

IN THE COURT OF THE MUNSIFF, KOCHI

Present :- Smt. Sai Vani K.R., LL.B., Additional Munsiff

Monday, the 6th day of January, 2014/ 16th Pousha, 1935

I.A.No.2770/2012 & I.A.No.2845/2012 in O.S. No.340/2012

I.A.No.2770/2012

Petitioner/Defendant:-

M.B.Balakrishnan, aged about 75, S/o.Bappi, Koikkara House,
K.P. 10/341, Kumbalanghi South, Kochi-7

By Adv. Suraj Krishna B.S.

Respondent/Plaintiffs:-

1. Raman, aged 63, S/o.Late Bappi, Koikkara House,
Kumbalanghi South, Kochi-7, now residing at CC 41/1964,
Veekshanam Road, Kochi-18
2. Sarvan alias Sarvothaman, aged 58, S/o. Bappi, Koikkara
House, Kumbalanghi South, Kochi-7.

By Adv.M/s.Paul Parakkal, K.s.Sathis Babu and Nimmy Joseph

This petition filed Under Section 10 read with Section 151 of the Code of Civil Procedure to stay all further proceedings in the above suit until the final disposal of O.S.315/2012 pending on the files of Additional Munsiff's Court, Kochi between the same parties.

I.A.No.2845/2012

Petitioners/Plaintiffs:-

1. Raman, aged 63, S/o.Late Bappi, Koikkara House,
Kumbalanghi South, Kochi-7, now residing at CC 41/1964,
Veekshanam Road, Kochi-18

2. Sarvan alias Sarvothaman, aged 58, S/o. Bappi, Koikkara House, Kumbalangi South, Kochi-7.

By Adv.M/s.Paul Parakkal, K.S.Sathis Babu and Nimmy Joseph

Respondent/Defendant:-

M.B.Balakrishnan, aged about 75, S/o.Bappi, Koikkara House, K.P. 10/341, Kumbalangi South, Kochi-7

By Adv. Suraj Krishna B.S.

This petition filed Under Section 151 of the Code of Civil Procedure to order joint trial of the above case with OS No.315/2012.

These petitions come up for hearing before me on 11.12.2013 in the presence of counsel for both sides and having stood over for consideration on 06.01.2014 the court passed the following:-

COMMON ORDER

I.A. Nos.2770/2012 is filed by the defendant in the above suit under section 10 CPC and I.A.2845/12 is filed by the plaintiff herein for joint trial of O.S.340/12 along with O.S.315/12.

2. OS.340/12 was filed before Principal Munsiff Court, Kochi which was subsequently transferred to this court. O.S.340/12 is filed for a decree of declaration that the plaintiff and his family members have a right of easement by prescription for the use of plaint C schedule pathway and for permanent prohibitory injunction restraining the defendant from obstructing the plaintiffs the ingress and egress from plaint A schedule property through plaint C schedule pathway. O.S.315/12 was filed by the defendant herein seeking permanent prohibitory injunction restraining the defendants therein from trespassing into the plaint A schedule property otherwise than for using the plaint B schedule pathway as a foot path and also from causing any

obstruction or inconvenience to the plaintiff by constructing walls or fences to plaintiff A schedule property leaving a gap of 3 links on both termini of the B schedule pathway.

3. The plaintiff in O.S 315/12 is the defendant in O.S.340/12 and the plaintiffs in O.S 340 /12 are the defendants in O.S.315/12. The subject matter and issues are directly and substantially the same in both the suits. An ad-interim injunction has been obtained by the plaintiff in O.S.315/12. The defendants therein has not made any effort in that suit to get the injunction vacated. The plaintiffs in O.S.340/12 have filed I.A. 2627/12 seeking interim prohibitory injunction restraining the respondent and his men from reducing the existing width of the plaintiff C schedule pathway and not to put up any structures in the plaintiff C schedule pathway. A commission was taken out in this suit. The plaintiff in O.S.315/12 states that the defendants therein (ie; the plaintiffs in O.S 340/12) have adopted the averments in their counter affidavit therein as their plaint in O.S.340/12. He prays that O.S 340/12 be stayed until OS.315/12 pending on the files of this court is adjudicated on merits. The plaintiffs in O.S.340/12 on the other hand filed IA.2845/12 stating that since parties to both the cases are the same and evidence to be adduced are also the same both O.S.315/12 and O.S 340/12 be tried together with O.S.340/12 as leading case.

4. Heard counsels for both sides.

5. Points for consideration:

1. Whether the subsequent suit ie; O.S.340/12 has to be stayed u/s.10 CPC?

2. Whether O.S.315/12 and O.S.340/12 need to be tried together?

6. Both the counsels have supported their pleadings with reported judgments. The commission report is marked as Ext.C1 and the rough sketch produced along with commission report is marked as Ext.C1 (a).

7. In the decision reported in (2013 KHC 4271 SC) in Aspi jal and Another Vs. Khushroo Rustom Dady Burjor, the Hon'ble Supreme Court has held that the

basic purpose and underlying object of S.10 of CPC is *to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdict by two courts in respect of the same relief and is aimed to protect the defendants from multiplicity of proceedings.* Further in Para 11 of said judgment of Hon'ble Supreme Court observed that the use of negative expression in S.10 ie, “no court shall proceed with the trial of any suit” makes the provision mandatory and the court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in S.10 of the code are satisfied. This view which finds support from a decision of this court in *National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara, 2005(2) SCC 256* in which it has been held as follows:- *The object underlying S.10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of S.10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of S.10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract S.10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. S.10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in S.10 are “the matter in issue is directly and substantially in issue” in the previous instituted suit. The words “directly and substantially in issue” are used in contradistinction to the words “incidentally or Collaterally in issue”. The petitioner in O.S. 340/12 relied on the decision of the Hon'ble Supreme Court in CA*

2082/98(AIR 2004 SC 3504) wherein it was held that *“the object of S.10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The section enacts merely a rule of procedure and a decree passed in contravention thereof is not a nullity. It is not for a litigant to dictate to the court as to how the proceedings should be conducted, it is for the court to decide what will be the best course to be adopted for expeditious disposal of the case. In a given case the stay of proceedings of later suit may be necessary in order to avoid multiplicity of proceedings and harassment of parties. However, where subsequently instituted suit can be decided on purely legal points without taking evidence, it is always open to the court to decide the relevant issues and not to keep the suit pending which has been instituted with an oblique motive and to cause harassment to the other side”*. They have further relied on decision of Hon'ble High Court of Kerala(2009(2) KLT 975) wherein the Hon'ble High Court has relied on Full Bench decision reported in (1976 KLT 279) where in it was observed that *“for the joint trial of suits first and foremost it is a concern of the court and not of the parties whether a joint trial of the suits is warranted. The power of the court to consolidate suits is not hedged by any statutory interdictions and in deciding that question whether the suits to be consolidated arise from distinct and different cause of action have no significance. Consolidation of two suits need not necessarily be any agreement of parties, for, if a court after hearing parties feels that in the interest of justice it is necessary that two or more proceedings should be tried together, it is open to it to order so to avoid repetition of the same evidence in the different cases or to avoid possibility of conflicting decisions in those cases or for other justifying reasons.”*

8. I find that principles laid down in all these decisions give utmost clarity as to what is stated in S.10 CPC that is to say that in case two suits involving the same parties arising out of same cause of action and substantially the same issue to be

decided are filed, later suit shall be stayed by the court. Further it is trite that it is the concern of the court and not the parties whether joint trial of the suit is warranted or not. In the present case, cause of action, matter in issue and dispute to be decided are one and the same. Hence the only course of action to be taken has to be in compliance with S.10 of CPC, that is to stay the subsequent suit ie, OS.340/12.

In the result, I.A.No. 2770/12 in O.S.340/12 is allowed and O.S.340/12 is stayed u/s 10 of CPC. IA.2845/12 for joint trial filed by the plaintiff in O.S.340/12 is dismissed.

Confdl. Asst. transcribed and typed by her and corrected by me and pronounced in this open court on this the 6th day of January 2014.

Sai Vani K.R.
Additional Munsiff

APPENDIX :

Exhibits for both sides:- Nil

Witness for both sides: Nil

Court Exhibits:-

C1 30.11.2012 Commission Report filed by Adv.Sajan Antony
C1(a) Rough Sketch

Additional Munsiff

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compd by: