

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.1731 of 2017  
& C.M.P.No.8186 of 2017

R.Venkatachalamurthy

.. Petitioner

Vs.

1.Mrs.R.Rajini

2.K.Rajan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 19.01.2017 made in I.A.No.669 of 2016 in O.S.No.666 of 2011 on the file of the I Additional District Court, Coimbatore.

For Petitioner : Mr.K.Govi Ganesan

For R1 : Mr.Tranvuebar Dorai Vasu  
Caveator

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 19.01.2017 made in I.A.No.669 of 2016 in O.S.No.666 of 2011 on the file of the I Additional District Court, Coimbatore.

2. The petitioner is the first defendant, first respondent is the plaintiff and second respondent is the second defendant in O.S.No.666 of 2011. The first respondent filed the suit for a direction to the petitioner and second respondent to deliver vacant possession of the suit property to the first respondent, the petitioner to pay Rs.1,80,000/- and Rs.5,000/- as damages and future damages respectively for the use and occupation of the suit property.

3. The petitioner filed written statement on 30.03.2012. The petitioner filed I.A.No.669 of 2016 under Section 10 read with Section 151 of C.P.C. for stay the trial of the above O.S.No.666 of 2011 till the disposal of S.A.No.127 of 2012. According to the petitioner, he filed O.S.No.677 of 1987 for declaration of title over the suit property and after amendment, alternate relief of specific

performance. The said suit was decreed on 30.07.2009. Against the said judgement and decree, the respondent filed A.S.No.130 of 2009 before the District Court, Coimbatore and the same was allowed by the judgement and decree dated 19.04.2010. Against the same, the petitioner filed S.A.No.127 of 2012 and the same is pending in this Court.

4. According to the petitioner, first respondent is claiming relief in the present suit based on the judgment and decree passed in A.S.No.130 of 2009 dated 19.04.2010. Earlier proceedings between the parties are pending in S.A.No.127 of 2012 before this Court and has not reached finality and therefore, he prayed for stay of further proceedings in the present suit in O.S.No.666 of 2011.

5. The first respondent filed counter affidavit denying the averments made in the affidavit and submitted that the petitioner has not prayed for any stay in S.A.No.127 of 2012 and after four years, the petitioner has come out with the present application only to protract the matter in O.S.No.677 of 1987. The petitioner is seeking possession to enforce the alleged agreement dated 07.01.1987 in O.S.No.667 of 1987. In the present suit, issue is

whether the first respondent is entitled to possession. The issue in both the suits are different and Section 10 of C.P.C. is not applicable to the present suit.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application holding that the first respondent is claiming right based on the sale agreement dated 07.01.1987 and not based on the judgement and decree dated 19.04.2010 passed in A.S.No.130 of 2009. The petitioner has not stated that the issues in the second appeal and the present suit are one and the same.

7. Against the order of dismissal dated 19.01.2017 made in I.A.No.19.01.2017, the present civil revision petition is filed by the petitioner/first defendant.

8. Heard the learned counsel appearing for the petitioner and caveator and perused the materials available on record.

9. The grievance of the petitioner is that the learned Judge failed to see that the suit in O.S.No.677 of 1987 filed by the

petitioner for declaration of title and alternate relief of specific performance has not attained finality and the same is pending in S.A.No.127 of 2012 in this Court. The parties and subject matter in both the suits, the present suit and earlier suit in S.A.No.127 of 2012, are one and the same. Therefore, the learned Judge ought to have stayed the suit. If the suit filed by the first respondent is decreed, S.A.No.127 of 2012 filed by the petitioner is allowed, there will be conflicting judgements.

10. From the reading of the materials available on record and impugned order, it is clear that the petitioner is claiming title over the suit property based on the sale agreement and in alternative, he sought for specific performance of the said agreement. On the other hand, the first respondent is claiming possession based on the settlement deed dated 07.06.1979 and she is also claiming damages for the use and occupation. The subject matter of the suit may be one and the same, but the relief sought for in both the suits are different. A subsequent suit can be stayed under Section 10 of C.P.C, only when the matter in issue directly and substantially an issue in a previously instituted suit between the same parties. The issue in the suit filed by the first respondent is not directly and

substantially an issue in earlier suit filed by the petitioner. In view of the above said facts, the civil revision petition is not maintainable and it is dismissed as devoid of merits.

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

06.06.2017

Index : Yes/No

dm/kj

To

The I Additional District Court  
Coimbatore.

**V.M.VELUMANI, J.**

dm/kj

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