



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2018

CORAM

WEB COPY

**THE HONOURABLE MR.JUSTICE M.V. MURALIDARAN**

C.R.P (MD) .No.174 of 2016 and  
CMP (MD) .No.800 of 2016

1.Sethurayan

2.S.Bhagawath Singh

... Revision Petitioners

/Respondents/ Defendants

Vs.

1.Bharathi Elementary School,  
S.Chennampatti Village,  
Peraiyur Taluk,  
Madurai District.

2.P. Manalan

3.P. Thathabai Navroji

... Respondents /

Petitioners/Plaintiffs

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated, 30.11.2015 in I.A.No.242 of 2015 in O.S.No.518 of 2014, on the file of the District Munsif - Cum - Judicial Magistrate, Peraiyur, Madurai District.

For Petitioners ... Mr. G. Aravinthan

For Respondents ... No appearance

### **ORDER**

This Civil Revision Petition is filed to set aside the fair and decreetal order, dated 30.11.2015 in I.A.No.242 of 2015 in O.S.No.518 of 2014, on the file of the District Munsif - Cum - Judicial Magistrate, Peraiyur, Madurai District.

2. The revision petitioners, who are the defendants, have filed an application in I.A.No.242 of 2015 in the suit filed by the respondents / plaintiffs to stay further proceedings in the suit in O.S.No.146 of 2010, till the disposal of W.P.(MD).No.5588 of 2010, which is pending before the Madurai Bench of Madras High Court, Madurai. Considering the application filed by the respondents / plaintiffs, the learned Judge has allowed the stay application stating that the matter is pending before the Madurai Bench of Madras High Court, Madurai and that the petitioners sought for



permanent injunction based on the strength of the order of DEO, Madurai and therefore, this Court is not correct to proceed with the case, when the base of the case itself is in question before the Hon'ble High Court.

3. Heard the learned counsel appearing for the petitioners. Even though the names of the respondents are printed in the cause list, there is no representation on behalf of the respondents.

4. Admittedly, there is a provision under the Civil Procedure Code in respect of stay of the proceedings, based on the appeal pending in respect of any suit, in respect of the similar nature of the prayer, which is under Section 10 CPC. If the party have right to file an application under Section 10 CPC for stay the proceedings, on the ground of the similar nature of the petition is pending before the trial Court or appellate Court. Admittedly, in this case, the respondent has filed an application only under Section 151 CPC and based on that, the learned Judge has simply stayed the proceedings till the disposal of the Writ Petition. The learned Judge without applying his mind properly, had simply stayed the proceedings in I.A.No.242 of 2015, vide order dated 30.11.2015. The said order is totally not proper and not passed on the proper provision under CPC. Section 151 CPC does not empower the Court to pass such an order of stay till the disposal of the Writ Petition. Therefore, the order passed by the learned Judge is warranting interference by this Court and the same is liable to be set aside.

5. In the result,

(i) This Civil Revision is allowed by setting aside the order dated, 30.11.2015 made in I.A.No.242 of 2015 in O.S.No.518 of 2014 on the file of the District Munsif - Cum - Judicial Magistrate, Peraiyur, Madurai District.

(ii) The trial Court is directed to decide the suit in O.S.No.518 of 2014, within a period of three months from the date of receipt of a copy of this order, after issuing notice to both parties.

(iii) No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-III)



To

The District Munsif-Cum-Judicial Magistrate,  
Peraiyur,  
Madurai.

+1CC to Mr.G.Aravinthan Advocate in SR.No.74267.

TRP

DS/RSK/SAR-3 ;28.08.2018; 3P/3C

C.R.P(MD) .No.174 of 2016 and  
CMP (MD) .No.800 of 2016  
20.07.2018