



CRP.Nos.307 & 310 of 2023.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 16.02.2023

Delivered On: 24.03.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.Nos.307 & 310 of 2023

and

C.M.P.No.2590 & 2625 of 2023

1. J.C.Vijayananthan
2. Indirani @ Jayanthi

... Petitioners/Plaintiffs
in both Petitions

Vs.

1. Vasanthi
2. Krithiga
3. Rampriya
4. Krishna Kumar

... Respondents/Defendants
in CRP.No.307/2023

Respondents/Defendants
15 to 18 in CRP.No.310/2023

5. Smt.Sarojini
6. Smt.Amudhavalli
7. Smt. Ganshimani
8. Smt. Jayalakshmi
9. Smt. Devaki
10. Smt. Sarojini
11. Smt. Karpagam
12. Sri. Shanmugavel
13. Sri. Udhayakumar
14. Smt. Rajeswari



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15. Smt. Shanthi

16. Smt. Deepika

17. Smt. Arulrani

18. Smt. Vijayalakshmi

... Respondents/Defendants

1 to 14 in CRP.No.310/2023

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the Fair and Decreetal Order dated 09.12.2022 passed in I.A.Nos.11 of 2022 in O.S.No.235 of 2011 and I.A.No.01/2022 in O.S.No.446 of 2016 on the file of the learned Additional District Munsif, Pollachi.

For Petitioners

in both Petitions : Mr.S.Surya
for W.Sathasivam

For Respondents

in both Petitions : Mr.T.M.Naveen for R-4

COMMON ORDER

These Petitions have been filed against the Order passed by the learned Additional District Munsif, Pollachi in I.A.Nos.11 of 2022 in O.S.No.235 of 2011 and I.A.No.01/2022 in O.S.No.446 of 2016, dated 09.12.2022.

2. It is the contention of the learned Counsel for the Petitioners that the Petitioners herein as Plaintiffs had filed two Suits, one is O.S.No.235



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of 2011 seeking partition of the property of his father and another one is O.S.No.446 of 2016 seeking partition of the property of his grand father.

2.1. It is the contention of the learned Counsel for the Petitioners that the Defendant in both Suits had taken stand in their written statement that the first Petitioner is neither legitimate nor illegitimate son of the deceased/Chinnasamy Gounder. The second Petitioner is not the wife of deceased Chinnasamy Gounder. In order to refuse the above contention, the Petitioners/Plaintiffs have filed O.S.No.669 of 2019 before the Court of the learned District Munsif, Madurai Town seeking to declare that the first Petitioner is the legitimate son of his late Chinnasamy Gounder.

2.2. It is the contention of the learned Counsel for the Petitioners that the first Petitioner's father/late Chinnasamy Gounder had filed HMOP.No.286/1983 before the Court of the learned Sub Judge at Madurai. In that Petition, Chinnasamy Gounder had not stated that the first Petitioner was not born from the wedlock between him and second Petitioner(mother). Further, Chinnasamy Gounder did not provide correct address of the second Petitioner/Plaintiff. Therefore, an ex-parte



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Order was passed against the second Petitioner(mother) in HMOP.No.286/1983 before the learned Sub Judge, Madurai. No evidence had been produced in the HMOP Petition to prove that the first Petitioner is not the son of late Chinnasamy Gounder. The divorce Petition was filed with only vague allegations and based on hearsay evidence. Therefore, to prove that he is the son of late Chinnasamy Gounder. He had filed Suit for declaration in O.S.No.669 of 2019 which is pending on the file of the learned District Munsif, Madurai Town. The declaration Suit had been adjourned for the Defendant's evidence in O.S.No.235 of 2011 and connected O.S.No.446 of 2016 pending before the Court of the learned District Munsif, Pollachi. The learned District Munsif, Pollachi had adjourned for arguments. Therefore, the learned Counsel for the Petitioners submits that the Revision Petitioners as Plaintiffs had filed I.A.No.11/2022 in O.S.No.235 of 2011 and I.A.No.1 of 2022 in O.S.No.446 of 2016 seeking to stay of all proceedings in both the Suits till the Suit for declaration filed by the Petitioners herein in O.S.No.669 of 2019 before the learned District Munsif, Madurai Town is disposed of. The Defendants in both the Suits had vehemently objected to the same and therefore, the learned Additional District Munsif,



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Pollachi had dismissed the I.A.Nos.1 & 11/2022.

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2.3. The learned Counsel for the Petitioners further submitted that the HMOP filed by the father was in the year 1983 by then the first Petitioner was aged 8 years. Therefore, the allegations made in the written statement and in the counter in I.A.No.11/2022 in O.S.No.235 of 2011 is unacceptable and unreasonable in the light of the presumptions in Sections 112 of Indian Evidence Act. Section 112 of Indian Evidence Act reads as follows:

“112. Birth during marriage, conclusive proof of legitimacy.- The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.”

2.4. Therefore, the claim of the Respondents in the counter that the first Petitioner is not born to late Chinnasamy Gounder is unacceptable in the light of the Section 112 of Indian Evidence Act. Therefore, till the Suit for declaration filed by the Petitioners as Plaintiffs in O.S.No.235 of 2011 as Plaintiff in O.S.No.669 of 2019 is disposed of, the trial Court



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disposing the Suits in O.S.No.235 of 2011 and O.S.No.446 of 2016 will cause prejudice to the Revision Petitioners, since the claim of the Petitioners as Plaintiffs in the Suit as it is based on the claim that he is the son of Chinnasamy Gounder which is vehemently disputed by the Respondents as Defendants in both the Suits. Therefore, the Revision Petitioner has to establish his status as a legitimate son born through his first wife. Therefore, the decree that is to be passed in O.S.No.669 of 2019 has a direct bearing on the Suit in O.S.No.235 of 2011 and 446 of 2016.

3. The learned Counsel for the Respondents also appeared before this Court and submitted that the Respondent's father Chinnasamy Gounder had divorced the first Wife who is the Second Plaintiff in O.S.No.235 of 2011 by filing HMOP.No.286/1983 on the ground of adultery.

3.1. It is the further contention of the learned Counsel for the Respondents that the mother of the first Petitioner herein was in relationship with a person other than the husband of the Respondents



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Chinnasamy Gounder. In that relationship, she became pregnant. Therefore, it was found out, she had adulterous relationship with another person due to which she became pregnant. After the birth of the first Petitioner herein only HMOP.No.286/1983 was filed based on the physical appearance of the child resembled the other person outside of the wedlock. Therefore, Chinnasamy Gounder after divorce had contracted the second marriage. Through that marriage the Defendants were born. Therefore, the claim for partition in the properties of Chinnasamy Gounder by the Petitioners herein does not arise. It is not at all maintainable. While so, with an ulterior motive to extract money from the Respondents, the Petitioners herein as Plaintiffs in O.S.No.235 of 2011 had filed the Suit for partition of Chinnasamy Gounder properties claiming that the first Petitioner herein is the son of late Chinnasamy Gounder. In the evidence, it came to light that the name of the father of the first Petitioner is given in the School Certificate as a different person and not Chinnasamy Gounder. Whereas the Suit had been filed as though the first Petitioner was born to Chinnasamy Gounder. That is why, after the trial in the Suit, the Plaintiff with an ulterior motive filed a Suit in different location away from the City in



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which trial had proceeded. When the Petitioners as Plaintiffs had filed the Suit for partition within the territorial limits of Pollachi, he had preferred the Suit only in Madurai City which is away from Pollachi. That itself gives presumption that the Petitioners herein as Plaintiffs are aware of the outcome of the result of the Suit in O.S.No.235 of 2011. Therefore, he seeks to stay the Suit in O.S.No.235 of 2011 against the usual practice of seeking stay in the later Suit when the earlier Suit had proceeded with the trial. The later Suit will be stayed till the earlier Suit is disposed of. Here, it is contrary to the usual practice. The Petitioners as Plaintiffs seek stay of all the proceedings when the Suit had come to the last stage, argument stage. Therefore, this Petition has no merits and is to be dismissed.

3.2. The learned Counsel for the Respondents vehemently objected the line of the argument of the learned Counsel for the Revision Petitioners who are the Petitioners in I.A.No.11/2022 in O.S.No.446 of 2016 on the file of the learned Additional District Munsif, Pollachi. It is the contention of the learned Counsel for the Respondents herein that the Respondents had clearly denied each and every allegations in the Plaint



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in O.S.No.446 of 2016. If the intention of the Petitioners herein as Plaintiffs was true and bona fide, he ought to have filed Suit for declaration that he is a legitimate son of late Chinnasamy Gounder, only before this Court. When he had filed Suit for partition in Additional District Munsif, Pollachi, the case filed in O.S.No.669 of 2019 before the learned District Munsif, Madurai Town had been filed with an ulterior motive to protract the proceedings. The Plaintiff had filed two Suits for partition before the learned Additional District Munsif, Pollachi and filed another Suit in the year 2019 before the learned District Munsif, Madurai Town and seeking to stay of all the proceedings in O.S.No.235 of 2011 and O.S.No.446 of 2016. It is the common procedure followed in the Courts that when there are two or more Suits between the same parties, the later Suit will be stayed till the finding is given in the earlier Suit. As they have taken here from the usual practice, the Petitioners herein had sought stay of the earlier Suit, contrary to the practices followed in the Civil Court that the later Suit only will be stayed. In this case, the Petitioners as Plaintiffs had chosen to stay the proceedings in O.S.No.235 of 2011 which is the earlier Suit and that too after the trial concluded and awaiting arguments. When the Court is ready to dispose of the case, the



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Petitioners/Plaintiffs had sought stay of all the proceedings in O.S.No.235 of 2011. That is why the learned District Munsif, Pollachi had dismissed the Petition in I.A.No.11/2022 in O.S.No.235 of 2011 as having no merits. Therefore, the learned Counsel for the Respondents also seeks dismissal of this Civil Revision Petition stating that the Plaintiffs are aware of the outcome of the Suit in O.S.No.235 of 2011. They are using as a ploy to extract money from the Respondents.

3.3. The Respondents had sought withdrawal of the Suit pending on the file of the learned District Munsif, Madurai Town so that the other Suit also could be heard along with the earlier Suit. Therefore, the Respondents/Defendants seek dismissal of these Petitions as having no merits.

3.4. The contention of the learned Counsel for the Respondents that the earlier Suit cannot be stayed which was resisted by the learned Counsel for the Petitioners placing reliance on the earliest judgment of this Court reported in *MANU/TN/0232/1947* in the case of ***K.R.Balaji Rao and Ors Vs. M.G. Natesa Chetty***. The relevant portion reads as



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follows:

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“It should further be established to the satisfaction of this Court for invoking its inherent jurisdiction that the stay has to be ordered in the ends of justice or to prevent abuse of the process of the Court. If these conditions are satisfied, there can be no question that the trial of an independent Suit can be stayed by this Court in the exercise of its inherent powers under Section 151 of the Code of Civil Procedure in the course of other proceedings pending before it. The preliminary objection must be overruled.”

(II) 2014 SCC Online Mad 12229 in the case of Nagammal and others Vs. The Tahsildar.

4. On consideration of the rival submissions, it is found that as claimed by the Petitioners herein, the Suit in O.S.No.669 of 2019 has direct bearing to meet out the allegations/contentions raised in the written statement in O.S.No.235 of 2011. The contention of the learned Counsel for the Respondents that the declaration sought by the Plaintiff in O.S.No.669 of 2019 is found unacceptable in the peculiar facts and circumstances of this case.

4.1. The contention raised by the learned Counsel for the Respondents is found acceptable only under Section 10 of CPC wherein



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only a subsequent Suit could be stayed. Here, the earlier Suit sought to be stayed on the ground that the Suit filed by the Plaintiff in this case before the District Munsif, Madurai has bearing on the foundation of the case. The Petitioners herein had instituted the Suit since the Defendant in O.S.No.235 of 2011 who had filed a written statement stating that the Plaintiff in O.S.No.235 of 2011 was not born to Chinnasamy Gounder. The Petitioners herein/Plaintiffs had filed Suit seeking declaration that he is the son born to Chinnasamy Gounder which has a direct bearing on the Suits in O.S.No.235 of 2011 and O.S.No.446 of 2016. The Order of the learned District Munsif dismissing the Petition in I.A.No.11/2022 holding that the Petition had been filed only to protract the proceedings is found unacceptable. It is true that the Petitioners had not amended the Suit immediately. After filing of the written statement by the Defendants and disputing the paternity of the first Petitioner, it has been observed by the learned District Munsif that the Petitioners herein as Plaintiffs had filed the Suit in O.S.No.669 of 2019. Eight years after filing written statement in O.S.No.235 of 2011, the Suit had been filed in the year 2019. It is better that the Suit pending on the file of the learned District Munsif, Madurai Town is withdrawn and posted before the very same



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Judge for trial along with the O.S.No.235 of 2011 and O.S.No.446 of 2016. Till such time, it is to be stayed. The Parties moved the Madurai Bench for the transfer of the Suit. Since it is a Suit for declaration that the Petitioners herein/Plaintiffs in O.S.No.669 of 2019/second Plaintiff in O.S.No.235 of 2011 is the son of late Chinnasamy Gounder/first Defendant in O.S.No.669 of 2019, the Respondents/Defendants in O.S.No.235 of 2011 who disputed the paternity of the first Petitioner herein/Plaintiff in O.S.No.235 of 2011 are the Defendants 2 to 5 in O.S.No.669 of 2019, the same could be considered by the Court.

4.2. Since the learned District Munsif, Pollachi had observed that the Suit in O.S.No.235 of 2011 is a comprehensive Suit, the Petitioners ought to have amended the Plaint seeking declaration and also regarding the same that is the foundation of the case. Therefore, the Suit has a bearing on the Suit in O.S.No.235 of 2011. Therefore, filing of the Revision Petition is found justified. The Orders passed by the learned District Munsif, Pollachi in I.A.Nos.11 of 2022 in O.S.No.235 of 2011 and I.A.No.01/2022 in O.S.No.446 of 2016 are set aside.



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4.3. The Suit in O.S.No.669 of 2019 on the file of learned District Munsif, Madurai is ordered to be withdrawn and transferred to the file of the learned Additional District Munsif, Pollachi, Coimbatore District to enable to dispose of that Suit as early as possible. Based on the outcome of the Suit in O.S.No.669 of 2019, both the Suits in O.S.No.235 of 2011 and O.S.No.446 of 2016 shall be disposed of by the same learned Additional District Munsif as early as possible without waiting for the finality of the declaration Suit in O.S.No.669 of 2019. The Appeals by the aggrieved parties shall be taken together in all three Suits.

With the above observations, these **Civil Revisions Petitions are allowed.** Consequently, connected Miscellaneous Petitions are closed.
No costs.

24.03.2023

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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To

1. The Additional District Munsif,
Pollachi.
2. The District Munsif,
Madurai.
3. Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
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