

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD) Nos.2257 & 2258 of 2013

M.P.Nos.1 of 2013 (2 MPs)

Padma @ Padmavathi ... Petitioner in both CRPs

Vs.

Jaya @ Jayalakshmi ... Respondents in both CRPs

COMMON PRAYER : Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal orders passed by the Principal District and Sessions Judge at Namakkal dated 30.04.2013 in I.A.Nos.597 & 598/2012 in O.S.No.25/2009.

For Petitioner : Mr. V.K.Vijayaraghavan

For Respondent : Mr. P.Valliappan

COMMON ORDER

Civil Revision Petitions are filed against the fair and decreetal orders passed by the Principal District and Sessions Judge at Namakkal dated 30.04.2013 in I.A.Nos.597 & 598/2012 in O.S.No.25/2009.

2. The issues and parties in both the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

3. The petitioner is the plaintiff and the respondent is the defendant in O.S.No.25 of 2009 on the file of Principal District Court, Namakkal. Both the petitioner and respondent are sisters. The petitioner filed the said suit against the respondent for partition. The respondent filed written statement and is contesting the suit. Trial commenced. The petitioner let in evidence as PW1 and she was cross examined. The respondent filed two applications I.A.Nos.597 & 598 of 2012 under Section 10 & 151 of CPC to stay all further proceedings in the above suit till A.No.1 of 2009 pending before the Registrar, Rasipuram is finally adjudicated upon and to permit the petitioner to defer from adducing evidence regarding the gift settlement deed dated 10.10.2008 and further permit her to adduce evidence after completion of the enquiry by the Registrar, Rasipuram respectively.

4. According to the respondent, their father executed a settlement deed dated 10.10.2008 settling the first item of the suit property in her favour. Before the said settlement deed was

registered, their father died. The respondent presented the said settlement deed before the Sub Registrar for compulsory registration with a request to register the document with notice to others. The Sub Registrar conducted enquiry and witnesses were examined and cross examined from 31.03.2009 to 24.07.2009. The petitioner also took part in the enquiry. The Sub Registrar refused to register the documents as the petitioner objected to the same. The said proceedings is now pending before the Registrar, Rasipuram, as per Section 74 of the Act. According to the respondent, she has initiated proceedings before the Sub Registrar on 10.12.2008 but the petitioner has filed the present suit on 14.03.2009. The settlement deed was called for by the court on the application filed by the petitioner. The respondent has challenged the said order before this Court.

4(a) The petitioner filed counter affidavit and denied all the averments and contended that the settlement deed dated 10.10.2008 is a forged one. The scribe and witnesses are close relatives of the respondent. Only the Civil Court is the competent court to decide the genuineness of the settlement deed. The Registrar or Sub Registrar are not the authority to decide the title of the parties. Even if the settlement deed is registered, only City Civil

Court can decide the issue with regard to the title. The document was called for by the Court and the documents is in court custody. The Civil Revision Petitions filed by the respondent challenging the same were dismissed.

5. The learned Judge, considering the averments in the affidavit, counter affidavit and judgment reported in 1999 (1) MLJ 296 [Ilamurugan v. Subramaniam] relied on by the learned counsel for the respondent, allowed both the applications.

6. Against the said orders dated 30.04.2013 made in I.A.Nos.597 & 598/2012 in O.S.No.25/2009, the present Civil Revision Petitions are filed by the petitioner.

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

8. The point for consideration in the present two Civil Revision Petitions is ***whether pending proceedings before the Registrar, the suit filed by the petitioner can be stayed as per Section 10 of CPC.***

8(a) **Section 10 CPC 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 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.

8(b) A reading of the above section reveals that the suits must be pending in a Civil Court having competent jurisdiction to decide the issue. The parties and issues must be directly and substantially one and the same. Section 10 can be invoked only to avoid conflicting judgments being delivered by two different Civil Courts having concurrent jurisdiction. Only when suits are pending before two different Civil Courts and parties and issues are directly and substantially one and the same, the subsequent suit can be stayed pending disposal of the earlier suit.

8(c) In the present case, two different cases are not pending

pending before two different Civil Courts. The respondent initiated proceedings before Sub Registrar on assurance and the said proceedings in pending before the Registrar. The issue before the Registrar is for registration of settlement deed alleged to have been executed by father of the parties. The suit filed by the petitioner is comprehensive suit for partition involving property in the settlement deed and other properties. Further the proceedings pending before the Registrar cannot be termed as a suit pending before the competent Civil Court and in view of the same, Section 10 CPC is not applicable and the suit filed by the petitioner cannot be stayed pending disposal of the proceedings before the Registrar. The learned Judge failed to appreciate the scope of Section 10 CPC and committed an irregularity in allowing the application. In view of the same, the orders of the learned Judge dated 30.04.2013 made in I.A.Nos.597 & 598/2012 in O.S.No.25/2009 are liable to be set aside and they are hereby set aside.

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9. In the result, all the Civil Revision Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes/No

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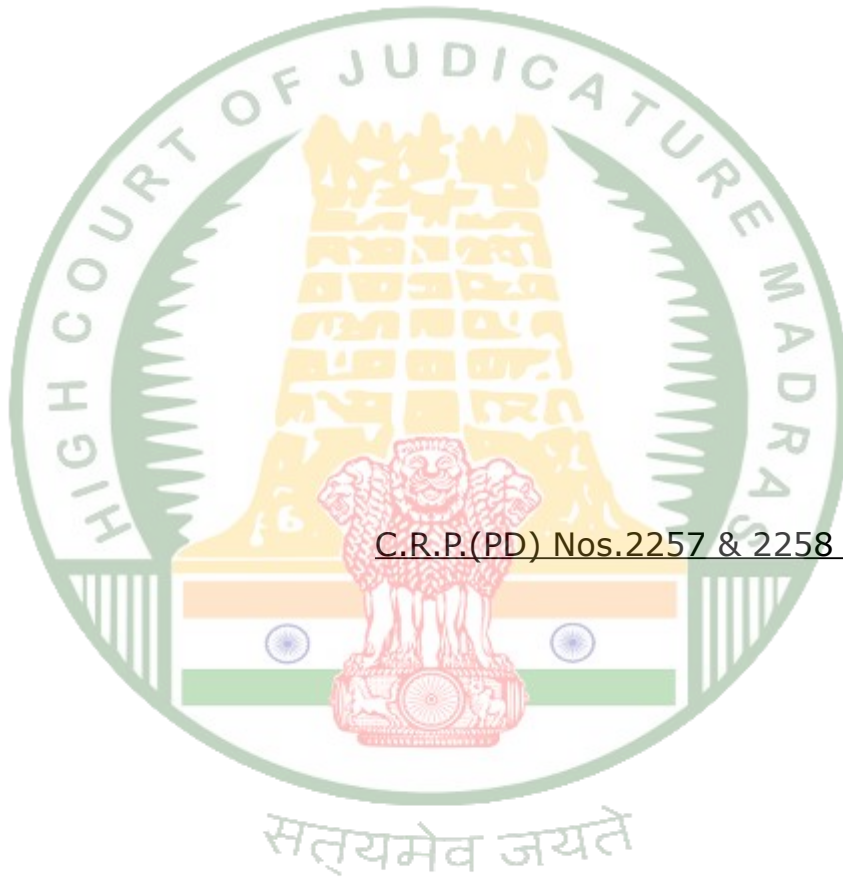
The Principal District and Sessions Judge,
Namakkal.



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V.M.VELUMANI, J.

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