

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

CRP [PD] No.2043 of 2016 and
CMP.No.10651 of 2016

Mrs.Roselin

...Petitioner

versus

Mr.Kuppan

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in IA.No.315/2015 in OS.No.98/2012 on the file of the learned Sub Judge, Cheyyar, Thiruvannamalai District dated 08.01.2016.

For Petitioner	: Mr.R.Raman Laal
For Respondent	: Mr.C.Munusamy

ORDER

The civil revision petition has been filed by the petitioner against the order in IA.No.315/2015 in OS.No.98/2012 dated 08.01.2016 on the file of the learned Sub Judge, Cheyyar, Thiruvannamalai District.

2 The petitioner filed an application before the Trial Court invoking section 10 of the Code of Civil Procedure to stay the further proceedings of the suit in OS.no.98/2012 on the ground that the

application filed by her predecessor in interest to restore the suit in OS.No.35/2006 is pending before the Trial Court. The application was dismissed by the learned Trial Judge. Feeling aggrieved, the petitioner is before this Court.

3 The learned counsel for the petitioner submitted that the petitioner has taken earnest efforts to restore the suit in OS.No.35/2006. Since there was no Presiding Officer, the matter was not taken up. In the mean time, the subsequent suit was taken up for evidence. It was only at that point of time, the petitioner has filed the application u/s.10 of the Code of Civil Procedure, to stay the further proceedings of the suit in OS.No.98/2012.

4 There is no dispute that the vendor of the petitioner was the plaintiff in OS.No.35/2006. The suit was dismissed for default. The petitioner appears to have purchased the property. Thereafter, the respondent filed a suit in OS.No.98/2012 for declaration and injunction before the Trial Court. In the mean time, the plaintiff in OS.No.35/2006 filed an application to restore the suit.

5 The petitioner who is a party to the suit in OS.No.98/2012, filed IA.No.315/2015 to stay the suit on the ground that the petition filed in OS.No.35/2006 to restore the suit is pending before the Trial Court.

6 Section 10 of the Code of Civil Procedure provides for stay of the subsequent suit, in case in a suit instituted earlier, the matter in issue is directly and substantially in issue between the same parties or between parties under whom they or any of them claim litigation. In the subject case, the suit filed by the vendor of the petitioner has already been dismissed. It is only the restoration petition which is pending before the Trial Court. The Trial Court, was therefore, perfectly correct in proceeding with the suit in OS.No.98/2012. The petitioner who is the purchaser of property from the plaintiff in OS.No.35/2006 is not entitled to an order under section 10 of the Code of Civil Procedure to stay further proceedings in OS.No.98/2012.

7 In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

K.K.SASIDHARAN, J.

AP

8 It is made clear that this order would not stand in the way of the petitioner or her vendor from taking steps in the proceedings for simultaneous trial of both the suits in case the subsequent suit is pending on the date on which the earlier suit was restored to file.

29.09.2016

AP

To

The Sub Judge,
Cheyyar,
Thiruvannamalai District.

CRP [PD] No.2043/2016