

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4040 of 2014
and M.P.No.1 of 2014

Sivakumar

.. Petitioner

Vs

1.Jayaraman

2.The Secretary,
Primary Agriculture Cooperative Bank,
Semmar Village,
Tirukoilur.

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 23.10.2013 made in I.A.No.87 of 2010 in O.S.No.13 of 2006 on the file of the 1st Additional Sub Judge, Villupuram.

For Petitioner : Mr.N.Suresh
For Respondents : Mr.R.Balakrishnan (For R1)
No appearance (For R2)

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 23.10.2013 made in I.A.No.87 of 2010 in O.S.No.13 of 2006 on the file of the 1st Additional Sub Judge, Villupuram.

2.The revision petitioner as a plaintiff filed a suit in O.S.No.13 of 2006 on the file of the District Munsif Court, Tirukoilur for declaration that the settlement deed executed by one Kandasamy Kounder is null and void, which was dismissed. Against which, A.S.No.36 of 2006 has been filed on the file of the 1st Additional Subordinate Court, Villupuram and the same is pending. The plaintiff filed O.S.No.13 of 2006 for declaration of title and recovery of possession on the basis of the settlement deed executed by his grandfather Kandasamy Kounder. When the case is about to open for trial, proof affidavit has been filed and documents were marked, at that time, the first respondent/first defendant filed I.A.No.87 of 2010 to stay the proceedings in O.S.No.13 of 2006 till the disposal of A.S.No.36 of 2006 and the same was allowed. Against which, the present Civil Revision Petition has been filed.

3.The main grievance of the learned counsel for the petitioner is that both O.S.No.13 of 2006 and A.S.No.36 of 2006 is pending before the same Court. He would further submit that both the cases can be tried simultaneously and there is no necessity for invoking Section 10 CPC. To substantiate his argument, he relied upon the decision reported in **2005 (1) CTC 156 (National Institute of Mental Health and Neuro Sciences vs. C.Parameshwara)** and prayed for an order.

4. Resisting the same, the learned counsel for the respondent would submit that O.S.No.150 of 1998 is a comprehensive suit which was ended in dismissal and against which, appeal has been preferred in A.S.No.36 of 2006, wherein appellant argument was heard on 11.06.2014 and it was posted on 17.06.2014 for respondent arguments. He further submitted that without advancing argument the plaintiff want to get along with the trial in O.S.No.13 of 2006. He would also submit that since A.S.No.36 of 2006 is a comprehensive once, till the disposal of A.S.No.36 of 2006 the suit in O.S.No.13 of 2006 has to be stayed. This factum has been rightly considered by the Trial Court. Hence, he prayed for dismissal of the Civil Revision Petition.

5. Considered the rival submissions made on both sides and perused the typed set of papers.

6. It is admitted by both sides that the suit property originally belong to one Kandasamy Kounder. The said Kandasamy Kounder had three daughters and a son by name Jayaraman, who is the plaintiff in O.S.No.150 of 1998 and the first defendant in O.S.No.13 of 2006 and he had two sons and three daughters. The said Kandasamy Kounder executed a settlement deed on 07.05.1982 in favour of one of the grandson Sivakumar on 07.05.1982 in respect of the suit property and that has been challenged by the plaintiff/first

respondent, namely, Jayaraman, by way of filing O.S.No.150 of 1998 on the file of the District Munsif Court, Tirukoilur for declaration declaring that the settlement deed is null and void and also for consequential injunction not to evict him from the suit property except due process of law and the same was dismissed after contest. Against which, A.S.No.36 of 2006 has been filed and the same is pending on the file of the First Additional Subordinate Court, Villupuram.

7.Now, the plaintiff/revision petitioner/settlee filed O.S.No.13 of 2006 for declaration of title and also recovery of possession. At this juncture, it is appropriate to incorporate Section 10 of CPC, which is as follows:

“10.Stay of suit:- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.”

8.The learned counsel for the petitioner also relied upon the decision reported in **2005 (1) CTC 156 (National Institute of Mental Health and Neuro Sciences vs. C.Parameshwara)**, wherein in paragraph No.8, it is held as follows:

“8.The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the -same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil Court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contra-distinction to the

words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical.

There is no quarrel over the proposition. But the above citation is not applicable.

9.If the Court come to the finality that the property is a separate property the settlor have the right to execute the settlement deed, then the defendant is entitled to the property and if the Court come to the conclusion that the property is an ancestral property, the settlor have no right to execute the settlement deed because the son inherit the property as successor and the defendant is not entitled to declaration of title and recovery of possession and he is entitled only a share in the property as a heir. Since A.S.No.36 of 2006 is a comprehensive suit, if it is disposed of and attained finality, the result of the other suit in O.S.No.13 of 2006 will be on the basis of the result of A.S.No.36 of 2006 since O.S.No.13 of 2006 is a simple suit for declaration of title on the basis of settlement deed and for recovery of possession. Therefore, the Trial Court has rightly held to stay the proceeding in O.S.No.13 of 2006 till the disposal of A.S.No.36 of 2006. It is pertinent to note that even though the appellant in A.S.No.36 of 2006 has advanced argument on 11.06.2014 the respondent/revision petitioner has not advanced his argument and he is

fighting with the other side and dragging on the proceeding. In such circumstances, I am of the view that only with a view to drag on the proceeding without advancing argument in A.S.No.36 of 2006, this revision petition has been filed which shows the abuse of process of Court. Hence, the revision petition deserves to be dismissed.

10.In the result, the present Civil Revision Petition is dismissed with costs of Rs.5,000/- (Rupees Five Thousand Only) to be paid to the Chief Justice Relief Fund. Further, since A.S.No.36 of 2006 is of the year 2006 and as already appellant arguments was heard, the First Additional Subordinate Court, Villupuram is directed to dispose of the same within a period of one month from the date of receipt of a copy of this order. Till the disposal of A.S.No.36 of 2006, the impugned order passed in I.A.No.87 of 2010 to stay the proceeding in O.S.No.13 of 2006 is hereby confirmed. Consequently, connected miscellaneous petition is closed. No costs.

23.11.2015

Index: Yes/No
Internet: Yes/No
cse

R.MALA. J.,

cse

To

The I Additional Subordinate Court, Villupuram.

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