

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 16.10.2019

ORDER PRONOUNCED ON : 18.10.2019

CORAM:

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.4939 of 2014

and

M.P.No.1 of 2014 & M.P.No.1 of 2015

Kalavathy

Petitioner

Vs

1. Loganathan

2. The State of Tamil Nadu
Rep by its District Collector
Collectorate of Vellore
Vellore

3. The Tahsildar
Gudiyatham (Taluk)

4. The Village Administrative Officer
Balur Village
Gudiyatham Taluk

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 12.09.2014 passed in I.A.No.157 of 2014 in O.S.No.209 of 2009, on the file of District Munsif Court, Gudiyatham.

For Petitioner : Mr.M.Kamalanathan

For Respondents : For R1 – Mrs.G.Devi
For R2 to R4 – Mr.N.Manikandan
Government Advocate (CS)

ORDER

The Civil Revision Petition has been preferred against the fair and decretal order dated 12.09.2014 passed in I.A.No.157 of 2014 in O.S.No.209 of 2009, by the learned District Munsif, Gudiyatham.

2. The 4th defendant in OS No.209 of 2009 on the file of District Munsif Court, Gudiyatham is the petitioner in this Civil Revision Petition. Before the above said Court, the 1st respondent in this Civil Revision Petition had filed a present suit, as against the revision petitioner and respondents 2 to 4. In the said suit, he seeks the relief of declaration declaring the right, title and interest of the plaintiff in the suit property. Further, he prayed for the relief of mandatory injunction directing the defendants 1 to 3, their subordinates, men, agents and servants to change, transfer and restore the Patta, Chitta, Adangal, A Register and other connected Revenue records. During the course of the trial proceedings, the petitioner and other two defendants have filed an application in IA No.157 of 2014, in which they seek the relief of staying all further proceedings of OS No. 209 of 2009, till disposal of Second Appeal No.1144 of 2005, pending on the file of this Court.

3. In the affidavit filed in support of the petition, the petitioner has stated that on 22.05.2009, i.e. before filing the suit pertains to this Civil Revision Petition, the 1st respondent in this Civil Revision Petition has filed a Suit in OS No. 31 of 2009, on the file of Subordinate Court, Gudiyatham as against the petitioner and others related to the very same subject matter of the suit, claiming absolute title. In the said suit, the 1st respondent has stated that his brother Etheeswaran filed a suit for partition in OS No.90 of 1999, on the file of Subordinate Court, Gudiyattam, claiming 4/9 share of the suit property. Preliminary decree has also been passed in the said suit and thereby the 1st respondent is entitled to 50% of the share in the suit schedule property. An appeal in AS No.60 of 2004 filed as against the findings rendered in OS No.90 of 1999, has also been dismissed by the learned District Judge, Vellore. Aggrieved over the said concurrent findings, the 1st respondent has filed SA No.1144 of 2005 and the same was pending before this Court. After filing OS No.31 of 2009, the very same plaintiff Loganathan has filed OS 209 of 2009 on 15.07.2009, which is the present suit. Since the dispute over the suit property is pending with this Court, claiming absolute right over the said property through the suit i.e through OS No.209 of 2009 is improper. At this juncture, the title of the 1st respondent cannot be decided either in OS No.31 of 2009 nor in OS No.209 of 2009. Hence, for avoiding the conflict of judgments, the petitioner prays to stay the entire proceedings in OS No.209 of 2009, till the disposal of the second appeal.

4. Resisting the claim made by the learned counsel appearing for the petitioner, the first respondent herein has filed a counter and states that the second appeal filed against the judgment rendered in AS No.60 of 2004 is pending with this Court in S.A.No.1144 of 2005, which is for determining the right of either parties in the suit schedule property. In the counter filed by the 3rd respondent, he has admitted that he is unnecessary party to the proceedings.

5. Having considered all the materials placed before him, the learned District Munsif, by an order dated 12.09.2014 had dismissed the petition filed by the petitioner and refused to allow the application filed under Section 10 of Code of Civil Procedure. Ultimately, he refused to stay the proceedings of OS No.209 of 2009. Feeling aggrieved over the same, the petitioner is before this Court with the present Civil Revision Petition.

6. Today when the petition is came up for hearing, the learned counsel appearing on either side are present. The learned counsel appearing for the petitioner would contend that the issue to be decided in the above suits filed by the 1st respondent is one and the same. So, if the suit filed by the 1st respondent is decided earlier, i.e before deciding the Second Appeal, it will cause much conflict and create multiplicity of proceedings.

7. On the other hand, the learned counsel appearing for the 1st respondent would contend that the issue to be decided, cause of action in earlier and present suits are all entirely different from each other and thereby, staying the proceedings of OS No.209 of 2009 is no way helpful to decide the issue involved in the suit filed by the 1st respondent. According to him, the petitioner is attempted to protract the proceedings of OS No.209 of 2009.

8. Submissions made by either side counsel are considered.

9. Before entering into the merits and de-merits of the petition, it is useful and necessary to see the definition of Section 10 of Code of Civil Procedure.

Section 10 Stay of Suit:

No Court shall proceed with the trial of any suit in which matter in issue is also directly and substantially in issue in a previously instituted suit between the same 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 Government and
having like jurisdiction or before the Supreme Court.*

Accordingly, the only issue to be decided for finalizing the Civil Revision petition is, whether the matter in issue related to the Second Appeal and present suit is one and the same or not. Though the party to the proceedings in both proceedings are one and the same, that alone cannot be sufficient to stay the proceedings.

10. Now on going through the prayer sought for in OS No.90 of 1999, on the file of Subordinate Judge, Gudiyatham, it is the subject matter of the Second Appeal No. 1144 of 2005, the same has been filed for the relief of partition and separate possession. So the issue in the said suit is whether the party to the proceedings are having right and title over the suit property or not. Now coming to the prayer sought for by the 1st respondent in OS No.209 of 2009, the said suit is filed for the relief to declare the right, title and interest of the plaintiff in the schedule mentioned suit property. Thus, the second suit is also filed for the relief to determine the right and title of the 1st respondent in SF No.152/2, measuring an extent of 3.33 acres, comprising Balur Village, Gudiyatham Taluk. The above referred property is the subject matter of both the suits. So, on culling out the entire circumstances, it is clear that in both suits, the matter to be decided is whether the 1st respondent is having right over

the said survey number or not. So it cannot be said that the issue to be decided is not one and the same. In the suit filed for the relief of partition, preliminary decree has been passed only after determining the right of parties. In the same way, if the suit is filed for the relief of declaration, only after determination of right over the said property, the relief of declaration can be granted. In otherwise, the cause of action arises for both sides is not a criteria to decide the rights of parties.

11. In fact, for deciding the application under Section 10 of Code of Civil Procedure, the following three essential conditions are necessary.

1. that the matter in issue in the second suit is also directly and substantially is issue in the first suit
2. that the parties in the second suit are the same or parties under whom they or any of them claim litigating under the same title
3. that the court in which the first suit is instituted is competent to grant the relief claimed in the subsequent suit.

So, complying the above three conditions, which are necessary for granting the relief under Section 10 of code of Civil Procedure, in the case in our hand also, it was observed that the matter in issue is one and the same in both suits. Moreover, the parties to the proceedings are also one and the same. Further, the Court, in which decree was already granted, is the competent forum for granting the decree for partition. The learned

District Munsif in the impugned order dated 12.09.2014, has mentioned the cause of action and merely observed that the cause of action in both suits are different one, thereby the application filed by the petitioner is not at all maintainable, which is nothing but erroneous. Therefore, considering all the above facts and in all aspects, it is very much essential to stay the entire proceedings of OS No.209 of 2009, till the disposal of SA No.1144 of 2005.

12. In view of the above discussions and observations, I am of the opinion that interference is necessary in the impugned order passed by the learned District Munsif, Gudiyatham in I.A.No.157 of 2014 in O.S.No.209 of 2009. Accordingly, the proceedings in OS No.209 of 2009 is hereby stayed till the disposal of S.A No.1144 of 2005.

13. With the above direction, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous petitions are closed.

18.10.2019

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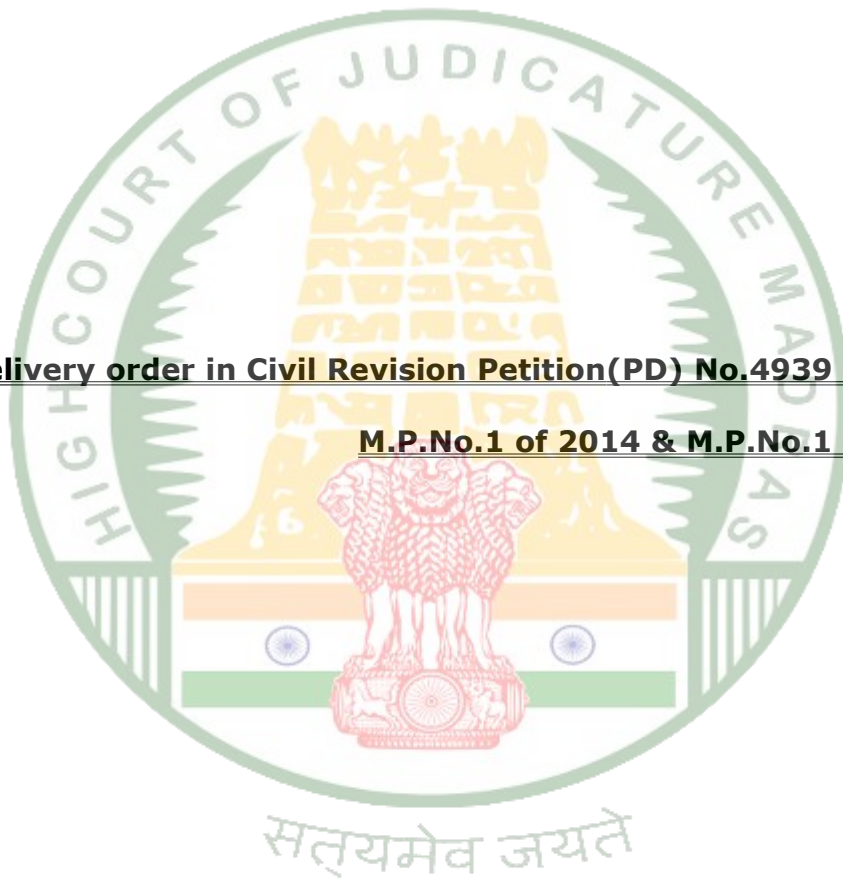
To

The District Munsif Court, Gudiyatham.

R.PONGIAPPAN, J.,

vrn

Pre-delivery order in Civil Revision Petition(PD) No.4939 of 2014
and
M.P.No.1 of 2014 & M.P.No.1 of 2015



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