

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.1321 & 1322 of 2015
and M.P.Nos.1,1 of 2015

1.Kamaludin
2.Hyrunnissa

.. Petitioners
in both C.R.Ps.

Vs.

Afsal Mariam
Represented by Power Agent
Rahmathulla

.. Respondent
in C.R.P.No.1321 of 2015

Jalma Nachiya
Rep by Power Agent
Rahmathulla

.. Respondent
in C.R.P.No.1322 of 2015

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decretal order dated 07.04.2014 made in I.A.No.52 of 2014 in O.S.No.26 of 2012 and I.A.No.53 of 2014 in O.S.No.30 of 2012 on the file of the District Munsif cum Judicial Magistrate Court, Needamangalam.

In both CRPs.

For Petitioners : Mr.S.Sounthar

For Respondents : M/S.P.T.Ramadevi

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 07.04.2014 made in I.A.No.52 of 2014 in O.S.No.26 of 2012 and I.A.No.53 of 2014 in O.S.No.30 of 2012 on the file of the District Munsif cum Judicial Magistrate Court, Needamangalam.

2. In both the Civil Revision Petitions, the issues and the petitioners are one and the same and hence, they are disposed of by this common order.

3. The petitioners are defendants and respondents are plaintiffs in their respective suits O.S.Nos.26 and 30 of 2012 on the file of the District Munsif cum Judicial Magistrate Court, Needamangalam. The respondents filed said suits for recovery of possession of the suit properties. The petitioners filed written statement on 16.08.2012 in O.S.No.26 of 2012 and in the month of

September 2012 in O.S.No.30 of 2012 and are contesting the suits. The petitioners filed I.A.No.52 of 2014 in O.S.No.26 of 2012 and I.A.No.53 of 2014 in O.S.No.30 of 2012 under Section 10 C.P.C. for stay of further proceedings of both the suits till the disposal of R.T.R.No.9 of 2013.

4. According to the petitioners, they are cultivating tenants under the respondents and their petition to record themselves as tenants was dismissed without any enquiry and they have given petition to the tenancy Tahsildar against the proceedings dated 30.05.2002 in Ku.vu.pa.Nos.1/2000, 2/2000, 6/2000 and the same was taken on file as R.T.R.No.9 of 2013. Only the tenancy Tahsildar has power to decide whether the petitioners are cultivating tenants or not and prayed for stay of the suits.

5. The respondents filed separate counter affidavit and denied all the averments made by the petitioners in the said applications. According to the respondents, the petitioners are trespassers and they are not cultivating tenants. The petition for recording themselves as cultivating tenants was dismissed in the year 2002 by proceedings dated 30.05.2002 in Ku.vu.pa.Nos.1/2000, 2/2000, 6/2000 and they have not challenged the same. The application for

stay under Section 10 C.P.C. can be considered only when the two suits between the same parties involving substantially the same issue pending before two Courts having concurrent jurisdiction and prayed for dismissal of the applications.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and Section 10 C.P.C., dismissed both the applications.

7. Against the said order of dismissal dated 07.04.2014 made in I.A.No.52 of 2014 in O.S.No.26 of 2012 and I.A.No.53 of 2014 in O.S.No.30 of 2012, the present two Civil Revision Petitions are filed by the petitioners/defendants.

8. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

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. As per Section 10 C.P.C., subsequent suit can be stayed if earlier suit between the same parties involving substantially the same issue pending before two Courts having concurrent jurisdiction. The scope of Section 10 C.P.C. is to avoid conflicting decision being rendered by two Civil Courts having same power in respect of the same issue. The conditions for granting stay are two suits must be pending in two different Civil Courts between the same parties and issues involved are substantially same. The proceedings not pending in the Civil Court cannot be the reason for applying the provision of Section 10 C.P.C. In the present case, the petitioners claim to be the cultivating tenants and they have initiated proceedings for recording themselves as cultivating tenants and the same was dismissed on 30.05.2002.

11. From the materials available on record, it is seen that after 12 years, the petitioners have filed petition before the tenancy Tahsildar in the year 2013. The Revenue Court is not a Civil Court

and Section 10 C.P.C. is not applicable in respect of the proceedings pending before the Revenue Court. Further, the suits are of the year 2012 and the proceedings before the Revenue Courts initiated by the petitioners is of the year 2013. The proceedings pending before the Tahsildar is subsequent proceedings. As per Section 10 C.P.C., only the subsequent suit can be stayed when earlier suit between the same parties involving same issues is pending before the competent Civil Court.

12. In view of the above facts, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

25.01.2018

Index:Yes/No

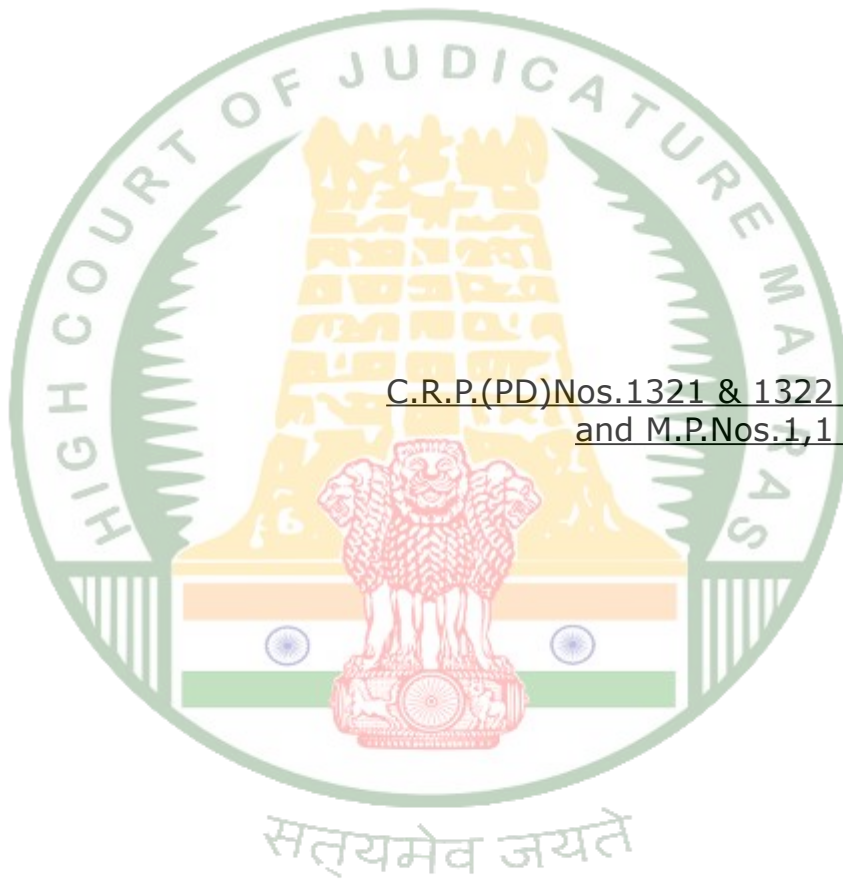
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To

The District Munsif Cum Judicial Magistrate Court
Needamangalam.

V.M.VELUMANI,J.

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