



C.R.P.(MD)No.3200 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 08.12.2023

Delivered on : 20.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3200 of 2023

and

C.M.P(MD)No.16502 of 2023

1.J.Veerayee

2. J.Ravichandran

3.J.Mathivanan

:Petitioners/Respondents 2, 3 & 5/
Respondents 2, 3 & 5/Defendants 2, 3 & 5

Vs.

Jothi (died)

1.K.Ravichandran

2.T.Sivakumar

: Respondents 1 & 2/Petitioners/
Petitioners/Plaintiffs

3.J.Karthikeyan

: 3rd Respondent/4th Respondent/
4th Respondent/4th Defendant

4.S.Rajasurendran

: 4th Respondent/6th Respondent/
6th Respondent/6th Defendant



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Prayer : This Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Ex-order and Fair Order of learned Principal Subordinate Judge, Madurai passed on 25.04.2023 in E.A.No.2 of 2023 in E.P.No.99 of 2021 in O.S.No.391 of 2011.

For Petitioners : Mr.V.Nagendran

For Respondents : Mr.M.Balakrishnan,
caveators/for R1 and R2.

ORDER

The Civil Revision Petition is directed against the order passed in E.A.No.2 of 2023 in E.P.No.99 of 2021, dated 25.04.2021, on the file of the Principal Subordinate Court, Madurai, allowing the petition filed under Order V Rule 15 of the code of Civil Procedure.

2. The respondents 1 and 2 as plaintiffs have filed a suit in O.S.No.391 of 2011 on the file of the Subordinate Court, Melur, to declare that the suit property is belonging to them and for consequential directions to the defendants to vacate and hand over the vacant possession of the suit property to the plaintiffs and for permanent injunction restraining the defendants and their men from in any manner encumbering or alienating or leasing out the suit property.



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3. Originally, the suit was filed against the sole defendant M.Jothi. Pending suit, the sole defendant died and as such, his wife and three sons were impleaded as defendants 2 to 5 and as per the order passed in I.A.No.48 of 2016 one Raja Surendran has been impleaded as sixth defendant.

4. The learned Principal Subordinate Judge, after trial, has passed a judgment and decree, dated 26.11.2019, decreeing the suit as prayed for. Aggrieved by the judgment and decree, the wife and sons of the deceased defendant Jothi, have preferred an appeal in A.S.No.52 of 2019 and the learned Ist Additional District Court, Madurai, has passed a judgment and decree, dated 18.01.2021, dismissing the appeal. Challenging the dismissal of appeal, the defendants 2, 3, and 5 have preferred a second appeal before this Court in SA.No.65 of 2022 by showing the fourth defendant son of the second defendant and brother of the defendants 3 and 5 as fourth respondent and that the second appeal was dismissed on 07.06.2022. Thereafter, the decree holders have filed the execution petition in E.P.No.99 of 2021, claiming possession of the property in pursuance of the decree passed by the Principal Sub Court, which was confirmed by the



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first and second appellate Courts and the same is pending on the file of the Principal Subordinate Court, Madurai.

5. In the execution proceedings, notice sent to the fourth respondent was returned as he was in foreign country. The decree holders, by alleging that the respondents 3 and 5 are the brothers of the fourth respondent; that all of them were residing in the same address and that since notice sent to the fourth respondent was returned, the same may be served through the respondents 3 and 5, filed the above petition under Order V Rule 15 C.P.C., seeking permission to serve notice on the fourth respondent through respondents 3 and 5.

6. The respondents 2, 3 and 5 have filed a counter statement raising objections that there were disputes in their family and hence, they were not on talking terms with the fourth respondent; that since there existed misunderstanding between the fourth respondent and the respondents 3 and 5, they were not in a position to inform the service of notice for the fourth respondent; that they were not aware of the foreign address of the fourth respondent and that therefore, the petition is liable to be dismissed.



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7. The Executing Court, after enquiry, has passed the impugned order allowing the petition. Aggrieved by the impugned order, the respondents 2, 3 and 5 have preferred the present revision.

8. It is pertinent to note that after the death of the sole defendant Jothi, his wife and sons, including the fourth respondent have entered into appearance and contested the case through the same counsel and that all the defendants 2 to 5 have preferred the appeal before the District Court by engaging the same counsel.

9. As already pointed out, the second appeal was filed only by the defendants 2, 3 and 5 and the fourth defendant was shown as the fourth respondent in the second appeal.

10. As rightly contended by the learned counsel for the respondents/plaintiffs, it is not the case of the revision petitioners that they were not residing in the same house earlier. More importantly, the learned trial Judge has specifically observed that the revision petitioners/defendants 2, 3 and 5 have themselves filed a memo on



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08.12.2022 stating that the fourth defendant/fourth respondent went abroad and also produced the copy of the passport to show his departure.

11. Considering the entire facts and circumstances of the case and also the facts that the revision petitioners were taking part in the Court proceedings along with the fourth respondent by engaging the same counsel; that all of them were residing in the same house previously and that the revision petitioners filed a memo along with the copy of the passport of the fourth respondent to show that he was in abroad, the impugned order to serve the notice of the execution petition to the fourth respondent through the defendants 2, 3 and 5 cannot be found fault with. The decree holders, in their affidavit filed in support of the petition , have specifically stated that the postal notice sent earlier in pursuance of the directions of the Executing Court was received by the fourth respondent, that the Executing Court by observing that the private notice was not sent, directed the decree holders to take notice and that the notice was returned as he was in abroad on 20.05.2022 and failed to appear for the hearing on 28.08.2022.



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12. At this juncture, it is necessary to refer the judgment of ***Punjab and Haryana High Court in Karnail Singh Vs. Malkiat Singh*** in ***Civil Revision No.5466 of 2017 (O & M)***, wherein, it has been held as follows :

“9.In the instant case, the defendant was duly served in the suit at the same address as furnished before the Executing Court. He appeared through counsel and filed written statement controverting the allegations in the plaint. But he did not lead any evidence and the suit was decreed against him. He did not appeal against that order. The respondent would, thus, be deemed to be aware of the judgment and decree against him. He would also be expected to be aware that the execution proceedings would necessarily follow. In these circumstances, if he has chosen to go abroad, without leaving any agent empowered to accept service on his behalf, it may legitimately be inferred that he is intentionally avoiding service. Hence, also, recourse to Order 5 Rule 20 CPC would be justified.”

13. It is evident from the records that the fourth respondent was residing in the same house, where the respondents 2, 3 and 5 are residing and summons and notices in the suit proceedings were served on the defendants 2 to 5 in the same address. But, after the disposal of the first appeal, the fourth respondent has not joined in the filing of the second appeal and after the dismissal of the second appeal, when the notice in the



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execution petition was sent to him, the same was served on him at the first instance and the notice sent subsequently was returned as he was in abroad.

14. Admittedly, he has not appointed any agent empowering him to accept the service on his behalf.

15. As rightly contended by the learned counsel for the decree holders, the fourth respondent was very much aware of the judgment of the second appellate court and also the pendency of the execution petition. But even then, he has not left any agent and as such, it can easily be inferred that the fourth respondent has been intentionally evading the service.

16. Viewing from that angle also, the impugned order cannot be found fault with. In case, if the revision petitioners refuses to receive the notice on behalf of the fourth respondent, then the executing court has to proceed under Order V Rule 20 of C.P.C. Consequently, this court concludes that the civil Revision Petition is devoid of merits and the same is liable to be dismissed.



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17. In the result, the Civil Revision Petition is dismissed. Since the execution petition is pending for the past two years, the Executing Court is directed to dispose of the petition within three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

20.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
das

To

1. The Principal Subordinate Judge,
Madurai.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Pre-delivery order made in
C.R.P.(MD)No.3200 of 2023
and
C.M.P(MD)No.16502 of 2023

Dated : 20.12.2023