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C.R.P.(MD)No.3424 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04/01/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.3424 of 2023

and

CMP (MD) No.17639 of 2023

1.D.Udhayakumar

2.U.Ananthi

: Petitioners/
Petitioners/Defendants

Vs.

M.Palandi

: Respondent/Respondent/
Plaintiff

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order, dated 07/10/2023 passed in I.A No.721 of 2023 in O.S No.1070 of 2023 on the file of the I Additional Sub Court, Madurai and pass such further or other orders.

For Petitioners : Mr.P.Arumugam

For Respondent : Mr.J.Barathan

O R D E R

This civil revision petition has been filed seeking to set aside the order, dated 07/10/2023 passed in I.A No.721 of 2023 in O.S No.1070 of 2023 by the I Additional Sub Court, Madurai.



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C.R.P.(MD)No.3424 of 2023

2. The facts in brief:-

A suit in O.S No.987 of 2021 was filed by this petitioner against four persons including the respondent herein seeking permanent injunction and in the alternative directing the respondent herein to hand over the possession or recovery of the same along with costs. In that suit, the respondent herein appeared and filed a written statement. Now it is pending for trial. Subsequent to that, the present suit in O.S No.1079 of 2023 was filed by the respondent herein seeking a decree and judgment against the petitioners herein for permanent injunction and for costs.

3. The case of the petitioner before the trial court in O.S No.987 of 2021 is that they purchased the property from the defendants 2 to 4 namely Krishnamoorthy, Dhanushkodi and Ponnammal, on 09/06/2021. On the very same date, possession was also handed over to them. At that time, the first defendant namely the respondent herein filed a caveat original petition before the District Munsif Court, Vadipatti and Subordinate Judge, Madurai. In that Caveat Petition, it was mentioned by the respondent herein that he is in possession and enjoyment of the suit property.



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C.R.P.(MD)No.3424 of 2023

4.In O.S No.1070 of 2023, the respondent herein has stated that suit property originally belonged to Krishnamoorthy one of the defendants in the earlier suit and he is a cultivating tenant. Krishnamoorthy also filed TCTP No.20 of 2004 before the Special Deputy Collector, Revenue Court Madurai. Another petition in TCTP No.15 of 2006 against him for eviction. Eviction ordered. Against which, revision was filed in CRP(MD)No.397 of 2021. It is stated to be pending. Which ground he sought adjournment and decree of permanent injunction. In that also, the petitioner filed written statement and stated to be pending for trial process.

5.Pending the suits, this petitioner filed the IA No.721 of 2023 before the trial court seeking an order of stay the proceedings in O.S No.1070 of 2023 till the disposal of the suit in O.S No.987 of 2021.

6.That came to be dismissed by the trial court by the impugned order. Against which, the present revision.

7.The learned counsel appearing for the petitioners would submit that the earlier suit was filed by the petitioners seeking permanent injunction. Subsequent to that only, the respondent herein filed another suit. As



C.R.P.(MD)No.3424 of 2023

per section 10 of the Civil Procedure Code, the subsequent suit must be stayed till the disposal of the earlier suit.

8.Per contra, the learned counsel appearing for the respondent would submit that the earlier suit filed by the petitioners herein did not choose to prosecute the matter, whereas he was ready and willing to prosecute his suit. So on that account, trial court directed the respondent herein to take up his case along with the earlier suit. Only at that time, this revision came to be filed by the petitioners herein. So according to him, when the petitioners are not ready to take up the earlier suit, naturally the order passed by the trial does not suffer from any illegality or irregularity as the case may be.

9.Section 10 of the Civil Procedure Code, read as under:-

"Section 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



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C.R.P.(MD)No.3424 of 2023

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.

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.

10.No doubt that as per the above said provision, subsequent suit can be stayed till the disposal of the earlier suit when the subjects in both are one and the same. When the petitioners are not coming forward to prosecute the first suit filed, naturally they cannot rely on section 10 of CPC. The petitioners cannot be permitted to take advantage of their own lapse as the case may be. For their own wrong, they want to delay the proceedings. In that occasion, the trial court has passed the impugned order for simultaneous trial.

11.So, I find no reason to entertain this revision and the order passed by the trial Judge does not suffer from illegality or irregularity.



C.R.P.(MD)No.3424 of 2023

12.The civil revision petition deserves dismissal.

Accordingly, it is **dismissed**. Consequently, connected CMP is closed.

04/01/2024

Index:Yes/No
Internet:Yes/No
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To,

The 1 Additional Sub Court,
Madurai.



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C.R.P.(MD)No.3424 of 2023

G.ILANGOVAN, J

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C.R.P (MD) No. 3424 of 2023

04/01/2024