

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :22.04.2016

Reserved on :28.04.2016

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP (PD) No.1136 of 2012
and
M.P.No.1 of 2013

1.S.Subramani
2.S.Marimuthu

.. Petitioners

Versus

Govindan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying against the Order and Decreetal Order dated 08.11.2011 in I.A.No.601 of 2011 in O.S.No.389 of 1993, on the file of the II Additional District Munsif Judge, Salem.

For Petitioners
For Respondent

...Mrs. A.L.Gandhimathi
... Mr.V.Rajasekaran

ORDER

Heard Mrs. A.L.Gandhimathi, learned counsel for the Revision Petitioners and Mr.V.R.Rajasekaran, learned counsel for the Respondent.

2. One Sengoda Nadar and Perianna Nadar have filed the suit in O.S.No.408 of 1981 on the file of the District Munsif Court, Salem seeking the relief of permanent injunction. The respondent herein also filed the suit in O.S.No.1544 of 1982 before the same Court for the relief of permanent injunction. After hearing the counsel for both sides, the trial Court decreed the suit in O.S. No. 408 of 1981 and dismissed the suit in O.S.No.1544 of 1982 by an order dated 30.03.1990. The judgment passed by the trial court in both the suits was the subject matter of S.A.Nos.1389 and 1390 of 1992 before this Court. It appears that as against the judgment and decree passed in the Second Appeals by this Court, Special Leave Petitions in S.L.P.Nos.15105 and 15106 of 2003 were filed and pending before the Hon'ble Supreme Court. During the pendency of the Special Leave Petition, the Respondent has filed the present suit in O.S.No.389 of 1993 before the learned II Additional District Munsif, Salem for declaration to declare that the assessment made to the property is null and void. Both the Plaintiffs as well as Defendants in O.S.No.389 of 1993 and the parties in S.L.P.Nos.15105 and 15106 of 2003 are one the same. Therefore, the Revision Petitioner, who are the Defendants 4 and 5 in the above suit in O.S.No.389 of 1993 have filed I.A.No.601 of 2011 under section 10 of CPC with a prayer to stay all further proceedings of the suit in O.S.No.389 of 1993 till the disposal

of the S.L.P.Nos.15105 and 15106 of 2003 pending before the Hon'ble Supreme Court. The learned Second Additional District Munsif dismissed the application which is questioned in this Civil Revision Petition.

Section 10 of CPC contemplates that:

"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 jurisdictions, or before the Supreme Court."

3. The trial court, without considering the factual aspects and Section 10 of CPC, refused to grant interim stay. On perusal of the documents filed by the Civil Revision Petitioners in page No.29 an order passed by the Hon'ble Supreme Court is annexed which arises out of the judgment and decree passed by this Court in the above mentioned second appeals. During the course of the arguments by

either side, the respondent has not disputed that the S.L.P.Nos.15105 and 15106 of 2003 are pending before the Hon'ble Supreme Court and the parties in the above said Special Leave Petition are one and the same.

4. Therefore, I am inclined to set aside the order of the learned District Munsif Court, Salem, in I.A.No.601 of 2011 in O.S.No.389 of 1993. Accordingly, the impugned order is set aside and the Civil Revision Petition is allowed. There will be an interim stay of all further proceedings in O.S. No. 389 of 1993 till the disposal of the S.L.P.Nos.15105 and 15106 of 2003, pending before the Hon'ble Supreme Court. No costs. Consequently, connected miscellaneous petition is closed.

28.04.2016

Index:Yes/No
Internet:Yes/No
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To

The II Additional District Munsif Judge,
Salem.

M.V.MURALIDARAN, J.
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**PRE-DELIVERY ORDER MADE IN
C.R.P(PD)No.1136 of 2012**

28.04.2016