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C.R.P. No. 3273 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 21.08.2024**

**CORAM**

**THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN**

**C.R.P. No. 3273 of 2024**

**and**

**C.M.P. No. 17514 of 2024**

1. Sivakami

2. Gomathi

3. Jayaram

4. Priya

... Petitioners / Petitioners / 4th to 7th Defendants

**Vs.**

1. Radha

... 1st Respondent / 1st Respondent / Plaintiff

2. Saraswathi

3. Ramasamy

4. Velumani

... 2nd to 4th Respondents/2nd to 4th Respondents/  
1st to 3rd Defendants

**PRAYER:** Civil Revision Petition is filed under Section 227 of the Constitution of India, against the order dated 02.04.2024 passed in I.A. No. 6 of 2024 in O.S. No. 1044 of 2021 on the file of the II Additional Subordinate Court, Coimbatore.



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For Petitioners : Mr. T.Yogesh  
For Respondents : Mr. V.V.N.Sivanthy

**ORDER**

This Civil Revision Petition arises against the order dated 02.04.2024 passed in I.A. No. 6 of 2024 in O.S. No. 1044 of 2021 on the file of the learned II Additional Subordinate Court, Coimbatore.

2. O.S. No. 1044 of 2021 is a suit for partition and separate possession that has been presented by the 1<sup>st</sup> respondent to the Civil Revision Petition.

3. After this suit came to be presented, the defendants 1 and 3 presented another suit for partition in O.S. No. 1346 of 2023, before the I Additional Subordinate Judge at Coimbatore. The Civil Revision Petitioners are defendants 4 to 7 in O.S. No. 1044 of 2021 and defendants 3 to 6 in O.S No. 1346 of 2023.

4. Taking advantage of the fact that Saraswathi and Velumani have presented O.S. No. 1346 of 2023, the civil revision petitioners moved an application seeking for stay of O.S. No. 1044 of 2021. This application was received as I.A. No. 6 of 2024. The plea of the civil revision petitioners before the Trial Court was that since a separate suit had been subsequently filed, the previous suit ought to be stayed.



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5. After the receipt of a counter from the plaintiff/1<sup>st</sup> respondent herein, the learned Judge proceeded to dismiss the application. He held that though under Section 10 of the Code of Civil Procedure, a subsequent suit can be stayed, the power under Section 151 of CPC is always available to the Court to stay the previous suit. This position of law as appreciated by the learned II Additional Subordinate Judge at Coimbatore cannot be taken any exception to because, it has been so settled by this court in ***K.R.Balaji Rao and Ors -vs- M.G.Natesa Chetty, [AIR 1948 MADRAS 138]*** and ***Sumanth Pathak -vs- TVS Suzuki Ltd., [2002 (2) CTC 213]***. In both these authorities, the Courts have held that where a specific provision for stay does not apply, as in the case of Section 10 of CPC, Section 151 of CPC can always be resorted to grant an order of stay.

6. Challenging the order passed by the learned Judge, the present Civil Revision Petitioner has come before this Court. I heard when the matter came up for admission on 14.08.2024, I requested the learned counsel for the petitioner to serve the entire set of papers on the counsel who appeared for the plaintiff in the court below. On such service, Mr. V.V.N. Sivanthi entered appearance for the contesting respondent.



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7. Mr. T.Yogesh, learned counsel for the petitioners would submit that the defendants have already moved an application in T.R.O.P. No. 204 of 2024 before the learned Principal District Judge at Coimbatore seeking for the clubbing of O.S. No. 1044 of 2021 along with O.S. No. 1346 of 2023.

8. Mr. V.V.N.Sivanthy would state that it is true that a Transfer Petition had been filed. He would add that the contesting respondents have already tendered “no objection” for transfer of the two suits for a common disposal.

9. Taking into consideration the aforesaid facts, I am of the view that the order dated 02.04.2024 in I.A. No. 6 of 2024 does not require to be interfered with. If both the suits are tried together, no prejudice would be caused either to the plaintiff or the defendants. Both the suits are for partition and the parties in both the suits are common. There is no necessity to stay the previous or the subsequent proceedings. That would only add to the agony of the litigations continuing between the parties. Since both the petitioners as well as the respondents agree that the suits can be tried together and taking into consideration the suit in O.S. No. 1044 of 2021 is ripe for trial, the suit in O.S. No. 1346 of 2023 now pending on the file of the I Additional Subordinate Court at Coimbatore is withdrawn and transferred to the file of



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the II Additional Subordinate Court at Coimbatore to be heard and disposed of along with O.S. No. 1044 of 2021. The learned Principal District Judge, Coimbatore is requested to record this fact and dispose of Tr.O.P. 204 of 2024.

10. In the result, this Civil Revision Petition is disposed of with the above directions. No costs. Consequently, the connected Miscellaneous Petition is closed.

**21.08.2024**

Index : Yes/No  
Speaking order : Yes/No  
NCC : Yes/No  
pal/kmk

To

1. The I Additional Subordinate Court,  
Coimbatore.
2. The II Additional Subordinate Court,  
Coimbatore.
3. The Principal District Judge,  
Coimbatore.



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**V.LAKSHMINARAYANAN, J.,**

pal

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