



C.R.P.(MD)No.1124 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 09.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.1124 of 2019

and

C.M.P(MD) No.6135 of 2019

1. Renganayaki
2. Janaki
3. Vijayalakshmi

... Revision Petitioners/Petitioners
Respondents/Defendants

-vs-

1. Kamalam
2. Sakthi Hariharan
3. Minor S.Gayathri Gopika

... Respondents/Respondents/
Petitioners/Plaintiffs

(The Minor 3rd Respondent through her mother
and next friend 1st Respondent herein)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.2 of 2019 in I.A.No.235 of 2016 in O.S.No.53 of 1998, dated 03.04.2019 on the file of the Principal Subordinate Judge, Tirunelveli.

For Petitioners : Mr.J.Ashok

For Respondents : No appearance



C.R.P.(MD).No.1124 of 2019

ORDER

WEB COPY

The present Civil Revision Petition has been filed by the petitioners against the dismissal order passed in I.A.No.2 of 2019, wherein the petitioners prayed to stay all further proceedings in I.A.No.235 of 2016 till the disposal of O.S.No.147 of 2018. Which was sought for under Section 10 of C.P.C was dismissed on 03.04.2019.

2. The petitioners herein are the defendants, and the respondents herein are the plaintiffs before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. The learned counsel appearing for the petitioners would submit that the brother of the petitioners has filed the suit for partition in O.S.No.53 of 1998. Wherein, these petitioners who are the sisters has not been impleaded. Without knowing the existence of the said suit, these petitioners has filed another suit for partition in O.S.No.550 of 2010 and they also got a preliminary decree. While so, the petitioners has received an application in



C.R.P.(MD).No.1124 of 2019

I.A.No.235 of 2016 which is the final decree application filed in O.S.No.53 of 1998. After receiving the summons in the said I.A, the petitioners came to know about the filing of the suit in O.S.No.53 of 1998 without impleading them. Hence, they filed suit in O.S.No.147 of 2018 to declare the decree in O.S.No.53 of 1998 as null and void. In such a background, they moved an application under Section 10 of C.P.C to stay the proceedings in I.A.No.235 of 2016. It is relevant to refer Section 10 of C.P.C, which is extracted hereunder:

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."



C.R.P.(MD).No.1124 of 2019

WEB COPY

5. According to Section 10 of C.P.C, no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially an issue in a previously instituted the suit. Therefore, if at all the petitioners want to have any stay under Section 10 of C.P.C, they should have filed the application in the subsequently instituted suit and not in the previously instituted suit.

6. It is also relevant to refer the judgment reported in **(2013) 4 SCC 333 (Aspi Jal and another vs.Kushroo Rustom Dadybujor)** in this regard. As per the above ruling in order to have an Order under Section 10 of C.P.C, there should have been an affirmative answer to the question that whether the decree in earlier suit is a *res judicata* to the subsequently instituted suit, otherwise Section 10 of C.P.C, application is liable to be dismissed. It is seen from the prayer, here, what the petitioners wanted is stay in I.A.No.235 of 2016 and not against any suits.

7. Therefore, this Court is of the view that when the earlier suit is not a *res judicata* to the subsequently instituted suit, the petitioners cannot have any remedy under Section 10 of C.P.C. Therefore, the findings of the trial



C.R.P.(MD).No.1124 of 2019

WEB COPY

Court does not warrant any interference by this Court. However, the petitioners are given liberty to file an appropriate application according to law to stay all further proceedings in I.A.No.235 of 2016.

8. In view of the peculiar circumstances of this case, though the present application has been filed in O.S.No.53 of 1998, this Court directs the Sub Court, Thirunelveli, to dispose of the suit in O.S.No.147 of 2018 as expeditiously as possible, preferably, within a period of three months from the date of receipt of the copy of this order.

9. In the result, this Civil Revision Petition is **dismissed**. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

09.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To
1. The Principal Subordinate Judge,
Tirunelveli.



WEB COPY



C.R.P.(MD).No.1124 of 2019

C.KUMARAPPAN,J.

ebsi

C.R.P(PD)(MD)No.1124 of 2019

09.08.2023