



CRP PD(MD).No.2449 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2023

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

C.R.P(PD) (MD).No.2449 of 2023

Gopal Naicker (died)

1.Dhanammal

2.Ezhilarasi

3.Murugeswai

4.Muthumani

5.Senthilkumar

:Petitioners/Petitioners/  
LRs of Respondent/LRs of Defendant

Vs.

Thirumayammal

: Respondent/Respondent/  
Petitioner/Plaintiff

**PRAYER:** Civil Revision Petition is filed under Article 227 of Consitution of India, to set aside the order of issuing notice to the respondent dated 08.06.2023 herein in I.A.No.1 of 2023 praying to raise attachment made in respect of the suit property in I.A.No.355 of 1994 in O.S.No.49 of 1996 on the file of the District Munsif Court, Nilakottai.

For Petitioners : Mr.J.Lawrance



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## **ORDER**

**WEB COPY** The Civil Revision Petition is directed against the order of issuing notice to the respondent, dated 08.06.2023 in I.A.No.1 of 2023 in I.A.No.355 of 1994 in O.S.No.49 of 1996 on the file of the District Munsif Court, Nilakottai.

2. It is evident from the records that the respondent has filed a suit in O.S.No.439 of 1994 on the file of the Principal Sub Court, Dindigul against one Gopal Naicker, wife of the 1<sup>st</sup> petitioner and father of the petitioners 2 to 5 to recover money due on the promissory note and also filed an application in I.A.No.355 of 1994 for attachment of the defendant's property before judgment and the attachment before judgment was ordered on 14.06.1994 and the said attachment was entered in the Sub Registrar Office, Dindigul District; that thereafter, the suit was transferred to the file of the District Munsif Court, Nilakottai and renumbered as O.S.No.49 of 1996 and that subsequently, the suit was ordered to be dismissed as settled out of Court on 22.10.1996.

3. The case of the petitioners is that the said Gopal Naicker died in the year 2005 and they have not taken any steps to raise the attachment, that when the petitioners were taking steps to partition their properties, they came to



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know about the entry of attachment and that therefore, they were constrained to file an application in I.A.No.1 of 2023 under Order XXXVIII Rule 9 C.P.C., seeking orders to raise attachment made in respect of the property in I.A.No.355 of 1994 and that the learned District Munsif instead of allowing the application, has ordered notice to the respondent.

4. The learned counsel for the petitioners would submit that the suit itself was dismissed as settled out of Court; that the respondent/plaintiff cannot have any say or objection to raise the attachment and that the attachment shall be deemed to be withdrawn and as such, no notice is required to be issued to the respondent/plaintiff.

5. It is evident from the records that since the parties have entered into settlement out side the Court, recording the same, the suit was ordered to be dismissed as settled out of Court and the Court fee paid on the plaint was ordered to be returned to the plaintiff. Since there is no enforceable decree, the question of retaining the attachment does not arise. Moreover, the suit was dismissed as early as on 22.10.1996.



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6. Considering the above, the order of the learned District Munsif in issuing notice to the respondent is not warranted and as such, the same is liable to be set aside.

7. In the result, the Civil Revision is allowed and the order of issuance of notice to the respondent/plaintiff in I.A.No.1 of 2023 in I.A.No.355 of 1994 in O.S.No.49 of 1996 on the file of the District Munsif Court, Nilakottai, is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

**06.10.2023**

NCC : Yes/No  
Index : Yes/No  
Internet : Yes/No  
das

To

1.The District Munsif Judge, Nilakottai.

2.The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR, J.**

das

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