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C.R.P.No.3804 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM:

**THE HON'BLE MR.JUSTICE P.DHANABAL**

**C.R.P.No.3804 of 2022**

Selvan

... Petitioner

Vs.

1.Palanisamy  
2.Karuppannan

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of The Constitution of India, to set aside the fair and decreetal order dated 08.06.2022 passed in I.A.No.1 of 2021 in I.A.No.433 of 2015 in O.S.No.236 of 2008 on the file of the Additional District Munsif Court, Tiruchengode.

For Petitioner : Mr.S.Senthil

For Respondents : Mr.T.L.Thirumalaisamy for R1

No appearance for R2

**ORDER**

This Civil Revision Petition has been preferred to set aside the fair and decreetal order dated 08.06.2022 passed in I.A.No.1 of 2021 in I.A.No.433 of 2015 in O.S.No.236 of 2008 on the file of the Additional District Munsif Court, Tiruchengode.

2. Heard Mr.S.Senthil, learned counsel for the petitioner and



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Mr.T.L.Thirumalaisamy, learned counsel for R1.

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3. The petitioner herein has filed an application in I.A.No.1 of 2021 before the Trial Court to stay the proceedings in I.A.No.433 of 2015 in O.S.No.236 of 2008 and the same was dismissed by the Trial Court. Aggrieved by the said order, the present Revision Petition has been filed by the petitioner.

4. According to the petitioner, he has filed an impleading application in I.A.No.2 of 2021 and he is the proposed party in the said application and also he filed a petition to stay the proceedings of the suit in O.S.No.236 of 2008. The first respondent herein has filed a suit for partition as against the second respondent in O.S.No.236 of 2008 and the suit was decreed and a preliminary decree was passed on 19.12.2013. Thereafter, I.A.No.433 of 2015 was filed for passing final decree and an Advocate Commissioner was also appointed and the Commissioner has inspected the property on 18.09.2021. At that time only, the petitioner came to know about the pendency of the case proceedings. Already the petitioner has filed a suit for partition as against his father, the second respondent herein and his paternal uncle, the first respondent herein



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and others before the Principal District Muncif Court, Namakkal in O.S.No.106 of 2021 and the same is also pending. Thereafter, he filed an application to implead him in the proceedings in I.A.No.2 of 2021. The first respondent who is the father of the petitioner is colluding with the second respondent and attempted to take over the rights of the petitioner over the property and he acted against the petitioner. Therefore, till the disposal of the suit in O.S.No.106 of 2021, on the file of the District Munsif Court, Namakkal, the proceedings of this Court in O.S.No.236 of 2008 has to be stayed.

5. According to the first respondent, already the suit was decreed on 19.12.2013 filed by the first respondent and a preliminary decree was passed. Thereafter, he filed an application in I.A.No.433 of 2015 for an appointment of Advocate Commissioner to divide the properties and pass final decree. After hearing both sides, the Commissioner was appointed and now, under the instigation of the second respondent, the petitioner has filed this Petition. The petitioner is not a party to the final decree proceedings. Already the father of the petitioner being the Kartha of the family has contested the suit and then only the decree was passed by this Court. Therefore, the petition filed under



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Section 10 of CPC., is not maintainable and the same is liable to be dismissed.

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6. Before the Trial Court, no oral evidence is adduced by the parties and on the side of the petitioner, Ex.P1 has been marked which is the copy of the plaint in O.S.No.106 of 2021. No documents were marked on the side of the respondents. The Trial Court after considering both sides argument, dismissed the application. As against the said order, now, the present Civil Revision Petition has been filed by the petitioner / proposed party.

7. The learned counsel for the petitioner would content that the petitioner has filed an application under Section 10 of CPC to stay the suit proceedings in I.A.No.433 of 2015 in O.S.No.236 of 2008. The first respondent is the paternal uncle of the petitioner and he filed a suit for partition as against the second respondent herein who is the father of the petitioner and the main suit was decreed on 19.12.2013 and preliminary decree was passed. Now the final decree proceedings were filed in I.A.No.433 of 2015 and the Commissioner was appointed and inspected the properties on 18.09.2021 at that time only the petitioner came to know about the pendency of the proceedings between the respondents 1 and 2. Already the petitioner has



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filed a suit for partition in O.S.No.106 of 2021 for the same properties and for other properties and the same is pending before the Principal District Munsif Court, Namakkal. Therefore, the present suit proceedings have to be stayed by this Court till the finality arrived in O.S.No.106 of 2021 on the file of the District Munsif Court, Namakkal. The Trial Court has not considered the case of the petitioner and dismissed the application for the reason that the petitioner is not a party to that proceedings and already he filed an application for impleading him as a party to the proceedings and the same was dismissed. Further, the case was posted for passing final decree and thereby the application is dismissed. The above said findings of the Trial Court is erroneous and therefore, this Civil Revision Petition has to be allowed by setting aside the order of the Trial Court.

8. The learned counsel for the first respondent would contend that the petitioner is none other than the son of the second respondent herein and the second respondent being the father of the petitioner very well know about the proceedings of the case. At the instigation of the second respondent only, the petitioner has filed this Petition at the stage of final decree proceedings. Further, the petitioner has filed another suit in respect of these properties along



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with other properties. Therefore, the present suit cannot be stayed as per

Section 10 of CPC and already the petitioner has filed an application to implead him in the main final decree proceedings and the same was also dismissed. Therefore, the Trial Court has passed a reasoned order and the present Petition is liable to be dismissed.

**9.** This Court heard both sides and perused the materials placed on record. The petitioner has filed an application to stay the proceedings under Section 10 of CPC. According to the petitioner, he filed another suit in O.S.No.106 of 2021 on the file of the District Munsif Court, Namakkal as against the respondents herein and others for the relief of partition and separate possession and the present suit is also for the same subject matter and the respondents are also the parties to that suit. Therefore, the present suit has to be stayed till the disposal of the pending suit in O.S.No.106 of 2021 on the file of the Principal District Munsif Court, Namakkal.

**10.** According to the first respondent, he filed the present suit for the relief of partition and separate possession against the father of the petitioner and the petitioner is entitled to the share over the properties which would be



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allotted to the father of the petitioner. Therefore, the substantial right of the petitioner can be claimed only through his father and the case is posted for passing final decree and thereby, the petitioner is not entitled to the relief as prayed for in the application.

**11.** It is an admitted fact that the first suit was filed by the parties for the relief of partition and the second suit was filed by the petitioner for the same relief by including these properties and also for other properties. Now the petitioner has filed another application for impleading him as a party to the proceedings and the same was dismissed by the Trial Court. Hence the Trial Court dismissed this application also. At this juncture, it is relevant to extract the provisions of Section 10 of CPC as under:

*"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 have 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."*



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**WEB COPY** **12.** As per Section 10 of CPC, the subsequent suit has to be stayed when the previous suit is pending for the same subject matter filed by the same parties. Here, the subject matter is not one and the same and the suit properties are one of the subject matter in the another subsequent suit and the parties are also not one and the same in the subsequent suit. The petitioner and some other parties are also included as parties. Therefore, the petitioner cannot seek remedy through the application filed by him to stay the proceedings. Further, this suit is the previous suit and the suit in O.S.No.106 of 2021 on the file of the Principal District Munsif Court, Namakkal is the subsequent suit. As per Section 10 of CPC., subsequent suit only can be stayed, if other conditions of Section 10 of CPC are satisfied. Hence, this suit is the previous suit, thereby, under Section 10 of CPC., the previous suit cannot be stayed. The Trial Court also correctly dismissed the application by holding that already the petitioner has filed an application to include him as one of the parties to the proceedings and the same was dismissed and the present suit is posted for passing final decree. Thereby, the petitioner is not entitled to the relief to claim to stay the suit under Section 10 of CPC. Therefore, the order passed by the Trial Court is in order and no infirmity or perversity found in the order of the Trial Court and



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does not warrant interference of this Court. This Court is of the opinion that this Revision Petition has no merits.

**13.** In the result, this Civil Revision Petition is dismissed. No costs.

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Index: Yes/No  
Speaking / Non Speaking Order  
gsk

To  
The Additional District Munsif Court,  
Tiruchengode.



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**P.DHANABAL,J.**

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