



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.1619 of 2017

and

C.M.P. (MD) No.9151 of 2017

S.Balaji .. Petitioner/Petitioner/Defendant

vs

Lalitha .. Respondent/Respondent/Plaintiff

Prayer: Civil Revision is filed under Article 227 of the Constitution of India, to allow this C.R.P. by setting aside the Order made in I.A.No.6 of 2015 in O.S.No.284 of 2013 dated 10.03.2017, on the file of the District Munsif Court, Uthamapalayam.

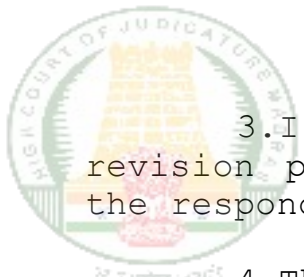
For Petitioner : Mr.M.Thirunavukkarasu

For Respondent : No Appearance

ORDER

The case of the revision petitioner is that he has filed a suit against the respondent herein and others in O.S.No.276 of 2006 on the file of the learned District Munsif Court, Uthamapalayam for the relief of a declaration, permanent and monetary injunction. However, the said suit came to be dismissed by the Learned Judge holding that there is some discrepancy over the description of Northern and Southern boundaries of the suit properties. Aggrieved over the same the petitioner filed an appeal suit in A.S.No.22 of 2013 on the file of the learned Sub-ordinate Judge, Uthamapalayam. The petitioner herein found that the four boundaries of the suit property was mistakenly mentioned, hence he took out an interlocutory application to amend the description of boundaries of suit property. In the meantime the respondent filed yet another suit against the petitioner herein in O.S.No.284 of 2013 before the learned District Munsif Court, Uthamapalayam for permanent injunction.

2.Since the suit properties and the parties thereto are one and the same besides the issue of title and injunction is liable to be decided in respect of same property, the petitioner filed an application in I.A.No.6 of 2015 under Section 10 of CPC to stay the latter suit in O.S.No.284 of 2013 contenting that if the trial of the suit is proceeded it will affect the declaration suit filed earlier by the revision petitioner. However the Learned Judge on misconception of law and fact dismissed the revision petitioner's application vide an order dated 10.03.2017. Aggrieved thereupon the petitioner has come up with the present Civil Revision Petition.



3.I heard Mr.M.Thirunavukkarasu, learned counsel for the revision petitioner and there is no representation on behalf of the respondent despite service of notice.

4.The learned counsel for the petitioner would submit that the suit of the respondent herein in O.S.No.284 of 2013 is an abuse of process of law and the same would result in multiplicity of proceedings and may serve a chance for conflicting decision. The matter in issue is directly and substantially the same in issue in the previous suit instituted by the petitioner. The rival claim of the revision petitioner and respondent is to be decided in the former suit in O.S.No.276 of 2006 filed by the revision petitioner which is pending in appeal stage, since the subject property and the parties thereto in both the suit in O.S.No.276 of 2006 and O.S.No.284 of 2013 are one and the same. Hence contending that the respondent's suit, is hit by Section 10 of CPC, the Learned counsel for the revision petitioner seek for bar of the stay of respondent suit in O.S.No.284 of 2013.

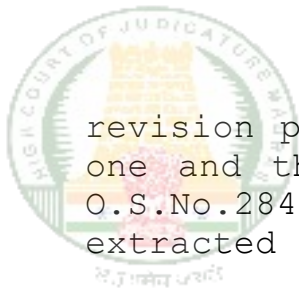
5.On perusal of the records, admittedly the revision petitioner has filed the suit in O.S.No.276 of 2006 and the same is dismissed and now the appeal filed by him in A.S.No.22 of 2013 on the file of the learned Sub-ordinate Judge, Uthamapalayam is pending.

6.It is further seen that latter the respondent by citing an alleged cause of action of the year 2013 has filed the latter suit in O.S.No.284 of 2013.

7.It is needless to say that the earliest suit of the petitioner is for the relief of declaration, permanent and mandatory injunction in respect of same set of properties as against the respondent and in such case the respondent ought to have made a counter claim if she is interested over the suit properties and such relief sought by the respondent may be for declaration, injunction or any other relief. However by not doing so, the respondent has chosen to file separate suit in O.S.No.284 of 2013 after the period of about 6 years from the earlier suit in O.S.No.276 of 2006.

8.On careful perusal of both the complaints in O.S.No.276 of 2006 and O.S.No.284 of 2013 it is seen that the parties are one and the same and the suit property is one and the same. In this regard it would be useful to look into the report of the advocate commissioner filed in I.A.No.284 of 2013 in O.S.No.276 of 2006, disclosing that the suit properties in both the suit filed by the revision petitioner and the respondent are one and the same.

<https://hcservices.ecourts.gov.in/hcservices/> 9.It is found that the matter in issue in O.S.No.284 of 2013 filed by the respondent herein directly and substantially in issue in the previous suit in O.S.No.276 of 2006 filed by the



revision petitioner and it is also seem that the parties are also one and the same. In such circumstance the respondent's suit in O.S.No.284 of 2013, it is hit by Section 10 of CPC which is extracted here under:

WEB COPY 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 different parties under whom they or any of them claim litigating under the same title where 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.In the present case on hand; both the above said ingredient are fulfilled. In a suit filed by the petitioner herein, the respondent herein was arrived as 3rd defendant and in the suit filed by the respondent herein, the petitioner herein is arrived as the sole defendant. The schedule of property was also one and the same. Therefore, this Court has no hesitation to stay of the suit filed by the respondent herein till the decision is rendered in the appeal filed by the revision petitioner as the subject issue and the parties thereto are substantially one and the same in both suits in O.S.No.284 of 2013 and O.S.No.276 of 2006.

11.In the result:

(a) this civil revision petition is allowed and the Order made in I.A.No.6 of 2015 in O.S.No.284 of 2013 dated 10.03.2017, on the file of the learned District Munsif Court, Uthamapalayam, is set aside;

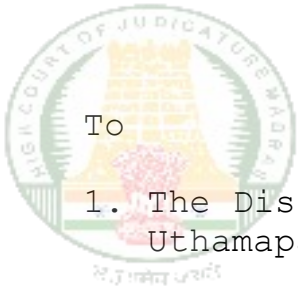
(b) the suit in O.S.No.284 of 2013 on the file of the learned District Munsif Court at Uthamapalayam, is hereby stayed till the disposal of the A.S.No.22 of 2013, on the file of the learned Sub-Court, Uthamapalayam. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar



To

1. The District Munsif,
Uthamapalaym, Theni District.

2. The Subordinate Judge,
Uthamapalayam, Theni District.

+1cc to Mr.M.Thirunavukkarasu, Advocate Sr.No.61465

VSV

VB/SV/MMS/SAR1/11.06.2018/4P/4C

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and
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