



WEB COPY



C.R.P.(NPD)No.1332 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD)No.1332 of 2017

1.Kannan
2.Kandasamy
3.Kunthiyammal

.. Petitioners

VS

1.Palaniappan
2.Lakshmi
3.Rajasekaran (Died)
4.Manikkam
5.Vijayakumari
6.Santhi
7.Gunasekaran
8.Sathiyamurthy
9.Sathiyaraj
10.Saranraj
11.Rukkumani
12.Venkatesh
13.Jayalakshmi

.. Respondents

(R3 died. R11 to R13 are brought on record as LR's of the deceased R3 viz. Rajasekaran vide Court order dated 24.7.2023 made in CMP.Nos.6920, 6921 & 6925 of 2023 in CRP(NPD)No.1332/2017 by this Court)

Petition filed under Article 227 of the Constitution of India against the Fair and Final order dated 27.06.2016 made in R.E.P.No.106 of 2015 in O.S.No.665 of 1988 on the file of the I Additional Sub-Court, Salem.

For Petitioners : Mr.L.Mouli

For Respondents : Mr.R.Nalliappan (for R6, R7 and R10)
No Appearance (for R2, R4, R5, R8, R9)
R1 & R3 – Died



C.R.P.(NPD)No.1332 of 2017

ORDER

WEB COPY

The civil revision petition arises against the dismissal of the execution petition in REP.No.106 of 2015 in O.S.No.665 of 1988. O.S.No.665 of 1988 was a suit for specific performance which was decreed on 21.11.1994. The appeal therefrom also ended in dismissal in A.S.No.903 of 1995 on the file of this Court on 23.11.2007.

2.The decree having been confirmed, the judgment creditor executed a registered document assigning the decree in favour of the first petitioner on 01.10.2014. On the strength of the said assignment, an application was filed under Order 21 Rule 16 of the CPC and the same was allowed without notice to the judgment debtors.

3.The applications having been allowed, the E.P. was taken on file in REP.No.106 of 2015. The learned Judge dismissed the E.P. on the ground that, at the time of considering the recognition of the civil revision petitioner as the assignee of the decree, notice was not given to the judgment debtors as required under Order 21 Rule 16 of the CPC.

4.I heard Mr.L.Mouli, learned counsel appearing for the petitioners and Mr.R.Nalliappan, learned counsel appearing for the respondents 6, 7 and 10 and I have gone through the records.

5.As per Order 21 Rule 16 of the CPC, notice is mandatory to the



C.R.P.(NPD)No.1332 of 2017

judgment debtors, because the judgment debtors cannot be called upon to satisfy the decree twice. Once there is an assignment of the decree under Order 21 Rule 16 read with Section 146 of the CPC, the assignee is entitled to execute the decree. What has not been done is the procedural requirement of sending a notice to the judgment debtors. For the said purpose, the execution petition itself could not have been dismissed. The Court should normally lean in favour of the judgment creditor. It could have considered the fact that the first appeal had been disposed of in 23.11.2007 and the E.P. being limitation E.P, it could have retracted its steps and issued notice to the judgment debtors under Order 21 Rule 16 of the CPC. That not having been done, to dismiss the execution petition itself, is to hold that the procedural law will override the substantive decree that has been obtained by the civil revision petitioner. Consequently, I pass the following orders:

(i) the order passed in REP.No.106 of 2015 dated 27.06.2016 is set aside.

(ii) the Court shall take up the application filed under Order 21 Rule 16 of the CPC and give an opportunity to the judgment creditor to file an application and issue notice to the judgment debtor,

(iii) it shall issue notice to the judgment debtors, hear the parties



C.R.P.(NPD)No.1332 of 2017

and thereafter decide on the merits of the application filed under Order

21 Rule 16 of the CPC and

(iv) if the Order 21 Rule 16 application is allowed, it shall take up the execution petition and dispose of the same on merits and in accordance with law.

6. With the above directions, this civil revision petition stands allowed. No costs.

24.07.2023
(2/2)

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

vs

To

The I Additional Sub-Court,
Salem.

V. LAKSHMINARAYANAN, J.



WEB COPY



C.R.P.(NPD)No.1332 of 2017

VS

C.R.P.(NPD)No.1332 of 2017

24.07.2023