



**C.R.P (MD) No.1432 of 2022**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

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R.Chinnakaruppan ... Petitioner

Vs

- 1.Nachammai
- 2.Subramani @ Kandasamy
- 3.Lakshmi
- 4.Sivagami
- 5.Devi
- 6.Chittu
- 7.Kalai Lingam
- 8.Chinnaiah @ Tamilarasu
- 9.Vairamuthu
- 10.Selvi
- 11.Valarmathi
- 12.Uma
- 13.Kalaiammal
- 14.Chockalingam @ Chiannakaruppan
- 15.Amirtham



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16.Lakshmi

17.Pandiammal

18.Selvaraj

19.Bharathidasan

20.Gopinath

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the docket order dated 14.06.2022 in O.S.No.09 of 2020 on the file of the Principal District Munsif, Karaikudi and allow this civil revision petition.

For Petitioner : Mr.G.Prabhurajadurai

**ORDER**

As against the docket order dated 14.06.2022 passed by the District Munsif Court in O.S.No.311 of 2022 (Earlier O.S.No.9 of 2020 on the file of the Principal District Munsif cum Judicial Magistrate Court, Karaikudi), the present civil revision petition has been filed.



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2.The petitioner has filed the above suit in O.S.No.9 of 2020 for partition as against the respondents before the Principal District Munsif cum Judicial Magistrate, Karaikudi. In the said suit on 14.06.2022 the trial Court ordered for issuance of fresh summons to the defendants on batta and also directed the plaintiff to pay batta in three days. Aggrieved over the same, the present civil revision petition has been filed.

3.The learned Counsel for the petitioner submits that the defendants 6,7 and 9,10,12,13,14,15,16 and 17 were set *ex-parte* on 25.02.2020; the defendants 2,8 and 19 were set *ex-parte* on 09.12.2021 and the matter was posted for *ex-parte* evidence. When the above defendants were already set *ex-parte*, the question of issuing fresh summons to those parties, who were set *ex-parte* does not arise and it is not proper and it would amount to reopening of the case. Further, the defendants, who were set *ex-parte* can proceed with the case only after filing an application under Order IX Rule 7 CPC to set aside the *ex-parte* order. Issuing fresh notice to the defendants would amount to



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permitting them to proceed with the case without filing of an application as required under Order IX Rule 7 CPC.

4.The learned Counsel has also relied on the decision of this Court in **K.Janarthanan and another Vs R.Thilak Kumar**, reported in **1992- 2- L.W, 505**, wherein this Court has held as follows:

*"26.The Orissa High Court, has in Nitya Matari Vs Bhutanath Misra, held that where the respondent in an appeal was declared ex-parte before the order of transfer of the appeal was made, the notice of the transfer need not be issued to the respondent. In the present case the respondent was not declared ex-parte when the matter was pending in this Court on the Original Side. Under the Original Side Rules, a defendant who is served with summons in the suit shall file his written statement within the period limited by the summons served on him, vide O.5, R.1 of the O.S.Rules. Under the proviso to the Rule he may file it within a further period of five days if the plaintiff or his advocate consents and certifies the consent by endorsement. Under O.4, R5 of O.S. Rules, unless otherwise ordered and accepted as*



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service provided by the rules, every summons issued by the Court shall require the dependent if he intends to defend the suit, to enter appearance within 14 days after the service of summons upon him. It is not the practice of this Court to set any defendant, ex-parte, unless all the defendants remained ex-parte in which event, the suit will be included in the list 'undefended cases'. Under order 6, Rule(1) of the O.S.Rules, if all the defendants are duly served and none of the defendants has filed a written statement the case shall be included in the list of undefended cases. On the other hand, if any of the defendant had filed a written statement the case shall be included in the general list of cases. As in the present case some of the defendants had filed written statements the case was not included in the list of 'undefended cases.' Thus the respondent enjoyed an advantageous position on account of rule prevailing in this Court. if it had been in any subordinate court, if defendant remained absent after service of summons he would be called absent and set ex-parte.

29. It is argued that the suit after it was transferred to the City Civil Court is a fresh suit and defendant from the suit which was



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pending in this Court on the original side. Learned Counsel for the respondent contends that summons should have been issued afresh in the suit after it was numbered in the City Civil Court. According to him, at any rate, notice should have been issued as directed by the Court to the Counsel. On facts, I have already held that the version of the respondent is unbelievable and I have accepted Exs.-5 and R-6 and held that notices were issued to the respondent himself by the petitioner's counsel. But with regard to the contention that the suit is a fresh one and summons should have been issued afresh, there is no warrant whatever either in the Civil Procedure code or in the Civil Rules of Practice. S.24 Civil Procedure Code is the provision for transfer of suits. It empowers the High Court as well as the District Court to transfer any suit, appeal or other proceeding either on the application or suo motu. Under sub-section (1) power is given to the Court to transfer on its own motion without notice to the parties. There is no rule prescribing issuance of a notice in cases of suo motu transfer or statutory transfer. In the present case, the transfer is not by any act or Court. The transfer is a statutory transfer pursuant to the provisions of Tamil Nadu Act 34



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of 1980. Under that Act, the pecuniary jurisdiction of the City Civil Court as well as the subordinate Courts was increased. Sec 4 of the Act 34 of 1980 is very significant. It says,

"(1) All suits pending in the High Court on the date of commencement of this Act and which would be within the cognisance of the Madras City Civil Court under the provisions of the Madras City Civil Court Act, 1982 (Central Act VII of 1982) as amended by this Act shall stand transferred to the Madras City Civil Court (emphasis supplied) Thus the statute by itself has transferred the suits from the date of the commencement of the Act. No party can plead ignorance of law or ignorance of the statute. Once the statute has transferred the suit it is not open to the parties to the suit to assert that they had no notice of the transfer. The practice applicable to transfer on application or even transfer suo motu by Court is not applicable to the present case, where the transfer is by the legislature itself."

5.The learned Counsel has also relied the circular issued by this Court in ROCNo.193-A/S1.R.R in July' 1981



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with regard to the instructions given by this Court based on above cited judgment, with the following guidance to the subordinate Courts for their guidance:

*"(i) when the suits, appeals or other proceedings are transferred from one court to another court, the transferor Court shall post before it, the cases to a particular date and take endorsement of the Advocate, who have already entered appearance for the parties that they are aware of the suits, appeals or other proceedings being transferred to a particular Court and only thereafter forward the papers to the transferred Court.*

*(ii) In case where parties have not already been served, notice or fresh notice (as the case may be) shall be issued by the transferee Court."*

6. Heard the learned Counsel for the petitioner and perused the materials placed on record.

7. It is seen from records that the defendants 6, 7 and 9, 10 and 12 to 17 were set *ex-parte* on 25.02.2020; the defendants 2, 8 and 19 were set *ex-parte* on 09.12.2021 and the matter was posted for *ex-parte* evidence on



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10.02.2022. Further the Principal District Munsif cum Judicial Magistrate Court, Karaikudi was converted to the District Munsif Court, Karaikudi vide Government Order in G.O(Ms)No.601 Home (CtsIII) Department dated 08.11.2022 and the proceedings of this Court in ROC No.2715-A/2020/B2 dated 19.01.2022 and the proceedings of the Principal District Judge, Sivaganga in D.No.411, dated 19.01.2022 and the suit in O.S.No.9 of 2020 was re-numbered as O.S.No.311 of 2022.

8.At the same time the defendants were set *ex-parte* after issuing summons and also after complying with the other procedures contemplated under CPC. However, the *ex-parte order* can be set aside only on the application under Order IX Rule 13 of CPC. Issuing fresh summons without any application being filed under Order IX Rule 13 CPC, would amount to reopening of the case. Therefore, the impugned docket order is set aside. The Civil Revision petition is allowed.



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9.The trial Court instead of issuing fresh summons to the defendants, may issue notice to the defendants about the assigning of new number to the suit, since issuing fresh summons would amount to setting the clock back.  
No costs.

08.08.2022

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To  
The District Munsif,  
Karaikudi.



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**B.PUGALENDHI , J.**

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