



C.R.P(MD)No.1741 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.10.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.1741 of 2021

and

C.M.P(MD)No.9281 of 2021

1.Simon Morris

2.Karthigai Selvi

... Petitioners /
Respondents /
Defendants

Vs.

Vimala Dhamayanthi

... Respondent /
Petitioner /
Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order dated 29.09.2021 in I.A.No.96 of 2020 in O.S.No.38 of 2018 on the file of 5th Additional District Judge, Madurai.

For Petitioners : Mr.G.Prabhu Rajadurai

For Respondent : Mr.K.Suresh
for Mr.D.Kirubakaran



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ORDER

Thiru.Benjamin executed a sale deed dated 28.03.2014 in favour of the revision petitioners. However, Benjamin continued to remain in the property. Benjamin passed away. His wife Vimala Dhamayanthi / respondent herein filed O.S.No.162 of 2017 on the file of I Additional District Judge, Madurai to declare the sale deed dated 28.03.2014 as null and void. In the said suit, the revision petitioners herein figured as the defendants. They filed I.A.No.13 of 2018 for rejection of plaint. The said IA was allowed. Aggrieved by the same, Vimala Dhamayanthi filed A.S(MD)No.151 of 2019 before this Court and it is still pending.

2.In the meanwhile, the revision petitioners filed O.S.No.38 of 2018 on the file of V Additional District Judge, Madurai for recovery of possession. Vimala Dhamayanthi filed I.A.No.96 of 2020 for stay of the suit proceedings. It was allowed vide order dated 29.09.2021. Questioning the same, the plaintiffs in O.S No.38 of 2018 filed the present Civil Revision Petition.



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3. Heard both sides.

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4. Section 10 of CPC 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] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India] established or continued by [the Central Government 3***.] and having like jurisdiction, or before [the Supreme Court].”*

The issue in O.S No.38 of 2018 as well as O.S.No.162 of 2017 center on the validity of the sale deed 28.03.2014 executed by the husband of Mrs.Vimala Dhamayanthi which is the subject matter of A.S(MD)No.151 of 2019. Therefore, the Court below was justified in coming to the conclusion that the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. Of course, the plaint in O.S No.162 of 2017 was rejected. But then, the first appeal (A.S(MD)No.151 of 2019) is the continuation of the original proceedings.



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5.In this view of the matter, the Court below was justified in coming to the conclusion that Section 10 of CPC is applicable. I, therefore, do not find any ground to interfere with the impugned order.

6.At the same time, taking note of the contentions advanced by the learned counsel for the revision petitioners, in the event of A.S(MD)No. 151 of 2019 getting dismissed, O.S.No.38 of 2018 on the file of V Additional District Judge, Madurai shall be disposed of within a period of six months thereafter. The impugned order is sustained.

7.With the aforesaid direction, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22.10.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To

1.V Additional District Judge,
Madurai.

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G.R.SWAMINATHAN, J.

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