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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 31.08.2021

Delivered On : 23.09.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R. THARANI

C.R.P. (PD) (MD) .No.2597 of 2015

and

M.P. (MD) No.1 of 2015

1.Selvaraj

2.Saroja

3.Elavarasi (Minor)

Rep. At Mothers cum guardian Saroja

... Petitioners

Vs.

1.Murugayee

2.Subbulakshmi

3.Ponnammal

4.Perumayee

... Respondents

PRAYER: This Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the judgment and decree made in I.A.No.365 of 2013 in O.S.No.61 of 2006 on the file of the learned District Munsif, Kulithalai, Karur District dated 05.02.2015.

For Petitioners : Mr.H.Lakshmi Shankar

For Mr.M.Suresh

For Respondents

: Mr.K.Govindarajan

ORDER

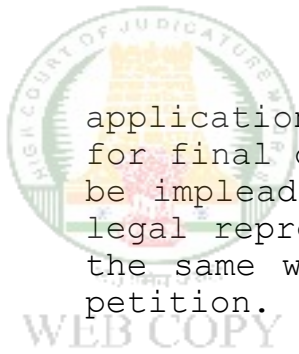
This petition has been filed to set aside the order in I.A.No.365 of 2013 in O.S.No.61 of 2006 on the file of the learned District Munsif, Kulitharai, Karur District.

2.The petitioners herein are the defendants 1, 2 and 5, the respondents 1 and 2 herein are the plaintiffs and the respondents 3 and 4 herein are the defendants 4 and 6 in the suit. The respondents 1 and 2 herein has filed a suit in O.S.No.61 of 2006, for partition and for other reliefs. Pending suit, the revision petitioners have filed a petition in I.A.No.365 of 2013 under Section 10 r/w. 151 of C.P.C., to stay the proceedings in O.S.No.61 of 2006 till the disposal of the final decree petition in I.A.No.179 of 2004 in O.S.No.50 of 2004.

3.A Brief substance of the petition in I.A.No.365 of 2013 is as follows:

Already an earlier suit in O.S.No.50 of 2004 or partition was filed and a preliminary decree was passed on 09.11.1993. An

<https://hcservices.ecourts.gov.in/hcservices/>



application in I.A.No.179 of 2004 in O.S.No.50 of 2004 was pending for final decree. The legal representations of one Veerammal were to be impleaded and the petition in I.A.No.453 of 2012 to implead the legal representatives was filed in the final decree proceedings and the same was allowed. The petition is pending for filing amendment petition.

The plaintiffs herein are claiming right over the property through Veerammal, who was a party to the earlier suit. This subsequent suit in O.S.No.61 of 2006 was filed by the plaintiffs for partition and for permanent injunction and this case is posted for the cross examination of P.W.1. The plaintiffs in the present suit are the legal heirs of the above said Veerammal and the appropriate relief for the plaintiffs is to implead themselves in the final decree proceedings. The suit properties in both the cases and the relief in both the cases are identical and hence, this suit, which is subsequent to the earlier suit is to be stayed. There was no appeal against the preliminary decree passed against the defendants in O.S.No.50 of 2004. The present plaintiffs are not having right to file a separate suit. This suit is to be stayed till the disposal of the petition in I.A.No.179 of 2004 in O.S.No.50 of 2004.

4.Brief substance of the counter in I.A.No.365 of 2013 reads as follows:

The respondents 1 and 2 denied all the allegations mentioned in the affidavit and claimed that they were not party in the suit in O.S.No.50 of 2004.

5.After hearing both sides, the trial Court dismissed the petition. Against which, the revision petitioner has preferred this Civil Revision Petition.

6.On the side of the revision petitioners, it is stated that the ingredients of Section 10 of C.P.C., was not considered by the trial Court. The issue in the second suit is the subject matter of the previous suit, which attains final decree stage. The issue in both the suits are identical. The petition under Section 5 cannot be dismissed on the ground of delay. The petitioners claim right through their mother, Veerammal. The said Veerammal was a defendant in the earlier suit. The claim of the respondents is that they are not aware of the earlier suit. But they sought for a prayer for grant of injunction not to proceed with the final decree petition in the earlier case. This itself clearly proves that the respondents were aware of the earlier proceedings. The defendant in the earlier suit Veerammal died and the plaintiffs were impleaded, in the final decree proceedings. In the partition suit, all the parties can raise their claim and there cannot be two decrees in two different suits against the same persons with regard to the same suit properties. There may be a chance for conflicting judgments. This suit itself was filed only on the instigation of Veerammal and Ponnammal, who were parties in the earlier suit.



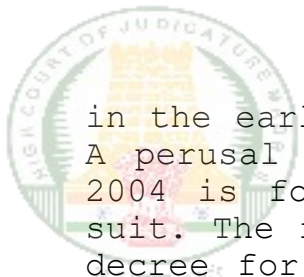
7. On the side of the respondents 1 and 2, it is stated that the suit property belong to one Vellaiya Gounder who passed away on 07.10.1994. The plaintiffs are the daughters of Vellaiya Gounder. They are entitled to a share. The other legal heirs made an attempt to fabricate some documents to deceive the plaintiffs. The plaintiffs have a right over the B schedule property by virtue of a settlement deed dated 28.08.1956. The revision petitioners have filed a written statement in the year 2011.

8. On the side of the respondents, it is stated that only at the stage of cross examination of P.W.1, the revision petitioners have filed a petition in I.A.No.365 of 2013 under Section 10 of CPC. The revision petitioners are wrong in stating that the subject matter and the parties in O.S.No.61 of 2006 and O.S.No.50 of 2004 are one and the same. The parties are not the same. The matter in issue in the present suit is entirely different from the matter in issue in the suit in O.S.No.50 of 2004. The plaintiffs in the present suit are not parties in the alleged earlier suit. The suit was filed in the year 2006. Only after seven years, this I.A. petition was filed and prayed the petition to be dismissed.

9. A perusal of the records reveals that the revision petitioners have filed a suit in O.S.No.484 of 1992 before the learned Sub Judge, Kulithalai. Subsequently, the case was re-numbered as O.S.No.50 of 2004. It is stated that a preliminary decree was passed in the suit and the final decree petition in I.A.No.179 of 2004 is pending. The respondents 1 and 2 herein have filed a suit in O.S.No.61 of 2006. The case is pending for the cross examination of P.W.1. At this stage, the revision petitioners who are the defendants in the suit, have filed the petition in I.A.No.365 of 2013 to stay the proceedings in O.S.No.61 of 2006, till the disposal of I.A.No.179 of 2004 in O.S.No.50 of 2004.

10. The contention of the revision petitioners is that the suit properties in O.S.No.50 of 2004 and O.S.No.61 of 2006 are the same and the matter in issue is also the same. A verification of the plaint in O.S.No.50 of 2004 and O.S.No.61 of 2006 reveals that the A schedule properties item 1 to 3 in O.S.No.50 of 2004 are mentioned as item No.3, 1 and 2 in the present suit. The property described as item 4 in the A schedule property is described as B schedule property in the present suit. The property described as C schedule in O.S.No.50 of 2004 was described as item 4 in the A schedule property in the present suit. Some other properties mentioned in the earlier suit in O.S.No.50 of 2004, are not included in the present suit.

11. A perusal of the records reveals that the Veerammal, Ponnammal and Arumugham are defendants in the earlier suit. The said Veerammal and Ponnammal were mentioned as defendants 3 and 4 in the earlier suit. Sarvaraj represented through Saroja was the plaintiff



in the earlier suit. He is the first defendant in the present suit. A perusal of the records reveals that the prayer in O.S.No.50 of 2004 is for partition and a preliminary decree was passed in the suit. The first prayer in the present suit is to pass a preliminary decree for partition. The third prayer in the present suit is for granting permanent injunction restraining the defendants 1 and 2 and their men and representatives from prosecuting O.S.No.484 of 1992 on the file of the District Munsif Court either for getting final decree or in any other manner whatsoever.

12.It is seen that the suit in O.S.No.484 of 1992 was re-numbered as O.S.No.50 of 2004. So the prayer sought for by the plaintiffs is not to proceed in the final decree proceedings in O.S.No.50 of 2004. The plaintiffs in the present suit are aware of the earlier proceedings and the pendency of the final decree proceedings. The parties in the earlier suit and the present suit are the same and the properties in the earlier suit and the present suit are the same. The plaintiffs in the present suit are the legal heirs of the said Veerammal who is one of the defendants in the earlier suit. It is stated that the present plaintiffs are impleaded in the final decree petition in earlier suit as the legal heirs of deceased Veerammal. The earlier suit for partition was filed in the year 2012 itself. A preliminary decree was passed. The present plaintiffs were impleaded in the final decree proceedings. The revision respondents herein can raise all their objections in the final decree proceedings in I.A.No.179 of 2004. There is no necessity to stay the final decree proceedings.

13.In the above circumstances, to avoid conflict of judgments, O.S.No.61 of 2006, which is subsequent to the earlier suit is stayed till the disposal of the final decree proceedings in I.A.No.179 of 2004 in O.S.No.50 of 2004. Hence, this Civil Revision Petition is allowed. The trial Court is directed to dispose of I.A.No.179 of 2004 in O.S.No.50 of 2004 within a period of six months from the date of receipt of copy of this order. The Registry is directed to send a copy of this order to the lower Court. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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



To

1.The District Munsif,
Kulithalai,
Karur District.

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+1 CC to M/s.K.GOVINDA RAJAN, Advocate (SR-30075[F] dated
23/09/2021)

C.R.P. (PD) (MD) .No.2597 of 2015

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RS (05.10.2021) 5P 3C