



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.10.2021

CORAM

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P(PD) (MD) No. 2366 of 2014

and

M..P(MD) No.1 of 2014

WEB COPY

Athimuthan

...Petitioner/Respondent/
Plaintiff

Vs.

1. Kanjana
2. Madhavan

...Respondents/Petitioners
Defendants

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree made in I.A.No. 15 of 2014 in O.S.No.233 of 2013 dated 01.09.2014 on the file of the District Munsif cum Judicial Magistrate Court, Vadipatti.

For Petitioner : Mr.M.Thirunavukkarasu

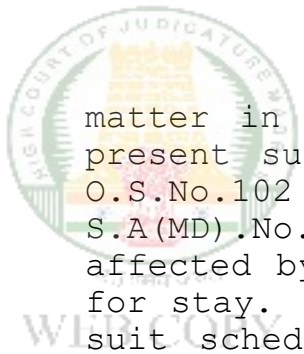
For Respondent : Mr.R.Vijayakumar

O R D E R

The Civil Revision Petition has been filed by the plaintiff against the order passed by the Trial Court under Section 10 of the Code of Civil Procedure staying the suit.

2. The brief facts of the case are as follows:

The petitioner/plaintiff has filed a suit in O.S.No.233 of 2013 seeking to declare him alone as an absolute owner of the property described in the plaint schedule property and for permanent injunction. The respondents/defendants filed IA No. 15 of 2014 under Section 10 of the Code of Civil Procedure seeking the stay the suit on the ground that the respondent had already filed a suit in O.S.No.102 of 2011 against the plaintiff and others before the same Court for declaration, recovery of possession and permanent injunction in respect of the very same property and the said suit was dismissed by the trial Court on 20.09.2012 and against the judgment and decree he had filed an appeal in A.S.No. 9 of 2013 before the Sub Court, Madurai and the said appeal was allowed by the Principal Sub Court by setting aside the judgment and decree of the Trial Court and they have enclosed a copy of the decree and judgment. Subsequently the plaintiff has filed a second appeal in S.A(MD) No. 591 of 2013 before the High Court and the same is pending. The respondents/defendants had further contended that the



matter in issue which has to be decided and the parties in the present suit are one and the same as in the previous suit in O.S.No.102 of 2011 which is now pending in the appellate Court in S.A(MD).No. 591 of 2013, thereby contending that the suit was affected by principles of subjudice had filed a petition seeking for stay. The respondent had filed counter and contended that the suit scheduled properties, parties to the suit are different and that the matter in dispute was also not one and the same. The Trial Court by order dated 01.09.2014 allowed the petition against which the present revision has been filed.

3. The learned counsel for the petitioner would submit that the petitioner is the plaintiff in O.S.No. 233 of 2013 and the first defendant in O.S.No.102 of 2011. The other defendants in O.S.No. 102 of 2011 are the government officials. The schedule of properties and the parties involved in the suit are different and the issue involved in the suit is also different. He would further submit that to attract Section 10 of the Code of Civil Procedure, any matter in issue in the present suit must be directly and substantially the issue in the earlier suit instituted between the parties and the subject matter of the suits must be one and the same between the parties. He would further submit that as a matter of fact Section 10 of the Code of Civil Procedure is a restricted provision and not a permissive one. The Trial Court without properly analyzing the fact that the schedule of properties are different and without considering the fact that the parties are also different had stayed the suit. Further in the earlier suit filed by the respondent the description of the suit scheduled property is not clear and precise. The survey number and specific boundaries of the property have not been stated. As far as in the subsequent suit filed by the petitioner for declaration, the survey numbers, boundaries and the extent of the properties have also been clearly mentioned and the petitioner has sought for declaration to declare him as absolute owner of the suit schedule properties, whereas in the earlier suit the respondents have without specifying the boundaries or survey numbers had sought to declare the suit scheduled properties as a public road. Further in the earlier suit, the Government Officials were added as party and in the subsequent suit the Government officials are not parties. The learned counsel would further submit that in order to attract Section 10 of the Code of Civil Procedure it is essential that the entire subject matter in controversy must be same between the previous suit and the subsequent suit. The test for applicability of Section 10 is whether on a final decision being reached in the previously instituted suit such decision would operate as *res judicata* in the subsequent suit. When the matter in controversy is the same, it may be immaterial what further relief is claimed in the subsequent suit. Though application of Section 10 of the Code of Civil Procedure entire subject matter of two suits must be the same and Section 10 will not apply where a few of the matters in issue are common and will apply only when the entire suit in controversy is same. In



Support of his contention , the learned counsel appearing for the petitioner relied on the judgment of the Hon'ble Apex Court in the case of **Aspi Jal and another .vs. khushroo Rustom Dadyburjor** reported in (2013) 4 SCC 333.

4. The learned counsel for the respondents /defendants would submit that earlier case in O.S.No. 102 of 2011 was filed to declare the suit scheduled properties as pathway and the subsequent suit has been filed by the petitioner/defendant to declare the property in patta No.1407 comprised and covered in S.No. 263/1A having an extent of 0.02.0 areas as his properties. However the learned counsel would further submit that though the properties are one and the same, the description in the earlier property is not clearly mentioned.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. In this case I.A.No. 15 of 2014 has been filed under Section 10 of the Code of Civil Procedure has been filed to stay the suit. As per Section 10 of the Code of Civil Procedure no Court shall proceed with the trial of any suit in which the matter in issue is also directly or substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title. In the earlier case filed by the respondent in O.S.No. 102 of 2011 the respondents have sought for declaration to declare the suit schedule properties as a pathway. For easy reference the schedule of the property in O.S.No. 102 of 2011 is extracted here under :

" மதுரை மாவட்டம், வாடிப்பட்டி தாலுகா, ஊர்சேரி கிராமத்தில் உட்கடை ராமேஸ்வரம் கிராமம், அலங்காநல்லூர் to பாலமேடு ரோட்டில் வழியில் ஆரம்பமாகி வாதிகள் நிலத்தில் சென்று முடிவும் 4000 அடி நீளமுள்ள 10 அடி அகலமுள்ள பொதுப்பாதை"

7. In the subsequent suit filed by the petitioner in O.S.No.233 of 2013 the relief sought for by the petitioner to declare that the petitioner/plaintiff herein alone is the absolute owner of the property described in the plaint schedule and consequentially to grant permanent injunction. For easy reference the schedule of the property in O.S.No. 233 of 2013 is extracted hereunder :

"In Madurai District in Vadipatti Taluk in Oorcherry Village the landed property lies in patta No.1407 comprised and covered in S.No.263/1A having an extent of 0.02.0 Ares".

8. In **Aspi Jal and another .vs. khushroo Rustom Dadyburjor** reported in (2013) 4 SCC 333, the Hon'ble Apex Court has held as under:

" 9. Section 10 of the Code which is relevant for the



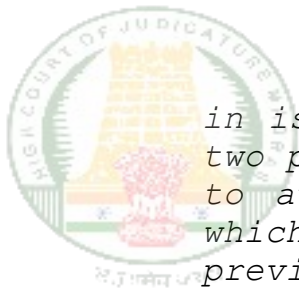
purpose reads as follows:

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

Explanation.- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action." From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a Court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10, i.e. "no court shall proceed with the trial of any suit" makes the provision mandatory and the Court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of the Code is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding.

10. The view which we have taken finds support from a decision of this Court in *National Institute of Mental Health & Neuro Sciences vrs. C.Parameshwara*, (2005) 2 SCC 256 in which it has been held as follows:

" 8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter



in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contradistinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject matter in both the proceedings is identical."

9. The schedule of properties in both the suits are different. No materials have been produced by the respondents/defendants to show that suit properties in both the suits are one and the same. The matter in issue in the subsequent suit is also not directly and substantial issue in the previous suit instituted between the parties. In the opinion of this court, the respondents have not made out a case to invoke Section 10 of the Code of Civil Procedure. The Trial Court without properly assessing the relief sought for in both the suits had wrongly passed an order, thereby committed an error. In view of the same, the revision stands allowed and the order passed by the learned District Munsif cum Judicial Magistrate, Vadipatti in I.A.No. 15 of 2014 in O.S.No.233 of 2013 dated 01.09.2014 stands set aside. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (Cr1)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The District Munsif cum Judicial Magistrate ,
Vadipatti.

Copy to

The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-31679[F] dated
08/10/2021)

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