



CRP(PD)(MD)No.2545 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.01.2023

CORAM:

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

**CRP(PD)(MD)No.2545 of 2022**

Rathinasabapathi (died)

Saraswathi (died)

1. Santhakumari

2. Sampath

3. Rani

4. Rajendran

Uthaman (Died)

5. Parvathi

6. Saraswathi

7. Umaselvi

8. Lakshmipriya

... Petitioners

versus

Pattammal (died)

Thirumeni (died)

1. Selvakumari

2. Mutharasan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the docket order dated 12.07.2022 made in E.P.No.41 of 2022 in O.S.No.97 of 1996 on the file of the learned Principal



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District Munsif, Thanjavur.

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For Petitioners : Mr.N.Suresh

### **ORDER**

The petitioner/decreed holder has filed this Civil Revision Petition as against the docket order dated 12.07.2022 made in E.P.No.41 of 2022 in O.S.No.97 of 1996 on the file of the learned Principal District Munsif, Thanjavur.

2. The petitioner has filed the above E.P.No.41 of 2022, after the Judgment and Decree passed in S.A.(MD)No.976 of 2014 dated 06.09.2021, within a period of two years from the date of decree by the Appellate Court. The Execution Court, by docket order dated 12.07.2022, issued notice to the Judgment Debtor. Aggrieved over the same, the present Civil Revision Petition is filed.



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3. The learned counsel for the petitioner, by relying upon the provisions under Order 21 Rule 22 C.P.C. and the Judgment of this Court in ***Hazrath Imam Hussain Wakf, rep. by its Muthavalli Mr.Aga Zulfikar Ali @ Afzal Aga, Chennai vs. Nayeema Adib*** reported in ***(2006) 4 MLJ 190*** and another Judgment of this Court in ***M/s.Jumma Periya Pallivasal Wakf vs. P.Abdul Jabbar*** reported in ***CDJ 2022 MHC 301***, submits that the Court ought not to have issued notice, when the Execution Petition was filed within two years from the date of decree.

4. Order 21 Rule 22 C.P.C. makes it clear that if the Execution Petition is filed within two years from the date of decree, there is no necessity for a notice to show cause against execution to the Judgment Debtor.

5. This Court, in ***Hazrath Imam Hussain Wakf, rep. by its Muthavalli Mr.Aga Zulfikar Ali @ Afzal Aga, Chennai vs. Nayeema***



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*Adib* reported in (2006) 4 MLJ 190, held as follows:

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“2. Order 21, Rule 35 C.P.C. read along with Order 21, Rule 22 C.P.C. makes it clear that in the event of application for execution being filed within two years from the date of the decree, the execution Court is fully empowered to secure possession to be delivered to the decree-holder from the person in possession who is bound by the decree and who refuses to vacate the property. Under sub-rule (3) of Rule 35 of Order 21 C.P.C., if such person who is bound by the decree does not afford free access, the Court can through its officers after giving reasonable warning and facility to any woman not appearing in public according to customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession. Thus, a conjoint reading of Order 21 and Rule 22 and Rule 35 C.P.C. makes it clear that in the event of the decree-holder approaching the concerned execution Court within two years after the date of the decree, is entitled for recovery of possession by order of delivery without any notice being order of delivery without any notice being ordered



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in the judgment-debtor concerned.

3. The said legal position has also been affirmed by this Court by His Lordship M.SRINIVASAN, as he then was, in the judgment reported, in *Nachayee Ammal and Others vs. Pichaimuthu* (1992) 2 MLJ 498 wherein the learned Judge has stated the legal position as under in paragraph 4:

“ ..... If the execution petition is filed within two years after the date of the decree, there is no necessity for the executing Court to issue notice to the judgment-debtor .....”

“6. Consequently, the order dated 7.1.1991 recording delivery is directly in accordance with law as the order granting execution without notice to the judgment-debtor was in accordance with the provisions of Order 21, Rule 22 of the Civil Procedure Code. Hence, that order cannot be set aside on the ground that the Circular issued by this Court had not been followed or complied with.”



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6. In the light of the above said legal position, the Civil Revision Petition is allowed. The Executing Court is directed to proceed with the Execution Petition in E.P.No.41 of 2022 without ordering notice to the respondent/Judgment Debtor.

**03.01.2023**

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

Note: Issue order copy on or before 05.01.2023.

To

1. The learned Principal District Munsif,  
Thanjavur.



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**B.PUGALENDHI, J.**

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