

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P.(PD)No.1434 of 2005

and

C.M.P.No.17269 of 2005

1. S.N.L.Jayabalan

2. S.N.L.Vellichelvan (Died)

3. S.N.L.Manoharan

4. V.Vijayalakshmi

5. V.Ravichandran

6. V.Rama Thilagam

7. V.Kasthuri Thilagam

8. V.Mangayarkarasi

(Petitioners 4 to 8 brought on record as LR's of the deceased sole 2nd petitioner, Vide Order of Court, dated 01.07.2016 made in CMP.No.48 & 49 of 2016 in CRP 1434 of 2005)

... Petitioners

Vs.

Arulmighu Anantha Vigneshwaraswamy
Thirukoil, Thattan Pillaiyar Koil,
Velipalayam, by its Hereditary Trustees

1. Singaravelu

2. Vadivelu Pathar

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 20.07.2005, made in I.A.No.29 of 2005 in O.S.No.47 of 2004 passed by the learned Principal Subordinate Judge, Nagapattinam.

For Petitioners : Mr.S.Subbiah

Senior counsel assisted

Mrs.Elizabeth Rani

For Respondents : Mr.S.Sounther

O R D E R

This Civil Revision Petition has been filed as against the order passed by the learned Principal Subordinate Judge, Nagapattinam, passed in I.A.No.29 of 2005 in O.S.No.47 of 2004, the suit has been filed for recovery of possession.

2. The brief facts of this case are as follows:

Originally, the Temple represented by its Hereditary Trustees/respondents herein, filed two suits viz., O.S.No.179 of 1996, for recovery and possession in respect of T.S.Nos.1373 and 1374 and O.S.No.180 of 1996, for permanent injunction in respect of suit in T.S.No.1375. Both the suits, came to be dismissed by the Trial Court vide common judgment, dated 22.03.1999.

3. Challenging the common judgment and decree of the Trial Court, the temple filed in A.S.No.197 of 1999 as against dismissal of O.S.No.180 of 1996 and A.S.No.198 of 1999 as against dismissal of O.S.No.179 of 1996. The Lower Appellate Court dismissed in A.S.No.197 of 1999, thereby confirming the judgment and decree passed in O.S.No.180 of 1996 and allowed in A.S.No.198 of 1999, thereby setting aside the judgment and decree passed in O.S.No.179 of 1996. Challenging the judgment and decree of the Lower Appellate Court passed in A.S.No.198 of 1999, the defendants therein filed in S.A.No.1000 of 2000 before this court and the same is pending. No second appeal has been preferred as against dismissal on A.S.No.197 of 1999.

4. It is to be noted that the suit for injunction has been filed in respect of T.S.No.1375. The suit No.179 of 1996, relates to the Survey Nos.1373 and 1374. The temple did not file any appeal as against the dismissal of the suit in A.S.No.197 of 1999. However, they filed a fresh suit for recovery of possession in respect of the suit Survey No.1375 in O.S.No.180 of 1996. At this stage, an application has been filed for stay of the proceedings in O.S.No.47 of 2004 by the defendants. On the ground that the issue to Survey Nos.1373 and 1374 is a directly and substantially issue in the previous suit and that the Second Appeal No.1000 of 2000 is pending in the subsequent suit.

5. The learned Principal Subordinate Judge has dismissed the application as against which the present civil revision has been filed.

6. Heard both sides and perused the materials available on record.

7. The learned senior counsel appearing for the petitioners vehemently contended that the issue involved in the second appeal relates to the rights of the parties and the specific case of the defendants is that the temple cannot claim the suit property under Tamil Nadu Act 26 of 1963. Since, the occupants are enjoying the property independently even though the properties were vested with the Government. Though the present suit relates to the different Survey Number to the issue involved in the second suit is also entitlement of the Temple

under the Act 26 of 1963. Hence, it is the contention of the learned senior counsel that since, previously instituted suit has culminated in to the second appeal, the issues are pending in the present suit should be stayed. Since, the matter in both the suits are directly and substantially in issue in previously instituted suit, it is submitted that the learned Principal Subordinate Judge ought to have appreciated the applicability of Section 10 C.P.C., but the learned judge had simply dismissed the application. Hence, prays for allowing the application.

8. The learned counsel appearing for the respondent temple submitted that, admittedly, the injunction suit filed by the temple was dismissed in O.S.No.180 of 1996 on 22.03.1999. Wherein, the title of the temple has been established and the finding rendered in the said judgment has not been assailed by the revision petitioners by filing an appeal. Since, failed in injunction suit, the temple has filed suit for recovery of possession in respect of the Survey field No.1375 in O.S.No.180 of 1996.

9. It is the contention of the learned counsel, that the suit subject matter is not the subject matter of the previously instituted suits and the application filed, is noway connected with the previously instituted suit i.e., Second Appeal No.1001 of 2000. Further, it is the contention of the learned counsel that the suit survey field No.1375 lies to south of the subject matter of previously instituted suit. Hence, unless the subject matter of both the suits are not one and the same, and Section 10 cannot pressed in to service. In support of his submission also place reliance on the judgment of the Allahabad High Court, reported in AIR 1994 All 81 (Bijendra Kumar and Others Vs. Basant Kumar).

10. This court considered the rival submissions and also perused the materials placed before it.

11. Admittedly, there is no dispute that the revision petitioners are also one of the party in the suit filed by the temple in O.S.No.180 of 1996 for injunction and the suit was dismissed. Further it appears that, the finding with regard to the title of the temple, has not been challenged by the revision petitioners. After dismissal of the injunction suit the temple has resorted in filing the suit for recovery of possession in respect of Survey No.1375. It is also not in dispute that previous suit filed in O.S.No.179 of 1996 by the temple for recovery of possession in respect of the Survey Field Nos.1373 and 1374.

12. Now, the second Appeal No.1001 is pending. The main defence of the defendants is that the temple cannot claim a title, in view of their long continuous possession and Act 26 of

1969 cannot be pressed in the service in their favour and they have independent right over the property. Of course, now the above issue is pending in a second appeal. Now the present suit in O.S.No.47 of 2004 is filed for recovery of possession in respect of Survey No.1375. Wherein also similar line of defence has been taken by the defendant. The main contention of the revision petitioners is since, the second appeal is pending, the issue is directly and substantially same in all the suits. Section 10 of 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."

13. Though section 10 says that if the issue is directly and subsequently any issue in a previously instituted suit between the same parties, then the subsequent suit shall be stayed. There is no dispute with regard to the above. Further, the present suit is filed with regard to the Survey No.1375. Though, the common line of defence has been taken by the parties who are occupants of the temple land, the suit property is a different one and when the subject matter of the present suit is different from the subject matter of the previously instituted suit, one cannot take advantage of Section 10 C.P.C as a matter of right. What is intended is Section 10 C.P.C is that if the suits are filed in respect of the same property, where the issue is directly and substantially in issue to the previously instituted suit, then the present suit will be stayed till the disposal of the previously instituted suit.

14. Therefore, merely because some identical issues are pending in respect of some other survey number, the suit cannot be stayed since the subsequently instituted suit which is no way connected with the subject matter of the previously instituted suit in O.S.No.47 of 2004 filed in respect of the Survey No.1375. Therefore, the contention of the learned senior counsel appearing for the petitioners cannot be countenanced. In this regard, the decision reported in AIR 1994 All 81 (Bijendra Kumar and Others Vs. Basant Kumar) the Allahabad High Court has held in paragraph 7 as follows:

7. It is well settled that where the subject matter of two suits are not the same S.10, C.P.C. Will have no application merely because the main issue in both the suits is common. It is also well settled that the working test to determine the applicability of S.10, C.P.C. Is whether the decision in the previously instituted suit non suits the subsequent suit which would fall as a whole on the principle of res-judicata."

15. In view of the above, the particular subject matter of the present suit is not the subject matter of the previously instituted suit, the suit cannot be stayed. Hence, this court does not find any interference in the order passed by the Trial court.

16. Accordingly, the revision is fails and dismissed, and the trial court is directed to dispose the suit within a period of six months from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Subordinate Judge, Nagapattinam.

2. The Section Officer, VR Section, Madras High Court.

+1 CC to Mr.S.Sounthar, Advocate sr 9975.

+1 CC to Elizabeth Ravi, Advocate sr 10007(06/08/2019)

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CP(CO)

SP(15/03/2019)