

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.182 of 2014
& M.P.No.1 of 2014

Loganathan

... Petitioner

Vs.

1.Sakunthala
2.Mahalakshmi
3.Rajeswari
4.Kanchana Mala
5.Dhanalakshmi
6.Perumal Raja
7.Ramathilagam

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 21.08.2013 made in I.A.No.1816 of 2003 in O.S.No.196 of 2001 on the file of the Additional Subordinate Court, Puducherry.

For Petitioner : Mr. T.M.Naveen

For R1 to R6 : Mrs.K.S.Kamatchi for
Mrs.P.Veena Suresh

R7 : died

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 21.08.2013 made in I.A.No.1816 of 2003 in O.S.No.196 of 2001 on the file of the Additional Subordinate Court, Puducherry.

2. The petitioner is first defendant, respondents 1 to 6 are the plaintiffs and seventh respondent is the second defendant in O.S.No.196 of 2001 on the file of the Principal Subordinate Court, Puducherry. The respondents 1 to 6 filed the said suit for declaration to declare the sale deed dated 18.11.1999 bearing document No.5595/1999 and rectification deed dated 02.02.2000 bearing document No.645/2000 are void ab-initio, non-est in law and not binding on the respondents 1 to 6 and for injunction. The petitioner filed written statement on 13.09.2001 and is contesting the suit. The petitioner filed I.A.No.1816 of 2003 under Section 10 read with 151 C.P.C. for stay of the proceedings in the suit in O.S.No.196 of 2001 till the disposal of the second appeal in S.A.No.1192 of 2003 pending before this Court.

3. According to the petitioner, he has filed O.S.No.247 of 2000 on the file of the II Additional District Munsif Court, Puducherry, for

the relief of interim injunction restraining the first respondent from interfering with his peaceful possession and enjoyment of the suit property. The said suit was decreed. Against the same, the first respondent filed A.S.No.17 of 2002 on the file of the Principal District Court, Puducherry and the said appeal was allowed. Against the said judgment and decree made in A.S.No.17 of 2002, the petitioner filed S.A.No.1192 of 2003 and the same is pending before this Court. The issue in O.S.No.247 of 2000 now pending adjudication in this Court in second appeal is identical to the issue involved in the present suit in O.S.No.196 of 2001 and therefore, prayed for stay of the present suit.

4. The first respondent filed counter affidavit and submitted that the issue in O.S.No.247 of 2000, which was filed by the petitioner, is only for injunction, whereas the present suit is comprehensive suit, and the issues involved in earlier suit and present suit are not directly and substantially connected with the issue in second appeal, which is pending in this Court.

5. Before the learned Judge, both the petitioner and respondents have not examined any witness and the petitioner

marked five documents as Exs.P1 to P5. The respondents have not marked any document.

6. The learned Judge by order dated 21.08.2013 considering the averments made in the affidavit, counter affidavit, issues framed in both the suits and documents filed in the earlier suit, held that except issue No.6 in the present suit in O.S.No.196 of 2001, all other issues are not directly and substantially connected with the issue in second appeal pending in this Court. The learned Judge stayed the suit only with regard to issue No.6 and allowed the application partly.

7. Against the said order dated 21.08.2013 made in I.A.No.1816 of 2003, the present Civil Revision Petition is filed by the petitioner/first defendant.

8. The learned counsel for the petitioner submitted that the learned Judge having held that issue No.6 is directly connected with the issue pending in the second appeal, ought to have allowed the application filed by the petitioner for stay in entirety and stayed the present suit in respect of the other issues. If injunction is granted in

favour of the petitioner in second appeal by this Court, even if the respondents 1 to 6 succeed in the present suit, they will not be in a position to execute the decree. The relief of declaration and injunction are inter linked, evidence to be let in is one and the same and the same cannot be separated. In a comprehensive suit, the relief cannot be separated and piece meal disposal of the suit is impermissible in law. The reliefs sought for in the present suit are hit by the principles of resjudicata in view of the earlier suit filed by the petitioner and prayed for stay of the present suit.

9. The learned counsel for the respondents 1 to 6 submitted that Section 10 C.P.C. is not applicable to the facts of the present case. The suit filed by the petitioner is only for injunction, whereas the respondents 1 to 6 have filed comprehensive suit for declaration and injunction. The issue in second appeal will not operate as resjudicata in respect of the issues raised in the present suit. The learned Judge has appreciated all the facts and has given reason for partly allowing the application and therefore, prayed for dismissal of the Civil Revision Petition.

10. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents 1 to 6 and perused the materials available on record.

11. The point for consideration in the Civil Revision Petition is whether the learned Judge is right in partly allowing I.A.No.1816 of 2003 and staying the present suit in respect of issue No.6 only.

12. The petitioner has filed the present application under Section 10 C.P.C. for stay of the subsequent suit till the disposal of the second appeal pending in this Court. Section 10 of C.P.C. reads as follows:

"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 parties under whom they or any of them claim litigation under the same title where such 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."

As per the above section, subsequent suit can be stayed only if the issues involved in both the suits are directly and substantially one and the same. The scope of Section 10 of C.P.C. is to prevent a party, to face more than one suit on the same issue. The criteria for granting stay of subsequent suit is whether subsequent suit will be hit by the principles of resjudicata by the decision in the earlier suit. The principle underlying Section 10 CPC is to prevent two Courts of concurrent jurisdiction to entertain and decide two suits on the same issue in order to avoid conflicting judgments.

13. From the materials available on record, it is seen that earlier suit filed by the petitioner is only for injunction restraining first respondent, whereas the present suit is filed by the respondents 1 to 6 for declaration to declare the sale deed and rectification deed are null and void and for injunction. The petitioner has filed written statement and the trial Court has framed issues based on the pleadings.

14. Considering the materials on record, pleadings and issues in both the suits, it is seen that only issue No.6 is directly and substantially connected with issue in the earlier suit in respect of the

same property. All other issues are not raised by the petitioner in the earlier suit. If this Court grants injunction as prayed for in favour of the petitioner, there will not be any resjudicata except in respect of issue No.6. All other issues are not directly and substantially connected with the issues in the earlier suit. The present suit is comprehensive suit and earlier suit is only for injunction. The learned Judge has considered all the aspects properly and partly allowed the application with regard to issue No.6 by giving cogent and valid reason. There is no irregularity or illegality warranting interference by this Court with the order of the learned Trial Judge, dated 21.08.2013.

15. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

21.11.2017

Index : Yes/No

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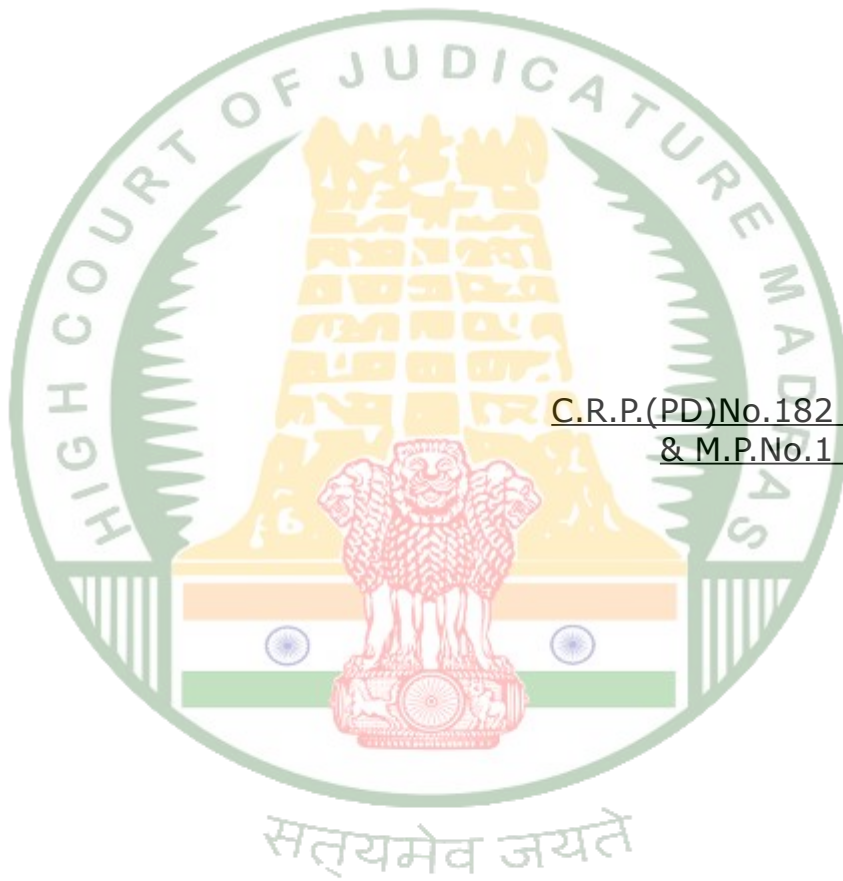
To

Additional Subordinate Judge, Puducherry.

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V.M.VELUMANI, J.

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