



CRP(MD). No.197 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 16.12.2025

CORAM

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

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and

CMP(MD) No.882 of 2019

1.Elizabeth (died)

2.Velammal

3.Senthil Sivasakthi Velmurugan

*(P2 and P3 have been impleaded vide
order dated 25.02.2025)*

... Petitioners

Vs

Paramasivan

... Respondent

PRAYER :-Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 29.10.2018 passed in EA.No.30 of 2018 in EP.No.1 of 2017 in OS.No. 178 of 2000 on the file of the Principal District Munsif Court, Tenkasi.

For Petitioners : Mr.R.J.Karthick



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For Respondent : Mr.J.Jeyakumaran

ORDER

This Civil Revision Petition has been filed challenging the order dated 29.10.2018 made in EA.No.30 of 2018 in EP.No.1 of 2017 in OS.No.178 of 2000 on the file of the Principal District Munsif Court, Tenkasi.

2.One Annathai has filed a suit in O.S.No.178 of 2000 on the file of the Principal District Munsif Court, Tenkasi, against the deceased first petitioner/defendant, seeking partition. The final decree was passed in the said suit in favour of Annathai/plaintiff on 02.03.2005. Aggrieved by the said judgment and decree, the deceased first petitioner has filed an appeal before the Principal Sub Court in A.S.No.26 of 2003 and the same was also dismissed on 03.09.2003. Challenging the same, no second appeal was filed and the judgment and decree, dated 02.03.2005, had become final.

3.On 21.04.2010, the plaintiff/decree holder, namely, Annathai, had executed a registered power of attorney in respect of the suit

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schedule property in favour of one Sasi, who is is none other than the son of said Annathai and subsequently, Sasi executed a sale deed in favour of one Sivasundari, vide Doc.No.1623/2010 dated 28.04.2010. Thereafter, the said Sivasundari executed a General Power of Attorney in favour of one Avudaiyamal, who is none other than the wife of the respondent herein, vide Document No.723 of 2010 dated 22.10.2010. Thereafter, on 27.10.2010, the said Avudaivammal executed sale deed in favour of the respondent, vide Doc.No.4237/2010.

4.After that, the respondent has filed E.P.No.1 of 2017 before the Principal District Munsif Court, Tenkasi, under Order 21 Rule 35 of C.P.C. to execute the judgment and decree, dated 02.03.2005. Pending EP., the deceased first petitioner filed E.A.No.30 2018, to compare the signature found in the power of attorney, dated 21.04.2010, executed by Annathai in favour of Sasi along with the admitted signature found in the papers of the suit as well as the Vakalat. However, it was dismissed, vide order, dated 29.10.2018. Challenging the same, the present Civil Revision Petition has been filed.



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5.The learned counsel for the petitioners reiterating all the contentions set out in the memorandum of grounds of Revision would vehemently content that the Court below has not considered the objections raised by the deceased first petitioner properly and there is a miserable failure on the part of the Court below in compliance with Order XXI Rule 16 CPC. He would further submit that as per Order XXI Rule 16 CPC., where a decree has been transferred by assignment, notice of such application shall be given to the transferor and the judgment debtor and the decree shall not be executed until the Court has heard their objection to its execution. He would therefore call upon this Court to set aside the order impugned herein.

6.*Per contra*, the learned counsel appearing for the respondent would submit that the Executing Court had already passed an order for delivery of the property on 22.01.2019 and the possession was also handed over to the respondent on 25.01.2019. When the case was posted to 04.02.2019 to record the delivery of property, suppressing such facts, the petitioner has filed the present petition by stating that the delivery



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was not effected and has also obtained an order of interim stay of EP.No.

1 of 2017 in the present petition and as such, the delivery was not yet recorded by the trial Court, due to which, the respondent suffered irreparable loss and hardship. Hence, he seeks for dismissal of the present petition.

7.I have considered the submissions made by the learned counsel on either side and perused the records.

8.Admittedly, one Annathai filed O.S.No.178 of 2000 for partition and the respondent filed E.P.No.1 of 2017 to execute the judgment and decree passed in favour of plaintiff, Annathai. Pending EP., the deceased petitioner filed E.A.No.30 2018, to compare the signature found in the power of attorney, dated 21.04.2010, executed by Annathai in favour of Sasi along with the admitted signature found in the papers of the suit as well as the Vakalat. It was dismissed, vide order, dated 29.10.2018, which is under challenge in the present petition. Pending the Civil Revision Petition, the first petitioner died and as such, her legal heirs were impleaded as parties, vide order dated 25.02.2025.



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9.It is a settled position that a *lis pendens* transferee from the defendant, though not arrayed as a party in the suit, is still a person claiming under the defendant. The same principle of law is recognized in a different perspective by Rule 16 of Order 21 CPC which speaks of transfer or assignment *inter vivos* or by operation of law made by the plaintiff/decreed-holder. The transferee may apply for execution of the decree of the Court which passed it and the decree will be available for execution in the same manner and subject to the same conditions as if the application were made by the decree-holder. In Order 21 Rule 16 also, an explanation was inserted through amendment made by Act 104 of 1976 w.e.f. 1-2-1977, whereby the operation of Section 146 CPC was allowed to prevail independent of Order 21 Rule 16 CPC.

10.In the case on hand, the only short point for consideration is whether the Court below has made compliance of Order XXI Rule 16 CPC while passing the order impugned herein or not?



11.For better appreciation Order XXI Rule 16 CPC is extracted

herein under:-

“ 16.Application for execution by transferee of decree:-

Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.”

12.Perusal of the impugned order, dated 29.10.2018, would reveal that the Court below failed to follow Order 21 Rule 16 CPC properly. The record shows non-compliance with the mandatory procedure



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prescribed under the said Code. The Court below's failure to comply with Order 21 Rule 16 CPC has resulted in an irregularity, which warrants interference. The Rule requires specific steps to be taken before passing an order, which were not followed in the present case. This Court finds that the petitioners' rights were prejudiced due to the trial Court's non-compliance. The Court below ought to have followed the procedure laid down under Order 21 Rule 16 CPC, which is mandatory in nature. The non-compliance has led to a miscarriage of justice, necessitating interference by this Court.

13. In the light of the above, the impugned order dated 29.10.2018 passed in EA.No.30 of 2018 in EP.No.1 of 2017 in OS.No.178 of 2000 on the file of the Principal District Munsif Court, Tenkasi, is set aside, as it suffers from procedural irregularity and the matter is remanded back to the trial Court for fresh consideration. The trial Court shall decide the matter afresh, after hearing both the parties, by arraying the petitioners 2 and 3 herein as parties in the petition, since the first petitioner/namely, Elizabeth, who is the defendant in the suit, died, and ensure compliance with the procedural requirements, within a period of six months from the



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date of receipt of a copy of this order. The parties shall cooperate with the proceedings. It is also made clear that this order is without prejudice to the rights and contentions of the parties in the main proceedings. The trial Court shall decide the matter on its own merits, uninfluenced by any observations made in this order.

14.In fine, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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16.12.2025

To

The Principal District Munsif, Tenkasi.



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N.SENTHILKUMAR, J.

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