



C.R.P.(MD)No.710 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 05.07.2023

Delivered on : 01.08.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.710 of 2018

and

C.M.P.(MD)No.3138 of 2018

J.Victor

... Revision Petitioner/ Petitioner/

1st Defendant

Vs.

1.V.S.Sankar Raju

... 1st Respondent/1st Respondent/

Plaintiff

2.Thoothukudi Naidu Mahajana Sangam Trust

Through its Managing Trustee N.Lakshmanan

(2nd Respondent is exonerated vide Court order

dated 04.07.2023)

... 2nd Respondents/2nd Respondent/

2nd Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the Principal District Munsif Court, Thoothukudi, in I.A.No.164 of 2018 in O.S.No.234 of 2012, dated 23.02.2018.



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For Petitioner : Mr.S.Prabhu

For Respondents : Mr.E.V.N.Siva for R1

R2 exonerated (vide Court order,
dated 04.07.2023)

ORDER

The instant Civil Revision Petition has been filed against the fair and decreetal order passed by the Principal District Munsif Court, Thoothukudi, in I.A.No.164 of 2018 in O.S.No.234 of 2012, dated 23.02.2018.

2. The revision petitioner is the first defendant before the trial Court. According to the revision petitioner, there was a suit in O.S.No.394 of 2004, for the relief of permanent injunction against him, based upon the lease agreement executed by Thoothukudi Naidu Mahajana Sangam Trust. The said suit was decreed in favour of the plaintiff. Against the judgment and decree of the trial Court, an appeal was filed by the defendant in A.S.No.221 of 2005 and the said first appeal was also dismissed on 19.12.2010. Against which, Second Appeal in S.A.(MD)No.805 of 2012, was filed and the same is pending before this Court for final disposal.



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3. The learned counsel for the petitioner would submit that, when an earlier suit in O.S.No.394 of 2004 was filed and is pending before this Court in S.A.(MD)No.805 of 2012, a subsequent suit in O.S.No.234 of 2012, which is also for directly and substantially on the same issue of the earlier suit cannot be proceeded by virtue of Section 10 of the Code of Civil Procedure, till the disposal of the Second Appeal in S.A.(MD)No.805 of 2012.

4. The respondent / plaintiff has filed the counter statement stating that both the suits are filed for a different relief, and that the application has been filed only to delay the proceedings. Further the respondent / plaintiff also stated that in earlier C.R.P.(MD)No.1121 of 2014, filed against the order passed in I.A.No.369 of 2014 in O.S.No. 234 of 2012, the petitioner himself agreed to proceed with the trial and has given an undertaking before this Court in this regard. However, contrary to the undertaking, the petitioner filed an application under Section 10 of C.P.C. Therefore, he would submit that the very application under Section 10 C.P.C. is not at all maintainable.



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5. After hearing both sides, the learned trial Judge, ultimately dismissed the application on the ground that, the decision in the earlier suit, viz., O.S.No.394 of 2004 has no bearing in the subsequent suit in O.S.No. 234 of 2012, and also further found that the petitioner has filed the instant application only to prolong the proceedings. Therefore, the learned trial Judge ultimately dismissed the application. Aggrieved with the order, the instant Revision has been filed.

6. I have given my anxious consideration to either side submission.

7. In order to understand the issue more effectively, it is appropriate to extract Section 10 of C.P.C. :

“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



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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. The main ingredient to bring the second suit within the contour of Section 10 C.P.C would be, the issue involved in the subsequent suit in O.S.No.234 of 2012, should be directly and substantially an issue of the previously instituted suit in O.S.No.394 of 2004. If we closely read the plaint of O.S.No.394 of 2004, the plaintiff has pleaded that he entered into a lease agreement with the Thoothukudi Naidu Mahajana Sangam Trust and prayed for the relief of permanent injunction, based upon the such lease.

9. However, in the subsequent suit, the plaintiff has gone a step ahead, and prayed for the relief of declaration that he is the lawful lease holder of the second schedule property under the second defendant, viz., Thoothukudi Naidu Mahajana Sangam Trust. It is pertinent to mention here that the Sangam is a party only in the subsequent suit and not a party in the previous suit in O.S.No.394 of 2004. More interestingly, the relief



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sought in both suits are also altogether different. Though, there is incidental reference in the previous plaint that the plaintiff is the tenant under the Thoothukudi Naidu Mahajana Sangam Trust, will in no way bar to the plaintiff to file the subsequent suit to declare his status as a tenant under the said Sangam.

10. Apart from that, the prayer sought for in the second suit is for possession and for the past and future damages. In the earlier suit, these issues have never been arisen and not prayed for. Therefore, the argument of the learned counsel for the petitioner that the issue involved in the earlier suit is directly and substantially similar to the issues of latter suit, cannot be countenanced.

11. At this juncture, this Court deems it proper to refer the judgment reported in **2013-4-SCC-333 (Aspi Jal and others V. Khushroo Rustom Dadyburjor)** The relevant portion of the judgment is as follows”-

“11. From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a Court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and



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*substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10, i.e. “no court shall proceed with the trial of any suit” makes the provision mandatory and the Court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of the Code is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding. The view which we have taken finds support from a decision of this Court in **National Institute of Mental Health & Neuro Sciences vs. C.Parameshwara, (2005) 2 SCC 256** in which it has been held as follows:*

“8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and



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*substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. **The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are “the matter in issue is directly and substantially in issue” in the previous instituted suit. The words “directly and substantially in issue” are used in contradistinction to the words “incidentally or collaterally in issue”. Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject - matter in both the proceedings is identical.”***

12. In the present case, the parties in all the three suits are one and the same and the court in which the first two suits have been instituted is competent to grant the relief claimed in the third suit. The only question which invites our adjudication is as to whether “the matter in issue is also directly and substantially in issue in previously instituted suits”.



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The key words in Section 10 are “the matter in issue is directly and substantially in issue in the previously instituted suit”.

The test for applicability of Section 10 of the Code is whether on a final decision being reached in the previously instituted suit, such decision would operate as res-judicata in the subsequent suit. To put it differently one may ask, can the plaintiff get the same relief in the subsequent suit, if the earlier suit has been dismissed? In our opinion, if the answer is in affirmative, the subsequent suit is not fit to be stayed. However, we hasten to add then when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit.”

(Emphasis supplied by this Court)

12. As per the above judgment, the Hon'ble Supreme Court has in categorical terms, held that key words in Section 10 C.P.C. is “the matter in issue is directly and substantially in issue” in the previously instituted suit. Further, it is also held that to attract Section 10 of C.P.C., the primordial requirement would be that the decision of the earlier suit should operate as *res judicata* to the subsequent suit. Here, the earlier suit is for injunction, but, the subsequent suit is for declaration, possession and for damage. Therefore, the decision of the earlier suit can't be the *res judicata* to the



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subsequent suit. Therefore, the very order passed by the learned trial Judge, rejecting the prayer of stay of suit perfectly in order and cannot be interfered with.

13. At this juncture, this Court would like to mention the conduct of the petitioner herein. In the first round of revision petition in C.R.P. (MD)No.1121 of 2014, the petitioner has undertaken to proceed with the trial of the suit in O.S.No.234 of 2012 and sought leave of this Court, to mark the Commissioner Report of the earlier suit in O.S.No.394 of 2004. Based upon the said request, this Court has directed the Court below to dispose of the suit in O.S.No.234 of 2012 with in a period of six months. It appears that only after the order passed in the said Civil Revision Petition, the petitioner came up with this Section 10 C.P.C application. Therefore, as rightly contended by the learned counsel for the plaintiff / first respondent herein the very application for a stay of suit was filed only to prolong the proceedings, which conduct is to be nipped by dismissing this application.



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14. In view of the above detailed discussion, this Court is of the firm view that the order passed by the Court below is well reasoned one and further this Court could not find any manifest or apparent error in the said order.

15. In the result, this instant Civil Revision Petition stands **dismissed**. However, considering the long pendency of this matter, the learned trial Judge is directed to dispose of the suit as expeditiously as possible, preferably within a period of six months from the date of receipt of the copy of this order. Further, both parties are directed to co-operate with the trial Court for early disposal of case within the time frame fixed by this Court. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No

Index : Yes/No

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To

01.08.2023

1.The Principal District Munsif Court,
Thoothukudi.

2.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

Ls

Pre-delivery Order made in
C.R.P(MD)No.710 of 2018

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