



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.734 of 2022

and

C.M.P.No.3686 of 2022

Mr.J.Ramesh

... Petitioner

Vs.

Mrs.Geetha

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 04.10.2021 passed in I.A.No.3 of 2021 in O.S.No.483 of 2016, pending on the file of the learned Principal District Munsif, Salem.

For Petitioner : Mr.D.Ashok kumar

For Respondent : Mr.R.A.Monalisa
for M/s.R.Marudhachala Murthy.

ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below, allowing the petition filed by the respondent under Section 10 of Code of Civil Procedure seeking an order of stay of all further proceedings in O.S.No.483 of 2016 till the disposal of suit in O.S.No.4 of 2017.



WEB COPY 2. The suit in O.S.No.483 of 2016 was filed by petitioner herein

seeking a declaration to declare the cancellation of gift settlement deed dated 11.06.2014 cancelling the earlier settlement deed as null and void and it will not bind the petitioner. The petitioner has sought for a direction for removal of encroachments apart from injunction restraining the respondent herein, who is arrayed as defendant, from interfering with the possession of the petitioner.

3. The respondent herein filed O.S.No.4 of 2017 on the file of Principal District Munsif, Salem against the petitioner seeking the relief of partition.

4. The respondent herein defendant filed a petition in I.A.No.3 of 2021 under Section 10 of Code of Civil Procedure, in the earlier suit filed by the petitioner herein in O.S.No.483 of 2016 seeking stay of the suit till the disposal of partition suit filed by her in O.S.No.4 of 2017. The said application was allowed by the Court below and aggrieved by the same, the petitioner/plaintiff has come up by way of this Revision.



WEB COPY 5. The learned counsel for the petitioner submitted that by invoking Section 10 of Code of Civil Procedure. The respondent can only seek stay of the subsequent suit. In the present case, the respondent, by invoking Section 10 of CPC, cannot seek stay of all proceedings of suit which is previously instituted and the said prayer is not maintainable.

6. The learned counsel for the respondent submitted that the partition suit filed by the respondent is comprehensive one, wherein, one of the issues relates to the validity of cancellation of gift deed is also framed and therefore stay of the trial is sought for in the partition suit.

7. Section 10 of Code of Civil Procedure 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.”

8. A reading of above provision makes it clear that out of two suits, one suit should have been filed previously and the other suit should have been filed subsequently. By invoking Section 10 of CPC, the suit instituted subsequently can be stayed. But, in the present case, the respondent herein filed a petition under Section 10 of CPC for stay of proceedings of previously instituted suit namely O.S.No.483 of 2016.

9. In view of the fact that the ingredients of Section 10 of CPC are not at all satisfied in this case, the Court below ought not to have allowed the application filed by the respondent. Therefore, the impugned order is set aside and the Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

28.10.2022



Index : Yes / No

Internet : Yes / No

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To

The Principal District Munsif, Salem.



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S.SOUNTHAR, J.

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