

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.464 of 2015
and M.P.No.1 of 2015

1.G.Muthukrishnan
2.G.Pandurangan
3.G.Gunasekaran
4.S.Sudhakar
5.K.Siddharthan
6.Thangapazham

.. Petitioners

Vs.

1.Prabakaran
2.P.Prabhavathy
3.Devanathan

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.09.2014 made in I.A.No.57 of 2014 in O.S.No.8 of 2007 on the file of the I Additional Subordinate Court, Cuddalore.

For Petitioners

: Mr.C.A.Theagarajan

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 06.09.2014 made in I.A.No.57 of 2014 in O.S.No.8 of 2007 on the file of the I Additional Subordinate Court, Cuddalore.

2. The petitioners are the defendants 2 to 7, the respondents 1 and 2 are the plaintiffs and third respondent is the first defendant in O.S.No.8 of 2007 on the file of the Subordinate Court, Cuddalore. The respondents 1 and 2 filed said suit for recovery of arrears of Rs.2,16,000/- from the third respondent together with interest being lease amount payable by him. The petitioners filed written statement and are contesting the suit. The petitioners filed I.A.No.57 of 2014 under Section 10 of C.P.C. for stay of all further proceedings in the present suit in view of the pendency of O.S.No.92 of 2004.

3. According to the petitioners, they filed O.S.No.92 of 2004 on the file of the Additional District Munsif Court, Cuddalore, for declaration that the decree of declaration granted in O.S.No.225 of 2003 for the sale of the trust properties is null and void, declaration

to declare the sale deeds dated 12.12.2003 executed in favour of second respondent and one Selvam, who is the seventh defendant in that suit, are void and for other reliefs. The present suit is filed by the respondents 1 and 2 on the ground that they have purchased the property from the trust and they are the owners of the suit property. The issues involved in both the suits are one and the same and therefore, prayed for stay of further proceedings in the present suit in view of the pendency of O.S.No.92 of 2004.

4. The respondents 1 and 2 filed counter affidavit and submitted that O.S.No.92 of 2004 is pending before the District Munsif Court, Cuddalore, which is subordinate to the present Court. The petitioners are delaying the disposal of O.S.No.92 of 2004, since possession is with them. They are not consenting for transfer or joint trial and prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, averments made in both the complaints and Section 10 of C.P.C., dismissed the application.

6. Against the said order of dismissal dated 06.09.2014 made in I.A.No.57 of 2014 in O.S.No.8 of 2007, the present Civil Revision Petition is filed by the petitioner.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. The contention of the learned counsel for the petitioner is that the issues in both the suits in O.S.No.8 of 2007 and O.S.No.92 of 2004 are one and the same. If O.S.No.92 of 2004 is decreed, it will be resjudicata to decide the present suit. The respondents 1 and 2 are claiming title based on the purchase, which is under challenge in O.S.No.92 of 2004. The respondents 1 and 2 filed O.S.No.4 of 2012 based on the purchase from the trustees. By the order dated 22.08.2014 made in I.A.No.20 of 2013 in O.S.No.4 of 2012, a similar suit O.S.No.4 of 2012 is stayed pending disposal of O.S.No.92 of 2004 and hence O.S.No.8 of 2007 also has to be stayed. These contentions are without merits.

9. Section 10 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."

10. A reading of the above said section would clearly show that a subsequent suit with the same issue as that of the earlier suit has to be stayed pending disposal of earlier suit. The condition of stay on subsequent suit is that the suits involving issues directly and substantially in issue are pending before two Courts on concurrent jurisdiction. Scope of Section 10 C.P.C. is to prevent same issues being entertained and tried by two different Courts on concurrent jurisdiction involving issues directly and substantially same.

11. In the present case, O.S.No.92 of 2004 is pending before the District Munsif Court, Cuddalore, while present suit is pending

before the Subordinate Court, Cuddalore. In O.S.No.92 of 2004, issue is for declaration that permission granted to the trustee to sell the trust properties is null and void and the sale based on such permission is also null and void, whereas O.S.No.8 of 2007 is filed for recovery of lease amount. The suits are not pending before two Courts having concurrent jurisdiction and the issues involved in both the suits are not directly and substantially one and the same. In view of the same, the finding of the learned Judge needs no interference and it is hereby confirmed.

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

19.12.2017

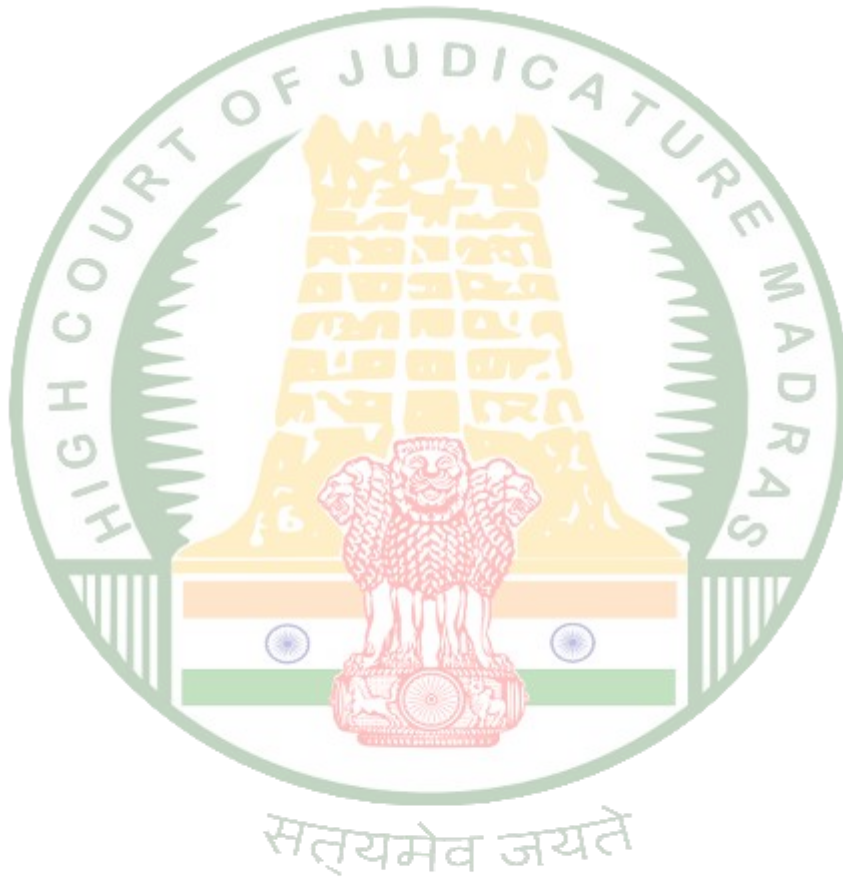
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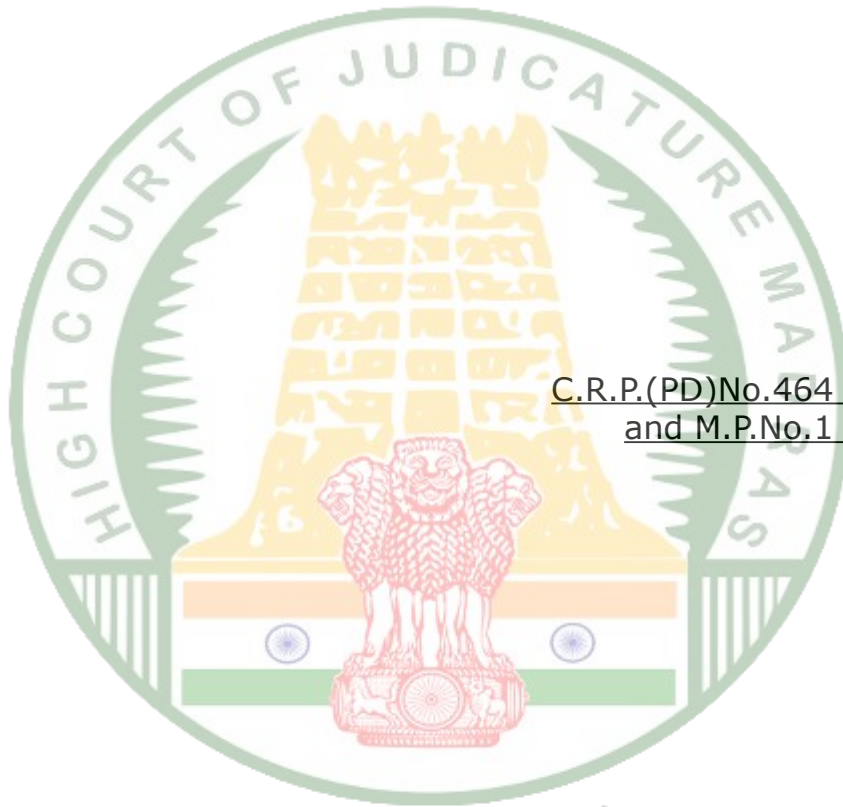
The I Additional Subordinate Judge, Cuddalore.



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V.M.VELUMANI,J.

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