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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.No.2193 of 2021

and

C.M.P.No.16627 of 2021

M.Sakthikumar

... Petitioner

Vs

A.Nagammal

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order and decretal order dated 27.01.2021 made in I.A. No. 3 of 2020 in O.S. No. 214 of 2017 passed by the Learned Additional District Munsif Judge, Kanchipuram and allow this Civil Revision Petition.

For Petitioner : Mr. K.M.Balaji

O R D E R

This Petition is filed challenging the order passed in I.A. No. 3 of 2020 in O.S. No. 214 of 2017 by the Learned Additional District Munsif, Kancheepuram.

2. I.A. No. 3 of 2020 was filed under Section 10 of the Civil Procedure Code for staying the proceedings in O.S. No. 214 of 2017 till the disposal of the A.S.S.R. No. 2572 of 2019 in I.A. No. 1 of 2019 pending on the file of the Principal Sub Court, Kancheepuram.

3. The Learned Counsel for the Petitioner submitted that the Petitioner is the Second Defendant in O.S. No. 214 of 2017. The Respondent filed Suit for recovery of possession. The cause of action for this Suit and the suit filed in O.S. No. 199 of 2012 are same. O.S. No. 199 of 2012 was decreed.

4. Against the said judgment and decree, the Petitioner filed appeal in A.S.S.R. No. 2572 of 2019 in I.A. No. 1 of 2019.



Therefore, till the disposal of A.S.S.R. No. 2572 of 2019 and I.A. No. 1 of 2019, further proceedings in O.S. No. 214 of 2017 has to be stayed. This Petition was contested by the Respondent/Plaintiff alleging that O.S. No. 199 of 2012 was filed for the relief of permanent injunction and it was decreed on 22.10.2016 in favour of the Respondent. Subsequently, the Petitioner encroached the Suit property and therefore, the suit in O.S. No. 214 of 2017 is filed. The cause of action for both the suits are different and the relief sought for in both the suits are different. Therefore, it is not necessary to stay further proceedings in O.S. No. 214 of 2017. On considering the rival submissions, the Learned Additional District Munsif, Kancheepuram dismissed the Petition. Against the dismissal of the stay Petition, this Civil Revision Petition is preferred.

5.The Learned Counsel for the Petitioner reiterated his submission stating that cause of action for both the suits are same and therefore, further proceedings in O.S. No. 214 of 2017 has to be stayed till the disposal of A.S.S.R. No. 2572 of 2019 in I.A. No. 1 of 2019.

6.Considered the submissions of the Learned Counsel for the Petitioner and perused the records.

7.It is seen from the submissions made by the Learned Counsel for the Petitioner and counter affidavit filed in I.A. No. 3 of 2020 that O.S. No. 199 of 2012 was filed by the Respondent for the relief of permanent injunction, not to disturb the possession and enjoyment of the Suit property. It is alleged in the counter that subsequent to the judgment and decree in O.S. No. 199 of 2012, the Petitioner encroached the suit property. Therefore, this suit is filed for recovery of possession. Thus, it is clear that the cause of action for both the suits are different and the relief claimed in both the suits are totally different. Therefore, prayer for staying the suit in O.S. No. 214 of 2017 cannot be entertained.

8.That apart, it appears that A.S.S.R. No. 2572 of 2019, the appeal against the judgment and decree in O.S. No. 199 of 2012 was not filed in time. I.A. No. 1 of 2019 was filed for condoning the delay in filing the appeal. When there is no previous proceedings pending as on date, the Petitioner cannot seek to stay the subsequent proceedings. For all these reasons, this Court finds no reason to interfere with the order of the Learned Additional District Munsif, Kancheepuram in dismissing the stay petition filed under Section 10 of the Civil Procedure Code. Hence, the order of the Learned Additional District Munsif, Kancheepuram is confirmed.



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9.Resultantly, this Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ay
To

The Additional District Munsif,
Kanchipuram.

+1cc to M/s.K.M.Balaji, Advocate Sr.52930

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and
C.M.P.No.16627 of 2021

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srg 17/11/2021