

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.08.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.756 of 2012
and
M.P.No.1 of 2012**

S.Thamizh Mullai

.. Petitioner

Vs.

1.C.Prathap

2.The Taluk Supply Officer,
Seerkazhi Taluk,
Nagapattinam District.

3.The Tahsildar,
Taluk Office, Nagapattinam District.

4.The District Collector,
Nagapattinam.

5.The Auditor & Accountant General,
Chennai.

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.1207 of 2011 in O.S.No.234 of 2008, dated 22.12.2011, on the file of the learned District Munsif, Seerkazhi.

For Petitioners : Mr.P.Vijendran

For Respondents : Mr.S.Sounthar (for R1)

ORDER

The petitioner has filed this Civil Revision Petition to set aside order made in I.A.No.1207 of 2011 in O.S.No.234 of 2008 dated 22.12.2011, on the file of the learned District Munsif, Seerkazhi.

2.It is the case of the revision petitioner that he filed a suit against the respondents herein in O.S.No.234 of 2008 on the file of the District Munsif Court, Seerkazhi, for permanent injunction restraining the defendants 2 to 5 from disbursing the death cum retirement benefits of the plaintiff's daughter deceased Prushkiya to the 1st defendant. The defendants have filed their respective written statement.

3.Pending suit the revision petitioner filed an application in I.A.No.1207 of 2011 to stay the suit in O.S.No.234 of 2008 under Section 10 of C.P.C, on the ground that his daughter died due to dowry harassment and for that he lodged a complaint before the Seerkazhi

Police Station and a case in Crime No.310 of 2007 was registered. Thereafter, the enquiry was conducted by the Revenue Divisional Officer is not proper and therefore, the revision petitioner filed Crl.O.P.No.5741 of 2008 before this Court to take action against the erring Police Officials and Revenue Divisional Officer and the same is pending. Hence the revision petitioner filed the above stay petition, to stay the trial of the suit till the disposal of the above Crl.O.P.No.5741 of 2008.

4.The 1st respondent herein filed memo of objection to the above stay petition and contended that the revision petitioner already filed so many similar application. The present application is filed only to delay the disposal of the suit. The alleged criminal proceedings are not a bar to proceed with the above suit.

5.The trial Court after considering the rival submission, dismissed the above application by order dated 22.12.2014. Aggrieved over the same the revision petitioner has come with this civil revision petition.

6.I heard Mr.P.Vejendran, learned counsel appearing for the

petitioner and Mr.S.Sounthar, learned counsel appearing for the 1st respondent and perused all the relevant records.

7.The learned counsel for the revision petitioner would submit that the revision petitioner filed a suit against the respondents herein restraining the respondents 2 to 5 herein from disbursing the death cum retirement benefit of deceased daughter to the 1st respondent herein. Since the petitioners' daughter died due to dowry harassment, the revision petitioner lodged a complaint against 1st respondent herein and the same was registered in Crime No.310 of 2007 by the Seerkzhali Police. Since, the Police Officials and Revenue Divisional Officer have not properly investigated the matter, the revision petitioner has filed a petition before this Court in CrI.O.P.No.5741 of 2008 to take action against the Police and Revenue Divisional Officer of Mayiladuthurai and the same is pending disposal.

8.In view of the pendency of the above Criminal Original Petition, the revision petitioner sought for stay of the above suit filed by her under Section 10 of C.P.C. The learned trial Judge without considering the scope Section 10 of C.P.C. has erroneously dismissed stay petition and the same is liable to be set aside by the this Court.

9.Per contra, the learned counsel for the revision petitioner contended that earlier the revision petitioner has filed several similar petitions by invoking Section 10 of C.P.C. and same were rightly dismissed by the trial Court. The present application is not maintainable in law. Section 10 of C.P.C. is not applicable to the facts of the case on hand, since the criminal proceeding is entirely different from the prayer sought for in the above suit.

10.This Court has carefully considered the rival submissions. While considering the case of the parties, it is useful to extract Section 10 of C.P.C. hereunder:

"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 different parties under whom they or any of them claim litigating under the same title where 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”.

11.A perusal of Section 10 of C.P.C., this Court would be able to see that the parties must be one and the same in both the suit or proceedings, the subject matter of the suit properties shall be one and the same and the relief sought for in both the suits shall be one and the same.

12.In the case on hand, the relief sought for in the suit and the above CrI.O.P. is entirely different. Further, the parties are also not one and same in both the proceedings. That apart the revision petitioner sought to stay of her suit till the disposal of the above suit which is filed seeking for entirely different relief and therefore, the revision petitioner cannot seek to stay of her suit till the disposal of the above CrI.O.P., as the issues involved in both the proceedings are entirely different one. Apart from that the revision petitioner had earlier filed similar applications and the same were dismissed by the trial Court.

13.Therefore, in the considered opinion of this Court, the trial Court has not committed any error in dismissing the application filed

by the revision petitioner under Section 10 of C.P.C. Hence, I do not find any merits in the Civil Revision Petition and same is deserves to be dismissed and accordingly dismissed.

14.In the result:

(a) this Civil Revision Petition is dismissed by confirming the order and decree made in I.A.No.1207 of 2011 in O.S.No.234 of 2008 dated 22.12.2012, on the file of the learned District Munsif, Seerkazhi;

(b) the trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order, since the suit is of the year 2008. No cost. Consequently, connected miscellaneous petition is closed.

04.08.2016

Note:Issue order copy on 13.09.2017

Internet:Yes

Index:Yes

vs

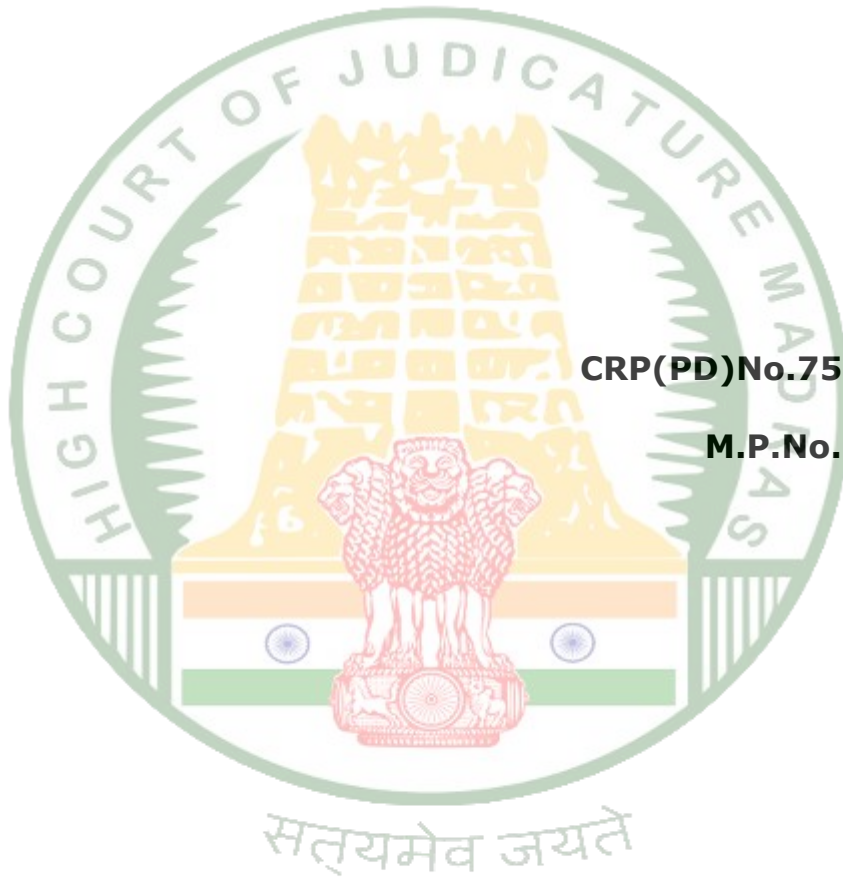
To

The District Munsif, Seerkazhi.

WEB COPY

M.V.MURALIDARAN, J.

VS



**CRP(PD)No.756 of 2012
and
M.P.No.1 of 2012**

WEB COPY 04.08.2016