

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.2258 of 2012
and
M.P.No.1 of 2012**

Packiriswamy

.. Petitioner

Vs.

Moorthy

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal orders passed in I.A.No.189 of 2011 in O.S.No.119 of 2010 dated 21.06.2011, on the file of the Court of District Munsif, Sirkali.

For Petitioner : Mr.A.Muthukumar

For Respondent : Mr.S.Sounthar

ORDER

The defendant in O.S.No.119 of 2010, on the file of the District Munsif Court, Sirkali, is the civil revision petitioner before this Court, challenging the order passed in I.A.No.189 of 2011 in O.S.No.119 of 2010 dated 21.06.2010.

2.The case of the petitioner/defendant is that the suit schedule of property was given by the petitioner's mother on 10.10.1994 by way of settlement, in respect of the suit schedule of property between the petitioner/defendant and his brothers namely Rajamanickam and Balasubramanian, there are several cases are pending before the learned District Munsif Court, Sirkali and other Courts.

3.In respect of the suit schedule of property, the petitioner's brother has filed a Civil Suit in O.S.No.75 of 1999 and the same was dismissed for default on 15.03.2000, but till date no restoration petition was filed by his brother.

4.Apart from this, this petitioner/defendant has filed a Civil Suit in O.S.No.105 of 1997 before the learned District Munsif, Sirkali and the same was dismissed for default, against which, an appeal in

A.S.No.10 of 2010 has been filed by the petitioner/defendant, who is the plaintiff in O.S.No.105 of 1997 and the same is pending before the learned Principal Sub-Judge, Mayiladuthurai, in respect of the suit schedule of property and another suit in O.S.No.186 of 2008 and O.S.No.17 of 2009 are pending before the very same Court viz., the District Munsif Court, Sirkali. Therefore, all the suits including the present suit in O.S.No.119 of 2010, the suit schedule of property is one and the same, but the defendant in O.S.No.119 of 2010 alone has different, because he has purchasing the suit schedule of property from the petitioner's brother. Therefore, to avoid multiple proceedings as per Section 10 of C.P.C., the petitioner has filed the present petition for stay all further proceedings in O.S.No.119 of 2010.

5. On receipt of a notice, a counter affidavit has been filed by the respondent/plaintiff since the respondent/plaintiff brothers namely Balasubramanian and Rajamanickam along with four others were filed Civil Suit in O.S.No.181 of 2000 for partition of suit and the said Court was passed a decree of 2/7 share to Balasubramanian and Rajamanickam and the said share of the property was purchased by the respondent/plaintiff and he is in absolute possession and enjoyment of the same.

6.The respondent/plaintiff also states that the suit schedule of property in respect of others, the respondent/plaintiff is no way connected, but the false averments made, all the suits are one and the same and this petitioner/defendant made objection for the petition filed under Section 10 of C.P.C. to stay all further proceedings, which is not at all maintainable and prayed for dismissal of the petition.

7.Considering both side cases, the learned District Munsif, Sirkali was pleased to dismiss the said application on 21.06.2011 by stating that in respect of Civil Suit mentioned in the affidavit, the petitioner/defendant has not produced any document to show their property has already one and the same. Apart from this, the petitioner/defendant also not explained about the relation of the parties and also relating of the suit schedule of property, challenging the said order, the present civil revision petition has been filed by the petitioner/defendant.

8.I heard Mr.A.Muthukumar, learned counsel appearing for the petitioner and Mr.S.Sounthar, learned counsel appearing for the respondent and perused all the materials available on record.

9. Admittedly, the respondent/plaintiff in O.S.No.119 of 2010 was purchased the property from the petitioners/defendants, Rajamanickam and Balasubramaniam and the said decree allotting 2/7 share to Balasubramaniam and Rajamanickam was challenged in the appeal and the same is pending. Apart from this, in respect of very same schedule property along with other properties, two suits are pending in O.S.No.186 of 2008 and O.S.No.17 of 2009 and the same is pending before the same Court i.e. District Munsif Court, Sirkali.

10. Apart from this, an appeal in A.S.No.10 of 2010 filed by the petitioner/defendant is also pending before the learned Sub-Judge, Mayiladuthurai. The provision under Section 10 of C.P.C., which stated 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 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.”

11.As per the provision, if the parties are one and the same and the suit schedule of property is one and the same and if any appeal or suit pending before the parties either very same Court or the Appellate Court, the learned Judge can stay the proceedings as per Section 10 of C.P.C.

12.The case in hand, though the petitioner, who is the defendant in the suit filed a petition in O.S.No.119 of 2010, but the respondent/plaintiff is the purchaser of the very same schedule of property from the brothers of the petitioner/defendant. Thus being the case, it is made clear that the parties are one and the same and the suit schedule property are one and the same. Unless, the Appellate Court has decided the entire decree in respect of 2/7 share granted in favour of the brothers Rajamanickam and Balasubramanian, the suit proceedings will definitely caused prejudiced to the petitioner/defendant.

13.To avoid the multiple proceedings, and also the nature of the case, this Court inclined to stay the proceedings as per Section 10 of

C.P.C., since this suit and other suits and appeal are pending before the same parties and also suit schedule of property are same.

14.In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.189 of 2011 in O.S.No.119 of 2010 dated 21.06.2011, on the file of the Court of District Munsif, Sirkali;

(b) the suit in O.S.No.119 of 2010 is stayed till the disposal of A.S.No.10 of 2010 pending on the file of the learned Subordinate Court, Sirkali and O.S.No.186 of 2008 and O.S.No.19 of 2009 pending before the learned District Munsif Court, Sirkali. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

04.07.2017

Speaking Order
Index:Yes

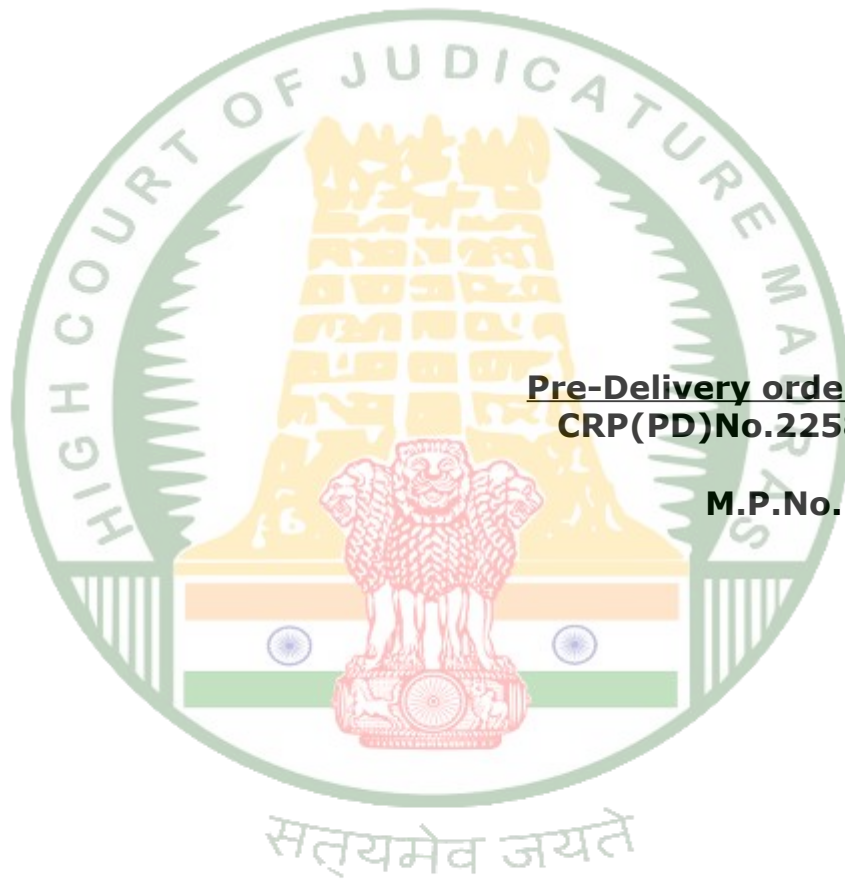
To

The District Munsif Court,
Sirkali.

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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(PD)No.2258 of 2012
and
M.P.No.1 of 2012**

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