



O.S.A.Nos. 103 & 104 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2025

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CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

O.S.A.Nos. 103 & 104 of 2025
and
C.M.P.Nos. 6138 & 6097 of 2025

O.S.A.No.103 of 2025

1.Mrs.Latha Saravanan
2.S.Rohithkumar
3.S.Sandhya

.. Appellants

VS

1.S.M.Siddique
2.M.Saravanan

.. Respondents

O.S.A.No.104 of 2025

1.Mrs.Latha Saravanan
2.S.Rohithkumar
3.S.Sandhya

.. Appellants

VS

1.S.M.Siddique
2.M.Saravanan

3.The Sub Registrar,
Anna Nagar, Office of Sub-Registrar,
Anna Nagar, Chennai – 600 037.

.. Respondents

Prayer in O.S.A.No. 103 of 2025: Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules read with under Clause 15 of Letters Patent against fair and decretal order dated 30.04.2024 passed in Application No.667 of 2024 in Tr.C.S.No.713 of 2016.



O.S.A.Nos. 103 & 104 of 2025

Prayer in O.S.A.No. 104 of 2025: Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules read with under Clause 15 of Letters Patent against fair and decreetal order dated 30.04.2024 passed in Application No.666 of 2024 in C.S.No.581 of 2013.

For Appellants : Mr.K.M.Venugopal
(in both appeals)

For Respondents : Mr.Srinath Sridevan, Senior Counsel
for Mrs.Aishwarya S.Nathan
for R1
(in both appeals)

COMMON JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

A.Nos.666 and 777 of 2024 were filed by the present appellants seeking a stay of C.S.No. 581 of 2013 and Tr C.S.No. 713 of 2016 by exercise of powers under Section 151 of Code of Civil Procedure, 1908 (CPC). The applications have come to be rejected on 30.04.2024 as against which the present appeals have been filed.

2. We have heard the detailed submissions of Mr.K.M.Venugopal, for the appellants and Mr.Srinath Sridevan, learned Senior Counsel, for Mrs.Aishwarya S.Nathan for the first respondent.

3. Initially an objection was raised by Mr.Srinath Sridevan to the maintainability of the appeal based on the decision of the Full Bench of this Court in *Central Brokers v Ramanarayana Poddar and Co.*, [AIR 1954 MAD 1957] (FB). The proposition laid down therein is that an order rejecting a plea for stay of suit under Section 10 of CPC would not amount to a judgment amenable to intra-court appeal in terms of Clause 15 of the Letters Patent.



4. However, three Hon'ble Judges of the Supreme Court in *Shah Babulal Khimji v Jayaben D Kania and another* [(1981) 4 SCC 8] have taken a differing view and para 120 of the judgment adumbrating illustrations of interlocutory orders which may be treated as judgments is extracted hereinbelow:-

"120. Thus, these are some of the principles which might guide a Division Bench in deciding whether an order passed by the Trial Judge amounts to a judgment within the meaning of the Letters Patent. We might, however, at the risk of repetition give illustrations of interlocutory orders which may be treated as judgments:

(1) An order granting leave to amend the plaint by introducing a new cause of action which completely alters the nature of the suit and takes away a vested right of limitation or any other valuable right accrued to the defendant

(2) An order rejecting the plaint.

(3) An order refusing leave to defend the suit in an action under Order 37, Code of Civil Procedure.

(4) An order rescinding leave of the Trial Judge granted by him under clause 12 of the Letters Patent.

(5) An order deciding a preliminary objection to the maintainability of the suit on the ground of limitation, absence of notice under s.80, bar against competency of the suit against the defendant even though the suit is kept alive.

(6) An order rejecting an application for a judgment on admission under order 12 Rule 6.

(7) An order refusing to add necessary parties in a suit under s.92 of the Code of Civil Procedure.

(8) An order varying or amending a decree.



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(9) *An order refusing leave to sue in forma pauperis.*

(10) *An order granting review.*

(11) *An order allowing withdrawal of the suit with liberty to file a fresh one.*

(12) *An order holding that the defendants are not agriculturists within the meaning of the special law.*

(13) *An order staying or refusing to stay a suit under s. 10 of the Code of Civil Procedure.*

(14) *An order granting or refusing to stay execution of the decree.*

(15) *An order deciding payment of court fees against the plaintiff."*

5. Since an order staying or refusing to stay a suit under Section 10 of the Code of Civil Procedure stands included in the above list, the objection of maintainability does not survive any further.

6. On an appreciation of the submissions made by both learned counsel, the following facts emerge. The 2013 and 2016 suits have been filed by one S.M.Siddique seeking specific performance as well as injunction in respect of the property at Plot No.616, G Block, 97, Annanagar East, Madras 102 ad-measuring 2 grounds 144 sq ft (hereinafter referred to as property / property in question).

7. The appellants were impleaded as parties to the suit some time in the year 2019. While so, and the trial in respect of the aforesaid two suits was progressing, it is the case of the appellants that they came to be aware on 23.08.2023 of a Will having been executed by their



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grandmother, Mrs. Senthamarai Manivannan. This paved the way for O.P.No.121 of 2024, wherein, the prayer was for grant of probate in respect of the newly found Will.

8. It is consequent thereto that A.Nos. 666 & 667 of 2024 came to be filed as the appellants believed that it is the Testamentary OP that should be decided first prior to the suits.

9. The learned Judge has rejected the application on 30.04.2024 noting the position that Section 10 of CPC relating to stay of suit would stand triggered only where the '*matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties*'.

10. Section 10, is extracted below:-

"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]."

11. In the present case, what the appellant seeks is, in fact, a reverse of what is provided for under Section 10, as he seeks a stay of previously instituted suits in order to enable the subsequently instituted suit to be decided. Hence, we agree that the applications were rightly rejected in view of the specific provision under the CPC.



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12. The applications leading to the passing of the present order have been filed in terms of Section 151 CPC, which is a wide provision, saving the inherent powers of the Court. It states that nothing in the CPC shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. We are of the view that Section 151 cannot be invoked in such a manner so as to militate with the operation of other specific provisions of the CPC.

13. The learned Judge has also noted the position that more than 38 adjournments have been taken by the appellants in the trial of the suit expressing the opinion that the applications are nothing but a ruse to further protract matters. In any event, the learned Judge has noted that no prejudice would be caused to the respondents if the trial of the suits are proceeded with and we agree on both counts.

14. In light of the discussion as aforesaid, we decline intervention in the impugned order. These original side appeals stand dismissed. No costs. Connected miscellaneous petitions are closed.

[A.S.M., J] [C.K., J]
24.03.2025

Index:Yes
Neutral Citation:Yes
ssm



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To

1. The Sub Assistant Registrar,
High Court, Madras.
2. The Sub Registrar,
Anna Nagar, Office of Sub-Registrar,
Anna Nagar, Chennai – 600 037.



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