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O.S.A.No.290 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

O.S.A.No.290 of 2018

and

C.M.P.Nos.13495 to 13497 of 2018

1.Karima Bee (died)
2.Rahamathunnisa
3.Ramiza Sulthana
4.Javeed Hussain
5.Syed Amjad Hussain
6.Iqbal Ahmed
7.Ayeesha Bee

... Appellants

Vs.

1.D.Sampath
2.K.Damodaran
3.N.Sundara Babu
4.T.Elango
5.S.Sivaraman (died)
6.A.Rajagopalan
7.Devaki
8.Kavitha
9.Sujatha
10.Subashini



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11.Senthil Kumar
12.Geetha Murugan

... Respondents

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[R4 to R6 impleaded as respondents vide Court order dated 02.03.2021 in CMP No.21819 of 2018 in OSA No.290 of 2018]

[R7 to R12 brought on record as LR's of the deceased 5th respondent vide Court order dated 15.09.2022 in CMP No.9975 of 2022 in OSA No.290 of 2018]

Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules r/w. Clause 15 of Letters Patent against the order and decree dated 06.06.2018 in A.No.5893 of 2016 in C.S.No.572 of 2016 on the file of this Court.

For Appellant : Mr.A.Ilaya Perumal
For R1 to R3 : Mr.R.Selvakumar
For R4 & R6 : Mr.J.Kamaraj

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Original Side Appeal is directed against the order of the learned Single Judge in A.No.5893 of 2016 in C.S.No.572 of 2016, dated 06.06.2018.



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2.The plaintiffs in the suit in C.S.No.572 of 2016 have filed this appeal. The appellants as plaintiffs filed the suit in C.S.No.572 of 2016 for declaration of their title and consequential reliefs in C.S.No.572 of 2016 in respect of the property which is also subject matter of another suit filed by the respondents 1 to 3 in O.S.No.11998 of 2010 (originally it was C.S.No.484 of 1997 before this Court and later transferred to Civil Civil Court, Chennai, and renumbered as O.S.No.11998 of 2010). The plaintiffs herein are also impleaded as defendants in the said suit. It is not in dispute that the subject matter of the two suits are one and the same. Admittedly, there is no issue regarding identity of parties. In other words, the parties in the two suits are one and the same. During pendency of the suit, defendants 1 to 3 in C.S.No.572 of 2016 filed an application in A.No.5893 of 2016 under Section 10 of Civil Procedure Code to stay the suit in C.S.No.572 of 2016 on the ground that the first suit filed by the defendants in the suit for declaration of their title and for consequential prayers in respect of the same property, is pending. The said application was allowed by the learned Single Judge of this Court by impugned order dated 06.06.2018. Aggrieved



by the same, the plaintiffs have filed the above Appeal.

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3. Section 10 of Civil Procedure Code 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.”

4. Considering the scope of Section 10 of Civil Procedure Code and pleadings in both sides, the learned Single Judge consciously held that the second suit is in respect of the same property. The parties are one and the



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same. In the said circumstances, the learned Single Judge has rightly allowed the application.

5.It is now brought to the notice of this Court that the appellants have filed an application seeking withdrawal of the suit in O.S.No.11998 of 2010 pending before the I Additional City Civil Court and transfer the same to this Court to decide both suits jointly. However, the said application is still pending. Now, the learned counsel appearing for the appellants, as well as respondents, admit before this Court that the entire trial in O.S.No.11998 of 2010 is completed and the matter is now posted for arguments. In view of the same, this Court is not inclined to entertain this appeal. Though the appellants ought to have prosecuted their application seeking transfer/joint trial of other suit, they have failed in getting an order from this Court for a joint or simultaneous trial. This Court, at this stage, is not inclined to interfere with the order of the learned Single Judge granting stay of further proceedings in the subsequent suit in C.S.No.572 of 2016, which is in tune with settled principles, particularly the provisions of Section 10 of CPC.



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6.As a result, this Original Side Appeal is dismissed for want of merits. No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (K.R.S., J.)
09.08.2024

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