



C.R.P.(MD).Nos. 1585 and 1586 of 2012 & 463 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 14.08.2023

DELIVERED ON: 22.09.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).Nos.1585 & 1586 of 2012
and C.R.P(MD).No.463 of 2015
and MP(MD).No.1 of 2015

CRP(MD).Nos.1585 & 1586 of 2012

Subbammal (died)

1.Seeniammal

2.RajalakshmiPetitioners in both revisions

Vs

1.Jeyaraj

2.Sarojini

3.Indhurani

4.Vijayalakshmi

Rengasamy Naicker (died)

5.Seenivasaka Naicker

Ayyammal (died)

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6.Lakshmiammal

7.Avudaiammal

8.Indhurani

9.Seenivasan

10.Subbalakshmi

11.Lakshmiammal

12.Thirupathi Seenivasan

13.Eilango

14.Mahadevi

15.Partheepan

16.Lakshmiammal

17.Seeniammal

18.Ponnuthai

....Respondents in both revisions

CRP(MD).No.463 of 2015

1.S.Jeyaraj

2.Sarojini

3.Indhurani

4.Vijayalakshmi

.....Petitioners

Vs



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- 1.Seeniammal
2.Rajalakshmi
3.Seenivasaga Naicker
4.Lakshmiammal
5.Avudaiyammal
6.Indhurani
7.Seenivasan
8.Subbulakshmi
9.Thirupathi Seenivasan
10.Elango
11.Mahadevi
12.Parthiban
13.Seeniammal
14.Seeniammal
15.Ponnuthai

...Respondents

PRAYER in CRP(MD).Nos.1585 & 1586 of 2012 : Civil Revision Petitions have been filed under Section 115 of Code of Civil Procedure, against the fair and final order dated 24.11.2011 made in I.A.Nos.814 & 815 of 2007 in I.A.No.155 of 1996 in O.S.No.98 of 1996 on the file of the Principal District Munsif Court, Sankarankovil.



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PRAYER: in CRP(MD).No.463 of 2015: Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records relating to the fair and decreetal order passed in C.M.A.No.1 of 2012 dated 14.08.2014 on the file of the Subordinate Court, Sankarankvoil and set aside the same by allowing this civil revision petition.

CRP(MD).Nos.1585 & 1586 of 2012:

For Petitioners	: Mr.S.Kadarkarai
For R1 to R4	:Mr.D.Srinivasaragavan
For R5 to R10, R13, R14, R17 & R18	: No appearance
R11, R12, R15 & R16	: Dispensed with

CRP(MD).No.463 of 2015:

For Petitioners	: Mr.D.Srinivasaragavan
For R2	: Mr.S.Kadarkarai
R1, R3 to R11,R15	: No appearance
R12 to R14	: Dispensed with

COMMON ORDER

The legal heirs of the first defendant in a suit for partition have filed CRP(MD).Nos.1585 and 1586 of 2012 challenging an order wherein the Court below had rejected their application to implead themselves in the



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final decree proceedings and their request for receiving objection to the Commissioner's report was rejected.

2.CRP(MD).No.463 of 2015 has been filed by the plaintiffs in the said partition suit wherein the Subordinate Court, Sankarankovil in CMA.No.1 of 2012 has reversed the order passed by the trial Court in I.A.No.813 of 2007 wherein the trial Court had rejected the application to set aside the exparte final decree.

3.Factual background:

(i)Four plaintiffs have filed O.S.No.196 of 1974 before the Subordinate Court, Tuticorin for the relief of partition and separate possession of their 9/50th share. In the said suit, one Chinna Ayyalusami Naicker was arrayed as the first defendant. After contest, a preliminary decree for partition was passed on 14.11.978. The said decree was challenged before this Court in A.S.No.438 of 1980 by the defendants 1,3 and 4. This Court was pleased to dismiss the appeal on 12.09.1987.

(ii)In the meantime, due to jurisdictional change, the suit was transferred from Subordinate Court, Tuticorin to Subordinate Court, Tenkasi wherein the suit was renumbered as O.S.No.19 of 1993. The plaintiffs/decreed holders filed I.A.No.82 of 1993 for passing of final



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decree. In the said proceedings, notice issued to the first respondent/first defendant namely Chinna Ayyalusami Naicker was returned with an endorsement “ refused”. Therefore, the Final Decree Court set him exparte on 10.06.1993.

(iii)An Advocate Commissioner was appointed to divide the properties by metes and bounds. He had filed the report on 21.10.1995.

(iv)Before enquiry in the final decree proceedings could be commenced, the suit was again transferred from Subordinate Court, Tenkasi to District Munsif Court, Sankarankovil due to jurisdictional change wherein the suit was renumbered as O.S.No.98 of 1996. The final decree application was renumbered as I.A.No.155 of 1996. The District Munsif Court, Sankarankovil after hearing either parties passed a final decree on 08.09.1997.

(v)The decree holders have filed E.P.No.55 of 2006. The first defendant in the suit namely Chinna Ayyalusami Naicker had passed away on 26.01.2006. Therefore, the petitioners in the execution petition had filed I.A.No.363 of 2006 to implead his legal heirs. When notice was received by the legal heirs of the deceased first defendant in the execution proceedings, they filled the following applications:



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(a) I.A.No.813 of 2007 to set aside the exparte final decree.

(b) I.A.No.814 of 2007 to impleade the legal heirs of the deceased first defendant and to array them as defendants 7 to 9 in the final decree proceedings.

(c) I.A.No.815 of 2007 to receive their objection to the Commissioner's report filed in the final decree proceedings.

4.All the three applications were heard together by the learned Principal District Munsif, Sankarankovil and a common order came to be passed on 24.11.2011. The District Munsif was pleased to hold that the first defendant having been set exparte even before the Subordinate Court, Tenkasi, he is not entitled to receive any notice from the District Munsif Court, Sankarankovil. That apart, the final decree having been passed on 08.09.1997, the first defendant who was alive till 2006 has not taken any steps to set aside the said final decree. The first defendant was fully aware of the final decree proceedings and he had voluntarily chosen to remain exparte. Based on the said findings, the Principal District Munsif had dismissed all the three applications.

5.Challenging the order passed in I.A.No.813 of 2007, the legal heirs of the first defendant had filed CMA.No.1 of 2012 before the



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Subordinate Court, Sankarankovil. Challenging the dismissal of I.A.Nos. 814 of 2007 and 815 of 2007, the legal heirs of the first defendant have filed CRP(MD).Nos.1585 and 1586 of 2012 before this Court.

6.The Subordinate Court, Sankarankovil has allowed CMA.No.1 of 2012 on the finding that when the final decree proceedings were transferred from Subordinate Court, Tenkasi to Principal District Munsif Court, Sankarankovil, no notice was issued to the first defendant. Challenging the said order, the decree holders have filed CRP(MD).No. 463 of 2015.

7. Since all the Civil Revision Petitions arise out of a common order, they have been tagged together.

8.Submissions of the learned counsel appearing for the petitioners in CRP(MD).No.463 of 2015:

(i)The learned counsel appearing for the revision petitioners submits that while the final decree application was pending before the Sub Court, Tenkasi in I.A.No.82 of 1993 in O.S.No.19 of 1993, notice was issued to the first defendant which has been returned with an endorsement “ refused”. The first defendant was set exparte on 10.06.1993. While the Advocate Commissioner visited the property on 04.12.1993, the first



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defendant was present. In fact, the Advocate Commissioner has recorded his presence and has also noted that the first defendant had refused to open his residential house. Therefore, the first defendant was very well aware of the fact that he has been set exparte and further proceedings are being conducted in the final decree application.

(ii)The learned counsel appearing for the revision petitioners further submits that after final decree proceedings were transferred from Subordinate Court, Tenkasi to Principal District Munsif Court, Sankarankovil, the case was pending for nearly two years and only thereafter, a final decree came to be passed. The first defendant was alive till January 2006 for nearly about eight years after passing of final decree. Therefore, the contention of the legal heirs of the first defendant that the first defendant was not aware of the transfer is not factually correct. The legal heirs of the first defendant are attempting to take advantage of non issuance of notice by the transferee Court.

(iii)The learned counsel appearing for the revision petitioners had relied upon a judgement of our High Court reported in **(2002) 2 MLJ 705 (Sankaralingam and another Vs. V.Rahuraman)** to impress upon the Court that in view of the circular issued by the High Court, it is not



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necessary to issue notice to each one of the litigants when a suit is transferred from one Court to another Court. In the present case, the first defendant having been said exparte already before the Subordinate Court, Tenkasi, the question of issuing notice to him intimating the transfer of case from Subordinate Court, Tenkasi to District Munsif Court, Sankarankovil is not necessary.

(iv)The learned counsel for the revision petitioners further contended that the decree holders have already taken delivery of the property on 18.04.2011. The said delivery order was challenged by the legal heirs of the first defendant in CRP(MD).No.857 of 2011 which was dismissed by this Court on 28.04.2011 granting liberty to them to prosecute I.A.Nos.813 to 815 of 2007. Therefore, it is clear that the attempt made on the part of the legal heirs of the first defendant is only to drag on the proceedings which were initiated in the year 1974. Hence, he prayed for allowing CRP(MD).No.463 of 2014 and dismissing CRP(MD).Nos.1585 and 1586 of 2012.

9.Submissions made on the side of the revision petitioners in CRP(MD).Nos.1585 and 1586 of 2012:

(i)The learned counsel appearing for the petitioners submits that



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the final decree proceedings pending before the Subordinate Court, Tenkasi were transferred to the Principal District Munsif Court, Sankarankovil on 01.12.1995. Admittedly, no notice has been issued to the first defendant intimating about transfer of the said proceedings to the new Court. The transferee Court has also not issued any notice to the first defendant. The first defendant did not receive any notice from the Advocate Commissioner who is stated to have visited the suit property.

(ii) The learned counsel for the revision petitioners relied upon the judgements of our High Court reported in **(2007) 5 MLJ 720 (V.Veeranan and another Vs. P.Srinivasan)** and **2019 SCC Online Mad 19869 (Dayanandhini Vs. K.Mala)** to contend that these two judgments have followed the judgement of our High Court reported in **1981 (Vol.94) LW 256 (Ellapuram Panchayat Union Vs. Sri Bhavaniamman Devasthanam)** wherein this Court has held that in all the cases where the suit or appeal is transferred from one Court to another Court, the litigants should be put on notice. In view of the said judgement, the non issuance of notice relating to transfer of final decree proceedings from Subordinate Court, Tenkasi to Principal District Munsif Court, Sankarankovil is fatal. Therefore, the final decree could be treated only as



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an exparte decree and the legal heirs of the first defendant are entitled to seek for setting aside the said exparte decree within one month of the receipt of notice in the execution proceedings, the legal heirs have approached the Court to set aside the exparte final decree. Therefore there is no delay whatsoever on the part of the revision petitioners.

(iii)The trial Court without properly appreciating the non issuance of notice either by transferor or by the transferee Court had dismissed I.A.Nos.814 and 815 of 2007 merely on the presumption that the first defendant was very well aware of the pendency of the proceedings. Even assuming that the first defendant was present at the time of Commissioner's inspection, only after Commissioner's report, the final decree proceedings were transferred from Tenkasi to Sankarankovil.

(iv)The learned counsel appearing for the revision petitioners further submitted that the First Appellate Court in CMA.No.1 of 2012 was right in reversing the order of the trial Court in I.A.No.813 of 2007 on the sole grant that neither the transferor nor the transferee Court have issued notice to the first defendant. Hence, he prayed for dismissing CRP(MD).No.463 of 2015 and to allow CRP(MD).Nos.1585 and 1586 of 2012.



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10.I have considered the submissions made on either side and perused the material records.

Discussion:

11.The final decree petition in I.A.No.155 of 1996 in O.S.No.98 of 1996 pending on the file of the Subordinate Court, Tenkasi was transferred to Principal District Munsif Court, Sankarankovil due to administrative reasons on 01.12.1995. The first defendant/first respondent in the said application was said exparte on 10.06.1993 on the ground that he had refused to receive the notice. Thereafter, during the Advocate Commissioner's visit, the first defendant was available and the same is reflected in the Advocate Commissioner's report dated. After transfer to Principal District Munsif Court, Sankarankovil, arguments were heard and a final decree came to be passed on 08.09.1997. The first defendant had passed on 26.01.2006.

12.During execution proceedings in E.P.No.55 of 2006, the decree holders had filed E.A.No.363 of 2006 to implead the legal heirs of the deceased first defendant. At that stage, the legal heirs have approached the Executing Court with a request to set aside the exparte final decree, to implead them in the said final decree proceedings and to accept their



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objection to the Advocate Commissioner's report. The primary ground on which these applications were filed is that the first defendant did not receive any notice from the transferee Court after it was transferred to Principal District Munsif Court, Sankarankovil. The First Appellate Court in CMA.No.1 of 2012 had allowed the appeal and the set aside the final decree solely on the ground that no notice was issued to the first defendant from the transferee Court.

13.The issue that arises for consideration is that whether a notice is mandatory from the transferee Court when a suit or appeal is transferred due to administrative reasons or due to the change in pecuniary or territorial jurisdiction.

14.Our High Court in a judgment reported in **1981 (Vol.94) LW 256 (Ellapuram Panchayat Union Vs. Sri Bhavaniamman Devasthanam)** in Paragraph No.9 has held that a notice should be given to the parties informing them about the transfer of the suit or appeal be transferred from one Court to another Court. In the said judgment, it has also been pointed out that this procedure should be followed until provisions are made either in C.P.C or under Civil Rules of Practice and Circular orders are issued.



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15.The above referred judgment was placed before the High Court on its administrative side and a Circular in ROC.No.193-A/81-RR/July 1981 was issued which is extracted as follows:

“(i)When 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 Advocates, 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 transferee Court.

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

16.The said circular is being referred to in the judgment of our High Court reported in **1992 (2) LW 505(K.Janarthan & another Vs. R.Thilak Kumar)**. This judgment was followed in another judgment reported in **1997-1-LW.276 (Krishnammal & another Vs. Arulmighu Madanagopalaswamy Temple)** and in **(2002) 3 CTC 13 (Sankaralingam and another Vs. V.Rahuraman)**.



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17.The judgement reported in **1981 (Vol.94) LW 256**
(Ellapuram Panchayat Union Vs. Sri Bhavaniamman Devasthanam)

will hold good only till circulars are issued by the High Court. Once a circular is issued, thereafter, the said circular has to be followed by the District Judiciary while transferring the suit or appeal from one Court to another Court. As per circular issued by the High Court in July 1981, the transferor Court has to post the cases to a particular date and take endorsement of the Advocates who have already entered appearance for the parties to the effect that they are aware of the suit or appeal or other proceedings being transferred to the particular Court and only thereafter it can be transferred. It has been further directed that in cases where the parties were not already been served, notice or fresh notice shall be issued by the transferee Court. Therefore, it is clear that the transferee Court is under an obligation to issue notice or fresh notice to a party only in cases where he has not been served before the transferor Court.

18.However a different view has been taken in a judgment reported in **(2007) 5 MLJ 720 (V.Veeranan and another Vs. P.Srinivasan)** relying upon the judgment reported in **1981 (Vol.94) LW 256 (Ellapuram Panchayat Union Vs. Sri Bhavaniamman Devasthanam)**. The three



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judgments namely **1992 (2) LW 505 (K.Janarthan & another Vs. R.Thilak Kumar)**, **1997-1-LW.276 (Krishnammal & another Vs. Arulmighu Madanagopalaswamy Temple)** and in **(2002) 3 CTC 13 (Sankaralingam and another Vs. V.Rahuraman)** were not brought to the notice of the Court.

19. Another learned Single Judge of this Court has delivered a judgment reported in **2019 SCC Online Madras 19869 (Dayanandhini Vs. K.Mala)** again relying upon **1981 (Vol.94) LW 256 (Ellapuram Panchayat Union Vs. Sri Bhavaniamman Devasthanam)**. In the said judgment, the learned Judge of this Court has directed the Registry to circulate the judgment of this Court reported in Vol.94 LW 256 to all the Civil Courts with an instruction to issue notice to the parties on transfer of suit. In compliance with the said judgment, the Registry has issued ROC.No.975/2019/RG/F1 on 21.03.2019 directing all the Subordinate Courts in the State of Tamil Nadu and Union Territory of Puducherry to follow the dictum laid down in Vol.94 LW 256. The Registry has issued the circular on 21.03.2019 oblivious of the fact that the order in **1981 (Vol.94) LW 256 (Ellapuram Panchayat Union Vs. Sri Bhavaniamman Devasthanam)** has already been taken cognizance of by the High Court on



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its administrative side and a circular to the said effect has been issued in July 1981. Therefore, the dictum laid by this Court in Vol.94 LW 256 directing the Courts to issue notices to the litigant no longer survives. Even as per paragraph No.9 of the said judgement, the dictum will be operative till circular orders are issued. Therefore, as on today, the circular of the High Court in July 1981 prevails.

20.Once a suit or appeal or other proceeding is transferred from one Court to another Court, it is highly impossible to issue notice to all the litigants intimating about the transfer either by transferor Court or by transferee Court. As per Circular of the High Court of the year 1981, once a party is represented through a Counsel, an endorsement of the said Counsel to the effect that he is aware of the transfer of the proceedings to another particular Court is enough and no notice need be sent either by transferor or by transferee Court to the litigant concerned. When the first defendant had refused to receive the summons, it should be treated as being served and therefore, the case of the first defendant would not fall under the category that he has not been served warranting notice or fresh notice from the transferee Court.



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21. In the present case, when the transferor Court issued notice to the first defendant and it has been returned with an endorsement “refused” and therefore, he was set exparte on 10.06.1993. The final decree application was transferred to the Principal District Munsif Court, Sankarankovil only on 01.12.1995. Therefore, it is clear that a party who had refused to receive the notice from the transferor Court and who had remained exparte cannot complain that he had not received any fresh notice from the transferee Court. In the present case, after being set exparte on 10.06.1993, when the Commissioner inspected the suit property on 21.10.1995, the first defendant was available. The Advocate Commissioner had recorded that the first defendant had refused to open the house in which he was residing. Therefore, it is clear that the first defendant was very well aware of the fact that after he was set exparte and an Advocate Commissioner has been appointed to divide the properties by metes and bounds.

22. The Executing Court had ordered delivery on 31.03.2011 and after effecting delivery, the execution petition was also terminated. The said order of delivery has been challenged before this Court in CRP(MD).No.857 of 2011 which was dismissed on 28.04.2011 granting



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liberty to prosecute I.A.Nos.813 to 815 of 2007. Therefore, it is clear that the decree holders have already taken possession of the property.

23.In view of the above said deliberations, the legal heirs of the first defendant would not be legally entitled to raise the issue of non service of notice from the transferee Court.

24.CRP(MD).No.463 of 2015 stands allowed and the order in CMA.No.1 of 2012 is set aside and the order in I.A.No.813 of 2007 dated 24.11.2011 is restored. CRP(MD).Nos.1585 and 1586 of 2012 stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.09.2023.

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

To
1.The Subordinate Judge
Sankarankovil

2.The Principal District Munsif,
Sankarankovil.

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR, J

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Pre-delivery common order made in
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and C.R.P(MD).No.463 of 2015
and MP(MD).No.1 of 2015

22.09.2023