

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.09.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.1380 of 2016 and
CMP.No.7676 of 2016

Venkatachalam

...Petitioner

versus

1.Suseela

2.Venugopal

3.The State of Tamil Nadu by Collector
Cuddalore District, Cuddalore - 607 001.

4.The Tahsildar
Cuddalore Taluk,
Cuddalore - 607 001.

5.The Head Surveyor,
Cuddalore Taluk, Cuddalore.

6.The Taluk Surveyor
Cuddalore Taluk, Cuddalore.

7.The Village Administrative Officer,
Andarmullipallam,
Cuddalore Taluk, Cuddalore District.
(Respondents 3 to 7 are not necessary
parties to this revision petition)

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.01.2016 passed in I.A.No.53 of 2015 in O.S.No.329 of 2013 on the

file of the Principal District Munsif of Cuddalore.

For Petitioner : Mr.R.Gururaj

ORDER

The petitioner filed a suit in O.S.No.329 of 2013 for a decree of declaration and consequential injunction. Thereafter, he filed an application in I.A.No.53 of 2015 to stay the suit till the disposal of the intra court appeal stated to have been filed against the order in the writ petition in W.P.No.20420 of 2013. The learned Trial Judge having found that the petition was filed under Section 151 of CPC without there being any material to invoke Section 10 of CPC dismissed the application. Feeling aggrieved, the petitioner is before this Court.

2. The learned counsel for the petitioner submitted that Section 10 of CPC is not attracted in the present case inasmuch as no previous suit is pending between the parties. According to the learned counsel, behind the back of the petitioner, the respondents 1 and 2 filed a writ petition and obtained an order to survey the property. The petitioner filed an application to grant leave to file appeal. It was only during the pendency of the said application, the petitioner filed this application under Sections 10 and 151 CPC to stay the suit. The learned Judge without considering the background facts dismissed the application. Hence, the said order is liable to be set aside.

3. The petitioner filed a substantive suit for declaration and injunction in O.S.No.329 of 2013. The petitioner also filed an application in I.A.No.53 of 2015 to stay the further proceedings, pending disposal of an appeal stated to have been filed against the order passed in the writ petition. Even according to the petitioner, Section 10 is not attracted in the subject case. There was no previous suit between the parties so as to enable the Trial Court to stay the further proceedings of the subsequent suit. The pendency of an application to grant leave or even the writ appeal cannot be a reason to stay the further proceedings in a civil suit filed for declaration and injunction.

4. When the factual matrix does not attract Section 10 of CPC, naturally, the petitioner cannot resort to Section 151 of CPC for stay of the trial. In any case, the pendency of an appeal against the order passed by the Writ Court cannot be a reason to stay the further proceedings of a suit filed by the petitioner claiming certain relief. I am therefore of the view that there is no case made out by the petitioner for stay of the suit in O.S.No.329 of 2013.

K.K.SASIDHARAN, J.

(svki)

5. In the up shot, I dismiss the Civil Revision Petition. No costs.
Consequently, connected miscellaneous petition is closed.

21.09.2016

Index : Yes/No

svki

To

The Principal District Court,
Cuddalore.

C.R.P.(P.D.) No.1380 of 2016