

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2016

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).No.1313 of 2013

and

M.P.No.1 of 2013

M.Dhanasekaran
S/o.Murugesan

.. Petitioner/Defendant

Vs.

S.Krishnan
S/o.Subramani

.. Respondent/Plaintiff

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 20.02.2013 made in I.A.No.19357 of 2012 in O.S.No.425 of 2012 on the file of the XV Assistant City Civil Court, Chennai.

For Petitioner : Mr.J.Nandagopal

For Respondent : Mr.G.Thangavel

ORDER

Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondent.

2. The present Civil Revision Petition has been filed challenging the impugned order dated 20.02.2013 made in I.A.No.19357 of 2012 in O.S.No.425 of 2012, wherein the application filed under Section 10 CPC to stay all further proceedings of the suit in O.S.No.425 of 2012 till the disposal of the A.S.No.1052 of 2012 came to be dismissed.

3. The learned counsel appearing for the revision petitioner would submit that the petitioner herein who is the defendant in O.S.No.425 of 2012 had filed a suit in C.S.No.1007 of 2007 before this Court challenging the sale deed dated 06.08.2007. Later, the said suit was transferred to the file of the City Civil Court and renumbered as O.S.No.13661 of 2010. While so, on 23.03.2010, the suit in O.S.No.13661 of 2010 was dismissed and as against the same, an appeal in A.S.No.1052 of 2012 had been preferred. In the said appeal, the arguments were heard and the matter had been adjourned for pronouncing judgment. That apart, the petitioner herein had also filed

another suit in O.S.No.3589 of 2011 for injunction restraining the plaintiff in O.S.No.425 of 2012 from interfering with his peaceful possession except due process of law. The said suit in O.S.No.3589 of 2011 was decreed on 03.08.2012. Thereafter, the respondent/plaintiff filed the suit in O.S.No.425 of 2012 for eviction and the same was pending.

4. The learned counsel appearing for the revision petitioner would further submit that since the issue involved in both the suits are one and the same, the revision petitioner herein had filed an application under Section 10 CPC in I.A.No.19357 of 2012 in O.S.No.425 of 2012 to stay all further proceedings of the suit in O.S.No.425 of 2012 till the disposal of the A.S.No.1052 of 2012. However, the Trial Court without considering the fact that the issue involved in both the suits are one and the same had dismissed the application and hence, the learned counsel for the revision petitioner prayed for setting aside the impugned order.

5. Resisting the same, the learned counsel for the respondent would submit that the revision petitioner had filed the suit in C.S.No.1007 of 2007 against the respondent herein and two others,

seeking for the following reliefs:

"(a) To declare and set aside the sale deed dated 6.8.2007 obtained from the Plaintiff by fraud force and coercion in favour of the 1st defendant Mr.S.Krishnan S/o.Subramani and registered as Document No.2849/07 on the file of the 3rd Defendant, namely SRO Anna Nagar in respect of house and building situated at Door No.206, Plot No.109, Vinayagar Koil Street, T.V.Nagar, Anna Nagar, Chennai-40 to an extent of 1150 sq.ft namely the suit property.

(b) For an Permanent Injunction restraining the Defendants 1 and 2 from interfering with the peaceful possession of the Plaintiff over the suit property.

(c) For the cost of the suit and for such other relief or relieves as this Hon'ble Court may think fit and proper in the circumstances of the case."

6. Admittedly, after contest the suit had been dismissed, against which the revision petitioner herein had preferred an appeal in A.S.No.1052 of 2012, which was pending for pronouncing judgment. It is pertinent to note that originally the suit properties were owned by

the petitioner herein viz., Dhanasekaran. It is the case of the respondent that he had purchased the suit properties under the sale deed dated 06.08.2007 and on the basis of the same, he had filed the suit for ejectment. The learned counsel would further submit that on the date of handing over possession, the revision petitioner was permitted to retain the ground floor and vacate the same after finding a suitable place. However, the revision petitioner failed to do so and hence, the respondent herein was forced to file the suit for ejectment. So, according to the learned counsel for the respondent, it is entirely a different issue. Thus, the learned counsel for the respondent seeks for dismissal of the Civil Revision Petition.

7. Considered the rival submissions made by both sides and perused the typed set of papers.

8. A bare perusal of the plaint would show that the respondent herein claims title on the basis of the sale deed dated 06.08.2007. So, if the appeal in A.S.No.1052 of 2012 is allowed, the respondent herein will have no right over the property and the suit gets automatically dismissed. But if the appeal is dismissed, the plaintiff will be entitled to recovery of possession.

9. At this juncture, it would be appropriate to consider the decisions relied on by the learned counsel for the revision petitioner:

9.1. In the decision reported in **2012-5-L.W.225, M.Ramasamy v. Pappathi**, it was held that when the matter in issue is directly and substantially in issue in the previously instituted suit, the later suit has to be stayed and the object behind Section 10 CPC is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. It is appropriate to incorporate paragraphs 6 and 8 of the said decision:

"6. Though, it is stated in Section 10 that when the matter in issue is directly and substantially in issue in the previously instituted suit, the latter suit has to be stayed, the object behind Section 10 C.P.C., is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. In this case, admittedly, O.S.No.436 of 2000, was tried and judgment was delivered and reversed in First Appeal. Therefore, the latter suit cannot be stayed, as the latter suit has already been disposed of.

7.

8. As stated *supra*, the issue in both the suits is identical, viz., whether the settlement deed executed by Mr.Munisamy Gounder, in favour of Mani @ Balasubramaniyan, is valid or not. If the settlement deed is upheld, then the parties in O.S.No.380 of 1998, cannot have any right over the properties and the partition suit will have to be dismissed. On the other hand, the settlement deed is declared as void or not binding on the legal representatives of the said Muthusamy Gounder, then they are entitled to the decree of partition. Therefore, till the issue regarding the settlement deed has been finally decided in O.S.No.436 of 2000, partition suit, viz., the suit in O.S.No.380 of 1998, has to be stayed. No doubt, the Second Appeal has not yet been numbered and the Miscellaneous Petition No.1 of 2012, has been filed to condone the delay and several steps have to be crossed and this Court has to condone the delay and the Second Appeal has to be admitted. In case, the Second Appeal is not admitted, then the suit in O.S.No.380 of 1998, has to be dismissed, as the parties have no right over the suit property. If the Second Appeal is admitted, then, till the

disposal of the Second Appeal, the parties have to wait, as their rights have to be adjudicated in the Second Appeal. In any event, O.S.No.380 of 1998, has to be stayed.”

9.2. In the decision reported in **AIR 2005 Supreme Court 242, National Institute of Mental Health and Neuro Sciences v. C.Parameshwara**, it was held that 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. It is appropriate to incorporate paragraph 8 of the said decision:

“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."

10. Now, it would be appropriate to consider the decisions relied

on by the learned counsel for the respondent.

10.1. In the decision reported in ***AIR 1985 CALCUTTA 154, Adhish Chandra Sinha v. Hindusthan Gas and Industries Ltd., and another***, it was held that merely because one of the questions in issue is the same as in the other suit would not make the subject matter identical. It is appropriate to incorporate paragraph 6 of the said decision:

"6. Applying the correct test, we are unable to hold that the two suits involve the same subject-matter or even that the principal issue involved in both the suits is identical. The Alipore suit, which has since been stayed, is a suit for ejectment on three-fold grounds, namely, (i) reasonable requirement, (ii) wrongful user of residential premises for non-residential purpose and (iii) the tenant agreeing in writing to vacate and then giving a notice to quit on his own. The suit may succeed on any of the grounds being made out. Only the validity of the notice dated Jan. 16, 1979, which is the basis of the third ground as aforesaid, is being challenged in the Original Side suit the subject-matter whereof is totally different, namely, declaration of the tenant's right as tenant notwithstanding

such notice and injunction for prevention of obstruction to the beneficial use of the tenancy and avoidance of nuisance. The learned Subordinate Judge may be right in holding that one of the issues that may arise for consideration in both the suits with regard to the validity of the notice dated Jan. 16, 1979, may be identical. But that does not make the subject-matter in issue in both the suits identical nor, on the facts and circumstances of the case can it be said that that is the principal issue in the Alipore suit. It is, therefore, difficult for us to hold that the subject-matter in issue in the Alipore suit is directly and substantially in issue in the Original Side suit. We have pointed out already that the Alipore suit may succeed even if the disputed notice fails resulting in failure of one of the grounds. Even if we judge it from another stand point, namely, as to whether the decision in the Original Side suit would clearly bar the Alipore suit on principles of res judicata or not, we are not in a position to hold that it would be so. Hence, in our view, Section 10 of the Code could not have been invoked and the learned Subordinate Judge in invoking such a provision was really acting in

illegal and irregular exercise of his jurisdiction, if not totally beyond his jurisdiction. Such an order would cause material prejudice to the plaintiff of the Alipore suit as his suit would unnecessarily and indefinitely be stayed as a result of such an order."

The above decision is not applicable to the facts of the present case because in the above case simultaneous trial has been ordered. But in the instant case, the suit in O.S.No.13661 of 2010 was already dismissed and as against the same, an appeal in A.S.No.1052 of 2012 has been preferred and after the filing of the appeal only, the present suit came to be filed.

10.2. In the decision reported in **(2005) 2 Supreme Court Cases 256, National Institute of Mental Health & Neuro Sciences v. C.Parameshwara**, much emphasis was placed on paragraphs 8, 9 and 11 and the same is extracted here under:

"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.

9. In the present case, the appellant had initiated the disciplinary proceedings against the respondent herein on charges of misappropriation of drugs. In the said disciplinary proceedings, the respondent was found guilty of alleged misappropriation of drugs. On the basis of the findings arrived at in the disciplinary enquiry, the respondent herein was removed. The extent of the loss suffered by the appellant, as found in the disciplinary enquiry, was Rs. 1,79,668.46. Being aggrieved by the order of dismissal, the respondent moved the Labour Court. On 29.10.2001, the Labour Court passed an award setting aside the order of removal dated 12.4.1993. Being aggrieved, the appellant instituted writ petition No. 24348/02. The appellant has also instituted civil suit No. 1732/95 for recovery of the loss suffered by it to the tune of Rs. 1,79,668.46 with interest. Thus, as can be seen from the above facts, both the proceedings operated in different spheres. The subject matter of the two proceedings is entirely distinct and different. The cause of

action of the two proceedings is distinct and different. The cause of action in filing the said suit is the loss suffered by the appellant on account of the shortage of drugs. On the other hand, in the said writ petition No. 24348/02, the management has challenged the award of the Labour Court granting reinstatement of the respondent.

11. In the impugned judgment, the High Court has observed that since the writ petition No. 24348/02 filed by the appellant against the award of the Labour Court was pending in the High Court and since the High Court was superior to the Civil Court it was desirable to stay the passing of the decree by the Civil Court. At this stage, it may be mentioned that the respondent applied for stay of the trial pending in the City Civil-Court, Bangalore under Section 10 read with Section 151 CPC. Since the scope of the writ petition filed by the management was entirely distinct and separate from the suit instituted by the management in the Civil Court, we are of the view, that, the High Court had erred in directing the trial Court not to proceed with the drawing up of the decree.”

The above decision is not applicable because the above matter relates to writ proceedings, wherein the order of the Civil Court came to be stayed. In the above matter, it was held that the subject matter of the two proceedings is entirely distinct and different, so as the cause of action. Hence, Section 10 CPC is not applicable.

10.3. In the decision reported in ***AIR 2013 Supreme Court 1712, Aspi Jal and another v. Khusroo Rustom Dadyburjor***, the decision made in the case of ***National Institute of Mental Health & Neuro Sciences v. C.Parameshwara*** reported in ***(2005) 2 Supreme Court Cases 256*** has been relied upon.

The above decision is also not applicable to the facts of the present case because in the instant case, the suit has been filed challenging the sale deed dated 06.08.2007, whereas the above decision relates to the writ proceedings.

10.4. In the decision reported in ***2014 AIR CC 505 (AP), Dr.M.Srinivas Rao v. Madhura Centre/Tiffin***, one suit is related to validity of termination of tenancy of tenant and liability to pay arrears

of rent and another suit is for declaration of title. In such circumstances, it was held that both the suits are not substantially identical. So, the High of Andhra Pradesh had held that Section 10 CPC shall not be invoked.

10.5. Similarly in the decision reported in **2015 AIR CC 2295 (KAR), Chetan Mahaveer Dongare v. Kiran Srikant Dongare and others**, one suit is for declaration of title and injunction and the other is for partition and separate possession. In those circumstances, it was held that the issue involved in both the suits are entirely different.

11. In the instant case, the earlier suit is filed challenging the sale deed dated 06.08.2007 executed in favour of the respondent and the subsequent suit is also filed on the basis of the very same sale deed dated 06.08.2007. While so, the substantial issue involved in the earlier suit is whether the sale deed dated 06.08.2007 is void or it is valid? If the Court comes to the conclusion that the sale deed is valid, the petitioner will not have any right over the property and he should vacate the premises and hand over possession. But, if the appeal is allowed, the respondent/plaintiff will have no right over the property. So, the substantial issue involved in both the suits are identical.

12. In view of the above stated position, I am of the view that the impugned order passed by the Trial Court dated 20.02.2013 made in I.A.No.19357 of 2012 in O.S.No.425 of 2012 is unsustainable and the same is liable to be set aside and accordingly set aside. Consequently, I.A.No.19357 of 2012 in O.S.No.425 of 2012 is allowed and all further proceedings of the suit in O.S.No.425 of 2012 is stayed till the disposal of the A.S.No.1052 of 2012.

13. In fine, the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

06.01.2016

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To

The learned XV Assistant City Civil Court,
Chennai.

R.MALA, J.

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