



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON :18.01.2021

DELIVERED ON : 15.07.2021
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.840 of 2019

1.Saravanan
2.Saroja : Petitioners/Petitioners/Defendants 3 &4

Vs

1.Thirumurugan
2.K.S.Azhagarsamy :1st Respondent/1st Respondent/Plaintiff
3.Mahalakshmi :Respondents 2-3/Respondent 2-3/Defendant 1 &2

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 22.03.2019 made in I.A.No.160 of 2015 in O.S.No.180 of 2013 on the file of the VI Additional District Judge, Madurai.

For Petitioners : Mr.S.Srinivasa Raghavan
For R.1 : No appearance
For R.2&3 : Mr.J.Bharathan for
Mr.T.R.Jeyapalam

ORDER

This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 22.03.2019 made in I.A.No.160 of 2015 in O.S.No.180 of 2013 on the file of the VI Additional District Judge, Madurai.

2. The petitioners would aver among other things that O.S.No.37 of 2013 was filed on the file of the VI Additional District Judge, Madurai by the father of the first petitioner herein against the father of the first respondent herein and also the respondents herein for the relief of declaration and injunction relating to the rice mill property and during the pendency of the suit, the father of the first petitioner died and all his legal heirs including the petitioners and second petitioner have been impleaded. The said suit is ready for trial, but, in view of the application filed by the first respondent herein in I.A.No.52 of 2019 for an appointment of a Receiver, the trial is not yet commenced in O.S.No.37 of 2013.



2.1. Further, the petitioners herein have also filed an application for injunction in I.A.No.259 of 2013 in O.S.No.37 of 2013 and the injunction has been made absolute by the trial Court as early as 08.07.2013 and the same has become final. Pending suit, the first respondent herein laid another suit subsequently in O.S.No.180 of 2013 before the same court against the petitioners herein for the relief of partition and separate possession and the subject suit property is one and the same.

2.2. The suit in O.S.No.37 of 2013 was filed previously and O.S.No.180 of 2013 was filed later. The suit properties and parties in both the suits are one and the same and the issue in O.S.No.37 of 2013 is directly and substantially the same in O.S.No.180 of 2013. The final judgment to be made in O.S.No.37 of 2013 would certainly operate as *res judicata* in O.S.No.180 of 2013 and accordingly, the petitioners have taken out another application under Section 10 of CPC for stay of trial O.S.No.180 of 2013 and the same was dismissed by the Court below. Aggrieved over the fair and decreetal order dated 22.03.2019 made in I.A.No.160 of 2015 in O.S.No.180 of 2013 on the file of the VI Additional District Judge, Madurai, the present Civil Revision Petition has been preferred by the petitioners herein for the relief stated supra.

3. The learned counsel for the petitioners contends that the Court below without appreciating the provisions of Section 10 CPC have erroneously dismissed the application filed by the petitioners herein. Unless O.S.No.180 of 2013 pending on the file of VI Additional District Judge, Madurai, is stayed, till the disposal of suit in O.S.No.37 of 2013, the petitioners will be put to a lot of hardship and hence, he prays for allowing this Civil Revision Petition.

3.1. In support of his contentions, he relied on the following judgments:-

a) **National Institute of Mental Health & Neuro Sciences Vs. C.Parameshwara** reported in (2005) 2 SCC 256.

b) **Manohar Lal Chopra Vs. Raj Bahadur Rao Raja Seth Hiralal** reported in AIR 1962 SC 527.

c) **Sellammal 7 another vs Mookan & another** reported in 2001-1-L.W.134

d) **Chiranjilal (dead) by Lrs Vs. Hari Das (dead) By Lrs** reported in (2005) 2 SCC 261.

e) **Manohar Lal Chopra Vs Raj Bahadur Rao Raja Seth Hiralal** reported in AIR 1962 SC 527.

4. *Per contra*, the learned counsel for the respondents herein contends that the Court below after taking note of the vital point that the prayer of the petitioners raised in both the subject suits are one and the same and accordingly allowed the prayer of the respondents herein in which no infirmity or illegality can be found.

Therefore, he prays for dismissal of this Civil Revision Petition.

4.1. He also relied on the following judgments to support his contentions:-

a) **Prem Lala Nahata and another vs Chandi Prasad Sikaria** reported in (2007) 2 SCC 551.

b) **Oriental Insurance Co.Ltd Vs Siby George & Others** reported in **2012 92) TN MAC 395 (SC)**

5. Heard the learned counsel for the petitioners and the learned counsel for the respondents and I have also perused the judgments quoted by both the parties.

6. A cursory perusal of the plaint in O.S.No.37 of 2017 and the plaint in O.S.No.180 of 2013 would reveal that the parties to both suits and the suit property in both the suits are one and the same. A perusal of the defence in both the suits in the light of the suit allegation would go to show that issues in both the suits are substantially similar and same. In the suit filed by the revision petitioners herein, they have alleged that the properties of the forefathers of both the parties have already been partitioned. The crux of the both the suits are the alleged partition took place between the petitioners and the respondents herein which is under dispute in both the suits. When that being the factual position, the Court below has perfectly arrived at the conclusion that it has to be dealt with together so that a proper conclusion can be drawn and the ends of justice would be met.

6.1. That apart, both the suits are pending in the same court and they are ready for trial. The issue in both the suits would be a common issue namely, whether the alleged oral partition dated 30.06.1997 is true or not? If the suits are tried jointly it will be easier for both the parties to approach the appellate Court at the same time. Whereas, if the request of the revision petitioners are acceded to, then, it will be very difficult to focus on the main issue by the Court. Supposing O.S.No.37 of 2013 filed by the revision petitioners alone is proceeded and if it was dismissed, then, naturally, the revision petitioners will file first appeal and if they lost the first appeal, then they will approach the Supreme Court and till the disposal of the suit filed by the petitioners are decided, the respondents cannot proceed with their partition suit.

6.2. The submission of the petitioners that Section 10 of CPC will come to the rescue of the petitioners herein will have no legs to stand for the simple reason that as per the proposition laid down in the cases of Section 10 of CPC, staying of the subsequent suit under Section 10 is not mandatory and the Court has got discretion to order joint trial of both the suits. The object of Section 10 is only to avoid conflicting judgments arising out of independent trial of the subsequent suit. But, when both the suits are jointly tried and accordingly, issues are framed and common judgments are delivered, then there is no possibility of conflicting judgment and both parties will not be prejudiced in any manner.



6.3. It goes without saying that when joint trial is ordered, it minimizes the precious time of the Court. It enables both parties to have examination of witnesses and production of documentary evidence for a single time. Section 10 of CPC bars only two independent trials. For instance, if one suit is at part-heard stage and another suit is at the stage of service of summons, then joint trial is not possible and Section 10 can be invoked, as contended by the petitioners herein. Such is not the factual position in the present case on hand. To put it shortly, in my opinion, Section 10 C.P.C does not place an embargo in considering an application for consolidation of trial taking into account the similarity of the claim involved in two different suits in order to avoid multiplicity of proceedings. It is eminently desirable that the suit should be consolidated and heard together to draw a correction conclusion by the Courts.

6.4. In the light of the foregoing discussions, this Civil Revision Petition stands dismissed and the order of the Court below stands confirmed. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

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Sub Assistant Registrar(CS)

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To

VI Additional District Judge,
Madurai.

+1 CC to M/s.J.PANDI DORAI, Advocate (SR-22602[F] dated 15/07/2021)

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-22603[F] dated 15/07/2021)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-22764[F] dated 15/07/2021)

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SSS (CO)

KB(23.07.2021) 4P 5C