



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.09.2019**

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP PD(MD)No.802 of 2012

and

M.P.(MD)No.1 of 2012

1.T.K.Srinivasan
2.T.K.Ponraj
3.S.Rajasekar
4.R.Krishnamoorthy

... Petitioners / Petitioners/
Plaintiffs

Vs.

1.Meerabai
2.Murugesan

... Respondents/ Respondents/
Defendants

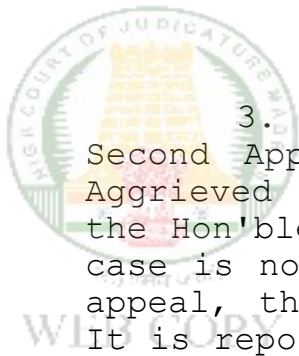
PRAYER: This petition is filed under Article 227 of Civil Procedure Code, against the fair and decreetal order dated 07.02.2012 passed in I.A.No.630 of 2011 in O.S.No.139 of 2011 on the file of the District Munsif Court, Theni.

For Petitioner : Mr.S.Kadarkarai
For Respondents : No Appearance

O R D E R

This petition has been filed against the order passed by the Courts below refusing to keep the suit in abeyance till the disposal of the Civil Appeal No.8314 of 2011, pending before the Hon'ble Apex Court.

2. The petitioners are the plaintiffs in the suit in O.S.No.288 of 2011, which was subsequently renumbered as O.S.No.139 of 2011, on the file of the District Munsif Court, Theni, seeking for the relief of permanent injunction. The suit was decreed as prayed for and as against the same, an appeal came to be preferred by the respondent in A.S.No.43 of 2010. The appeal came to be allowed and thereby the Judgment and Decree passed by the trial Court was set aside. Aggrieved by the same, the petitioners herein filed S.A.(MD)No.100 of 2011 before this Court.



3. This Court by a Judgment, dated 28.03.2011, allowed the Second Appeal and remitted the matter back to the Court below. Aggrieved by the same, the petitioners herein filed an SLP before the Hon'ble Apex Court and the Apex Court had granted Leave and the case is now pending in Civil Appeal No.8314 of 2011. Pending the appeal, the Apex Court has passed an interim order of Status-quo. It is reported that the appeal is pending and it is yet to be taken up for hearing.

4. The learned counsel appearing for the petitioners submitted that an application was filed before the Court below bringing to the notice of the Court below the fact that the Civil Appeal is pending before the Hon'ble Apex Court and an interim order has also been granted and therefore, the proceedings in the Suit will have to be kept in abeyance awaiting the final orders in the Civil Appeal. The learned counsel submitted that the Court below without understanding the purport of the orders passed by the Hon'ble Apex Court, refused to keep the proceedings in abeyance only on the ground that no stay has been expressly granted by the Apex Court and without there being an order of stay, Order 41 Rule 5 of CPC will apply and the Court below had taken a stand that it will proceed with the suit and dispose the same on merits. Learned counsel concluded his arguments by submitting that the final orders in the Civil Appeal will have a direct bearing in the suit and if any final Judgment is passed in the suit, the Civil Appeal itself will become infructuous.

5. The respondents have been served with notice and their names are also printed in the cause list and there is no representation for the respondents.

6. This Court has carefully considered the submissions of the learned counsel for the petitioners and the materials available on record.

7. Admittedly in this case, the Judgment passed by this Court in S.A.No.100 of 2011, remitting the suit back to the trial Court, is the subject matter of challenge before the Hon'ble Apex Court and Leave has been granted and Civil Appeal is pending adjudication. The Apex Court has also granted an interim order of Status-quo. Under such circumstances, the trial Court will have to necessarily keep the proceedings in abeyance, awaiting for the final orders in the Civil Appeal. If the trial Court proceeds further to decide the suit on merits, the Civil Appeal pending before the Apex Court will become infructuous.

8. In view of the above, this Civil Revision Petition is allowed and the fair and final order passed by the Court below in I.A.No.630 of 2011, dated 07.02.2012 is hereby set aside. The suit in O.S.No.139 of 2011, on the file of the District Munsif Court, is hereby kept in abeyance, pending final orders to be passed



in Civil Appeal No.8314 of 2011 by the Apex Court. No costs.
Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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// True Copy //

Sub Assistant Registrar

To

The District Munsif Court,
Theni.

+1 CC to M/s.S.KADARKARAI, Advocate (SR-86026[F] dated 10/09/2019)

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mp

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