



WEB COPY



C.R.P (PD) No.4448 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P (PD) No.4448 of 2024

Mr.M.Murugan
S/o.Late Mr.D.Munuswamy

.. Petitioner

vs.

Mrs.M.Vasanth Devi
W/o.Mr.Thomas

..Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 03.09.2024 made in I.A.No.4 of 2021 in O.S.No.6212 of 2016 on the file of the XVI Additional City Court, Chennai.

For Petitioner : Mr.M.Stalin

For Respondent : Mr.T.Suresh

ORDER

This civil revision petition arises against the order passed by the learned XVI Additional Judge, City Civil Court, Chennai in I.A.No.4 of 2021 in O.S.NO.6212 of 2016 dated 03.09.2024.



C.R.P (PD) No.4448 of 2024

for permanent injunction restraining Vasantha Devi from putting up any construction over the property and another suit for permanent injunction restraining Kasthuri from in any way carrying out similar activities. O.S.No.12434 of 2010, O.S.No.7689 of 2010 and O.S.No.5755 of 2014 are pending before the III Assistant City Civil Court, Chennai.

5. The sole defendant Vasantha Devi filed an application seeking stay under Section 10 of CPC in O.S.No.6212 of 2016 pleading that the issue raised in O.S.No.12434 of 2010 is substantially the same as in O.S.No.6212 of 2016. This was opposed by the plaintiff pleading that the parties are different and one suit is pending before the Additional Judge whereas the other suit is pending before the Assistant Judge and therefore, application under Section 10 of CPC would not be maintainable. Learned Judge agreed with the defendant and allowed the application under Section 10 of CPC. Hence this revision.

6. Mr.Stalin, relying upon the judgment in *National Institute of Mental Health and Neuro Sciences Vs. C.Parameshwara, AIR 2005 SC 242* pleads that as the Additional Court and Assistant Court cannot be treated as the Court of concurrent jurisdiction and hence, the application



C.R.P (PD) No.4448 of 2024

filed under Section 10 of CPC is not maintainable.

WEB COPY

7. Mr.Suresh pleads that the issue involved in both the suits are one and the same and therefore, application under Section 10 is maintainable and the order passed by the learned trial Judge need not be interfered with.

8. I have carefully considered the arguments and have gone through the records.

9. The purpose of Section 10 of CPC is that where an issue is substantially being tried by a Court of competent jurisdiction in a suit previously instituted, the same issue should not be tried by a Court of competent jurisdiction instituted subsequently.

10. I am afraid I am not in agreement with Mr.Stalin since the Additional Court and the Assistant Court are different in hierarchy, one being superior to other, Section 10 is inapplicable.

11. The test as laid down in ***Parameshwara*** case (cited supra) is, if an issue is decided by a Court of competent jurisdiction would operate as *resjudicata* on the subsequent suit, then Section 10 would be applicable. The Court interfered with the order of stay in that particular case because the proceedings that had been sought to be stayed was a suit for recovery of money, pending a proceeding before the Labour Court challenging the



C.R.P (PD) No.4448 of 2024

dismissal of the workman from employment. In paragraph 8 of the said judgment, the Hon'ble Justice S.H.Kapadia (as his Lordship then was), set down the test for Section 10 of CPC. Applying the said principle to the facts of the case, I am not able to take a different view than one taken by learned XVI Additional Judge, City Civil Court in the impugned order.

12. This is because, the plaintiff in O.S.No.12434 of 2010 disputes the settlement deed as a forgery and also as one which could not have come into force on account of vitiating circumstances. The plaintiff in O.S.No.6212 of 2016 bases his right only on the basis of settlement deed which is sought to be set aside in the previous suit. If the learned III Assistant Judge, City Civil Court grants the decree holding that the settlement deed is null and void and not binding on the plaintiff, then the very substratum of the plaintiff's case in O.S.No.6212 of 2016 would vanish.

13. In fine, the finding with respect to the settlement deed by the III Assistant Judge would operate as *resjudicata* on the XVI Additional Judge, City Civil Court. Therefore, the view taken by the learned Judge is absolutely correct and does not require any interference.



C.R.P (PD) No.4448 of 2024

14. By merely staying the suit, agony of the parties would continue. It is not in dispute that several transfer petitions were filed to club the proceedings before III Assistant City Civil Judge. The parties, as pointed out above, are siblings. It is in everyone's best interest, especially considering that the plaintiff in O.S.No.12434 of 2010 is a senior citizen, to conclude the litigation swiftly. Therefore, in exercise of power of transfer vested in this Court and with the agreement both the counsel, suits pending in O.S.No.7689 of 2010, O.S.No.12434 of 2010 and O.S.No.5755 of 2014 on the file of III Assistant Judge, City Civil Court at Chennai are transferred to the file of XVI Additional Judge, City Civil Court at Chennai. The learned XVI Additional Judge, City Civil Court at Chennai shall try the aforesaid suits along with O.S.No.6212 of 2016. The learned XVI Additional Judge shall frame an issue on the validity of the settlement deed in O.S.No.6212 of 2016 and O.S.No.12434 of 2010 and answer the same. The evidence may be recorded in common and disposed of within a period of nine months from the date the three suits are received by the XVI Additional Judge, City Civil Court, Chennai.



C.R.P (PD) No.4448 of 2024

With the above order of transfer, the Civil Revision Petition is
dismissed. There shall be no order as to costs.

07.11.2024

Index:Yes/No

Neutral Citation:Yes/No

gpa

To

1. XVI Additional City Civil Court
Chennai
2. III Assistant City Civil Court
Chennai
3. The Section Officer
VR Section
Madras High Court



WEB COPY



C.R.P (PD) No.4448 of 2024

V. LAKSHMINARAYANAN, J.

gpa

C.R.P (PD) No.4448 of 2024

07.11.2024