

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4527 of 2011
& M.P.No.1 of 2011

Rajammal (died)

1. A.G.Balakrishnan
2. Kamalammal

.. Petitioners

Vs.

1. A.G.Jalapathy
2. Jothi Ammal
3. Baby Ammal
4. Chandra Ammal
5. Kumar @ Pichandi
6. J.Parimala
7. Chendamarai

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 08.07.2011 made in I.A.No.41 of 2011 in O.S.No.11 of 2005 on the file of the Additional District and Sessions Judge, Fast Track Court, Vellore.

For Petitioner : Mr.S.Mukunth

For RR1, 2, 5 & 6 : Mr.A.V.Ilango

ORDER

This Civil Revision Petition has been filed to set aside the order dated 08.07.2011 made in I.A.No.41 of 2011 in O.S.No.11 of 2005 on the file of the learned Additional District and Sessions Judge, Fast Track Court, Vellore.

2. The petitioners are the plaintiffs and the respondents are the defendants in O.S.No.11 of 2005. Pending suit, the petitioners filed I.A.No.41 of 2011 for stay of the suit till the disposal of suit in O.S.No.137 of 1996 filed by the petitioner on the file of Sub-Court, Vellore. According to the petitioners, the present suit in O.S.No.11 of 2005 is the subsequent suit in O.S.No.137 of 1996 and the parties and issue involved in both the suits are one and the same.

3. The respondents filed counter and submitted that for the very same relief, two suits cannot be maintained before different forums. In O.S.No.137 of 1996, which is pending before the Sub Court, Vellore, joint trial has commenced along with other connected suits and it has been posted for cross examination of

PW1. Therefore, the respondents sought for dismissal of I.A.

4. The learned Judge, considering the materials on record and taking note of the fact that the present suit which was filed earlier in the year 1996, was transferred from one Court to another on four occasions and renumbered as O.S.No.137 of 1996 and now is pending before the Fast Track Court, Vellore and the same is pending for more than 15 years, held that the petitioners have not given correct suit number and dismissed the application in view of the fact that present suit is earlier.

5. Heard both sides and perused the materials on record.

6. The petitioners filed I.A.No.41 of 2011 Under Section 10 CPC for stay of O.S.No.137 of 1996. According to the petitioners, the parties and the issue involved in both the suits are one and the same. In view of the same, the respondents prayed for stay of the suit. Section 10 CPC reads as follows:

"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 litigating 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.

Explanation- *The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."*

7. A reading of the Section 10 makes it clear that when the parties and issues involved in the subsequent suit are one and the same as that of earlier suit, subsequent suit can be stayed pending disposal of earlier suit. In the present case, the learned Judge, based on the record, held that the present suit is earlier suit. In view of the factual findings, the petitioners are not entitled to the relief Under Section 10 CPC. There is no illegality or irregularity warranting interference by this Court with the order of the learned

trial Judge, dated 08.07.2011.

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

07.07.2017

Index : Yes/No

gsa

To

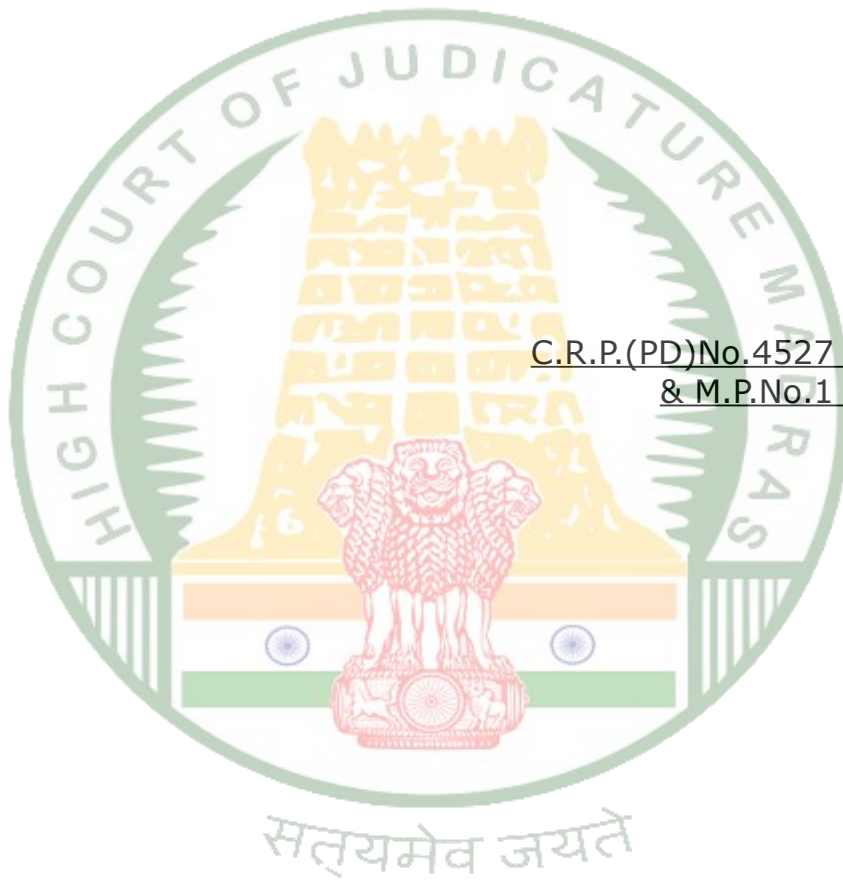
The Additional District and Sessions Judge,
Fast Track Court, Vellore.



WEB COPY

V.M.VELUMANI, J.

gsa



C.R.P.(PD)No.4527 of 2011
& M.P.No.1 of 2011

WEB COPY 07.07.2017