

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2160 of 2018 and
CMP No.13461 of 2018

1. Arumugam

2. Kandasamy

... Petitioners

Vs

Neelavathy

... Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal order dated 13.02.2018 passed in I.A.No.46 of 2018 in O.S.No.78 of 2016 on the file of the District Munsif Court, Perambalur.

For Petitioners : Mr.S.Vijay Anand

For Respondent : Mr.V.Lakshmi Narayanan

ORDER

This revision is by the defendants in O.S.No.78 of 2016 questioning an order made in I.A.No.46 of 2018, an application under Section 10 of the Code of Civil Procedure, filed by them seeking to stay

of all further proceedings in O.S.No.78 of 2016 till the disposal of the appeal in A.S.No.21 of 2009 filed by them against a decree in O.S.No.13 of 2001 which is an earlier suit with reference to the same property filed by the vendor of the plaintiff in O.S.No.78 of 2016.

2. One Ayyamperumal, the vendor of the plaintiff in O.S.No.78 of 2016, filed a suit in O.S.No.13 of 2001 against the petitioners herein and others, seeking a permanent injunction, restraining them from interfering with his possession of the suit property. The said suit was partially decreed on 29.12.2008. Aggrieved, it is stated that, the petitioners herein have filed an appeal in A.S.No.21 of 2009 and the said Ayyamperumal has also filed an appeal in A.S.No.15 of 2009. Both the appeals are stated to be pending on the file of the Sub Court, Perambalur.

3. While so, the respondent herein filed an instant suit in O.S.No.78 of 2016, seeking a decree for permanent injunction in respect of the very same properties covered by the decree in O.S.No.13 of 2001 (renumbered as O.S.No.212 of 2001 on the file of the learned District Munsif at Perambalur). The petitioners came out with the instant application in I.A.No.46 of 2018 under Section 10 of the Code of Civil Procedure seeking stay of the suit. Along with the suit, the plaintiff had also filed an application in I.A.No.262 of 2016, seeking an interim

injunction.

4. The trial Court concurred with the petitioners contention that the suit in O.S.No.78 of 2016 is liable to be stayed under Section 10 of the Code of Civil Procedure. It, however, concluded that the proceedings in I.A.No.262 of 2016 cannot be stayed since Section 10 of the Code of Civil Procedure does not contemplate stay of proceedings in Interlocutory applications. On the above conclusion, the learned trial Judge while staying the suit, held that he could proceed with the Interlocutory application for injunction in I.A.No.262 of 2016. Aggrieved, the defendants are on revision.

5. I have heard Mr.S.Vijay Anand, learned counsel appearing for the petitioners and Mr.V.Lakshminarayanan, learned counsel appearing for the respondent.

6. While Mr.S.Vijay Anand, learned counsel appearing for the petitioners would contend that the trial Court was not right in concluding that it can proceed with an application for injunction, pointing out that any order passed by it, may contravene the decree already granted in O.S.No.212 of 2001 which is a subject matter of the appeals in A.S.Nos.15 and 21 of 2009. According to him, even though Section 10 of the Code of Civil Procedure does not empower the Court to stay the

proceedings in an Interlocutory application, in a proper case, the Court can always invoke Section 151 of the Code of Civil Procedure to stay such proceedings.

7. Mr.V.Lakshminarayanan, learned counsel appearing for the respondent would submit that no doubt, Section 151 of the Code of Civil Procedure can be invoked to stay interlocutory proceedings an application for injunction need not be stayed. He would also submit that the trial Court is perfectly justified in concluding that Section 10 of the Code of Civil Procedure would not cover the Interlocutory application.

8. I have considered the rival submissions.

9. No doubt, Section 10 of the Code of Civil Procedure will not cover interlocutory applications. But in the case on hand, as the facts would reveal that there is every possibility of there being conflicting orders if the trial Court decides the interim application either way. The earlier suit in O.S.No.212 of 2001 has been decreed partially, thereby finding that the plaintiff in O.S.No.212 of 2001 is in possession of some of the property and he has been favoured with the decree for permanent injunction. The present application for interim injunction in I.A.No.262 of 2016 is by a person claiming under the said plaintiff who has partially succeeded in the earlier suit.

10. As regards the properties for which decree for injunction has been granted, I.A.No.262 of 2016 is unnecessary and as regards properties for which decree for injunction has been negated any order passed in I.A.No.262 of 2018 granting injunction will be in conflict with the decree granted by the Court.

11. In this situation, I do not think the trial Court was justified in concluding that it can proceed with Interlocutory application in I.A.No.262 of 2016 once there is a chance of a conflicting orders. The very object behind Section 10 of the Code of Civil Procedure is to prevent a subsequent trial on a matter which is already pending before a Court of law to avoid conflicting Judgments. If an order in Interlocutory application would be in conflict with the Judgment of the trial Court which is under appeal, it is prudent that the Court must stay its hands and wait for the disposal of the appeal. Now that the suit has been stayed, I do not see any reason to allow the trial Court to proceed with the Interlocutory application on merits. Even if Section 10 of the Code of Civil Procedure is not applicable, the Court always has the power under Section 151 of the Code of Civil Procedure to grant stay. A Division Bench of this Court in Krishnan -Vs- Krishnamurthi & others reported in (1981) 94 LW 703 had held that even in cases which do not

strictly fall under Section 10 the Court can stay the proceedings under Section 151 of the Code of Civil Procedure, in an appropriate case.

12. Therefore, the Civil Revision petition is allowed. The proceedings in I.A.No.262 of 2016 will also remain stayed till the disposal of the appeals. As seen from the records, the appeals are of the year 2009, they are already 11 years old. Hence there will be a direction to the Sub Court, Perambalur, to dispose of the appeals in A.S.Nos.21 of 2009 and 15 of 2009 as early as possible at any rate within a period of two months from the date of resumption of physical hearing in the Courts at Perambalur. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order / Non Speaking order
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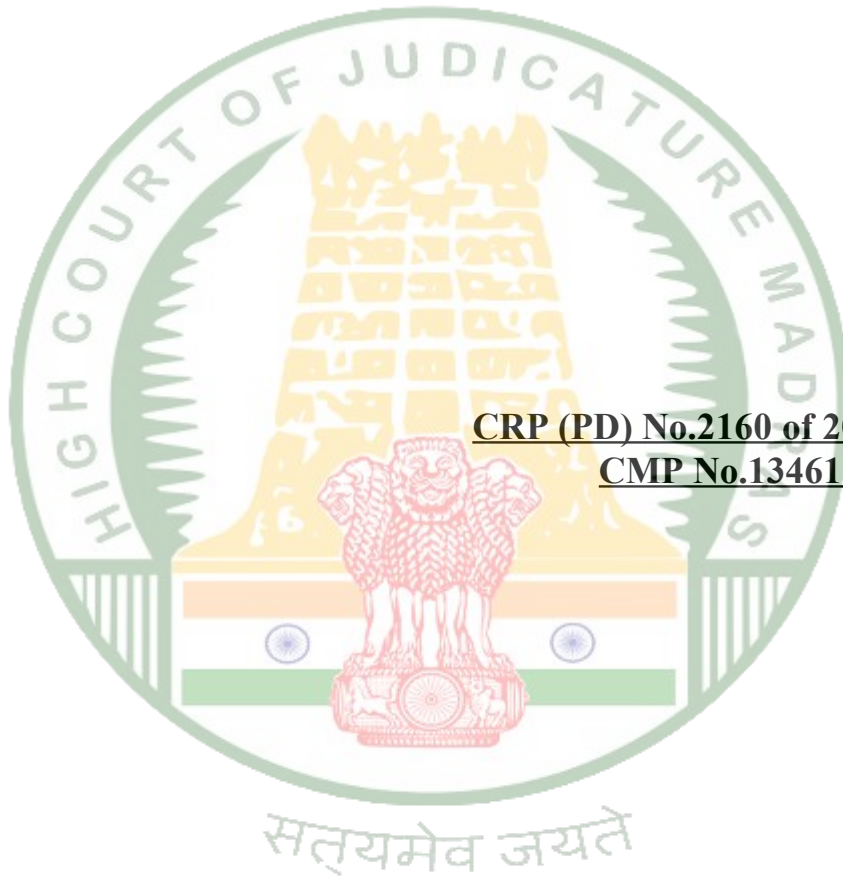
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The District Munsif Court Perambalur.

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R.SUBRAMANIAN, J.

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