforesaid finding of the Executing Court is acceptable on the ground that nothing has been produced by the petitioner to show that while closing E.P.No.37 of 2004, the attachment was raised by the Executing Court. In the absence of any proof showing that the attachment was raised, it is to be presumed that the attachment of the petition mentioned property still subsists and the respondents have no necessity to seek attachment of the petition mentioned property once again. Therefore, I am of the view that the Executing Court was right in holding that there was no necessity to attach the petition mentioned property once again.

15. In view of the categoric finding as aforesaid based on the materials on record, I do not propose to delve into the various decisions relied by the learned counsel for the petitioner and more over, the same will not be applicable to the facts of the present case.

16. Upon consideration of the materials available on record and after satisfying that the present execution petition has been filed well within the period of twelve years, the Executing Court has ordered sale of the petition mentioned property. There is no illegality or infirmity in the order of the Executing Court and the Civil Revision Petition is liable to be dismissed.

17. In the result, the Civil Revision Petition is dismissed. The Executing Court is directed to proceed with the matter further. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS-III)

To
The Subordinate Judge, Virudhunagar.

+1 CC To MR.V.SASIKUMAR, Advocate SR. NO.81846
+1 CC To MR.P.ATHIMOOLAPANDIAN, Advocate SR. NO. 82047

Pre-delivery order made in
C.R.P. (MD) (NPD) No.2522 of 2017
and
CMP (MD) No.11821 of 2017

03.09.2018

VS

TP/PM/SAB-III/(24.09.2018) 4P 4C
<https://hcservices.courts.gov.in/hcservices/>