

(1994) 07 MAD CK 0088
In the Madras High Court

M. Sampathraj Bothra

APPELLANT

Vs

Thiruvengadam

RESPONDENT

Date of Decision : 08-07-1994

Acts Referred:

Citation : (1994) 2 MLJ 477

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Judgement

Pratap Singh, J.—This civil revision petition is directed against the order passed E.A. No. 278 in E.P. No. 2090 of 1985 in O.S. No. 9388

of 1976 on the file of X Judge, City Civil Court, Madras.

2. Short facts are : The respondent has obtained a money decree against S.R. Jain in O.S. No. 9388 of 1976. To realise the decree debt, he

levied execution in E.P. No. 2090 of 1985 praying for arrest. The respondent filed E.A. No. 278 of 1987 praying for an order to amend column

No. 11 in the Execution Petition by adding alias Sampathraj Bothra after S.R. Jain. Without ordering notice to the judgment-debtor, the court

below had allowed the petition. Aggrieved by that order, M. Sampathraj Bothra has filed this revision petition.

3. Learned Counsel appearing for the revision petitioner would submit that S.R. Jain and Sampathraj Bothra are totally different persons and

without even ordering notice to S.R. Jain in Execution Application, this amendment with regard to the name of the judgment-debtor has been

made, that the order is erroneous since no notice was served on the judgment-debtor. Learned Counsel for the revision petitioner would further

submit that if at all any amendment is to be made, it can be done only by filing

application to amend the decree and not by filing execution application.

4. I have carefully considered the submissions made by the learned Counsel for the revision petitioner. The order passed by the court below

without giving notice to the judgment-debtor is clearly erroneous. If the name of the judgment-debtor is to be amended, the application must be

filed for amendment of decree alleging that he has got another name and that too after issuing notice to the judgment-debtor and after hearing him.

Taking that view of the matter, I do not propose to go further to find out whether the defendant in the suit viz. S.R. Jain and M. Sampathraj Bothra

in whose name this civil revision petition is filed is one and the same person or different person in this revision since that is not necessary. For the

infirmities which I have pointed out, the order passed in E.A. No. 278 of 1987 is liable to be set aside.

5. In view of the above, the civil revision petition is allowed and the order passed in E.A. No. 278 of 1987 in E.P. No. 2090 of 1985 in O.S. No.

9388 of 1976 on the file of Assistant Judge, City Civil Court. Madras, is set aside. No costs.