



WEB COPY



CRP (PD) No. 2899 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No. 2899 of 2021

And

C.M.P.No. 20881 of 2021

Nagarajan

... Petitioner/Petitioner/3rd Defendant

Vs

Palanisamy

... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final orders dated 09.11.2020 passed in I.A.No. 3 of 2021 in O.S.No. 18 of 2016 on the file of the District Munsif Court at Paramathi.

For Petitioner : Ms. V.Revathi

ORDER

Challenge in this revision is to the order of the trial Court dismissing an application filed under Section 10 of the Code of Civil Procedure seeking stay of the suit in O.S.No. 18 of 2016 on the ground that



the previously instituted in the suit in O.S.No. 7 of 2016 is pending.

WEB COPY

2. The petitioner is the plaintiff in O.s.No. 7 of 2016 on the file of the District Munsif Court, Paramathi. The said suit is one for permanent injunction restraining the defendants from interfering with the plaintiff's possession of the suit properties.

3. The plaintiff would claim that he is the exclusive owner of the suit property and he is in possession in his own right. The third respondent in O.S.No. 7 of 2016 has filed the suit in O.S.No. 18 of 2016 in the same Court seeking partition and separate possession of his 1/9th share in the suit properties. The partition suit was filed on 31.01.2016 and the suit for injunction was filed on 25.01.2016. The petitioner, who is the third defendant in the partition suit and plaintiff in O.S.No. 7 of 2016, the injunction suit, has filed the instant application seeking stay of the partition suit.

4. The application for stay was resisted by the respondents



CRP (PD) No. 2899 of 2021

contending that the suit for injunction has been dismissed for default and therefore, there is no suit pending. It was also contended that the issues that arise in both the suits are substantially different and therefore, Section 10 of CPC will not get attracted.

5. The learned trial Judge dismissed the application for stay on the ground that the suit for injunction has been dismissed and therefore, in the absence of second suit, an application under Section 10 of CPC would not lie.

6. Ms. V.Revathi, learned counsel appearing for the petitioner would vehemently contend that an application to restore the suit is already pending and if the suit is restored and the suits are tried simultaneously, the petitioner would be put to hardship.

7. I am unable to accept the contention of the learned counsel appearing for the petitioner. Even assuming that the reasoning of the trial Judge that the suit in O.S.No. 7 of 2016 having been dismissed, there cannot



CRP (PD) No. 2899 of 2021

be stay of the suit in O.S.No. 18 of 2016 is erroneous, I do not think Section 10 of CPC could be invoked in the case on hand. In order to invoke Section 10 of CPC, the relief prayed for should also be substantially the same. Section 10 of CPC enables the Court to stay a suit only when the matter in issue in one suit is directly and substantially in issue in a previously instituted suit between the same parties. In the suit for injunction, the only issue that is to be decided is whether the plaintiff is in possession of the property or not. In the suit for partition, the issue that is to be decided is whether the plaintiff is entitled to a share or not. Thus two are not matters which are substantially the same. Therefore, I am unable to interfere with the order of the trial Court for dismissing the application. Hence, this Civil Revision Petition fails and it is accordingly dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

12.01.2022

vsg

Index: Yes/No

Speaking order / Non speaking order



CRP (PD) No. 2899 of 2021

WEB COPY

To:

1. District Munsif Court, Paramathi.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.

R.SUBRAMANIAN, J.



WEB COPY



CRP (PD) No. 2899 of 2021

Vsg

CRP (PD) No. 2899 of 2021
And
C.M.P.No. 20881 of 2021

12.01.2022