

IN THE COURT OF THE MUNSIF, KOLLAM

Present : Smt. Ragi.S., Principal Munsiff

On Saturday, the 26th day of October, 2024/4th day of Karthika, 1946.

IA.No.04/2024 in OS. 47/2022

Between

Petitioner/Original
Defendant:-

Sinu Subair, Aged 31 years,
S/o Subair, Rahuman Manzil,
Mahatma Nagar 59 B, Pallimukku,
Vadakkevila P.O , Kollam 691 010

By Adv. Sri. Shaji.P. Aziz.

And

Respondent/
Original Plaintiff :-

Noorjahan, aged 52 years, W/o A.A.Salim,
Anaz Manizl, Decent Junction P.O,
Thrikkovilvattom, Kollam.

By Adv. Sri. Injakkal D. Pramod Kumar.

This petition is filed by the Petitioner/original defendant under Sec.151 and 10 of the Code of Civil Procedure and this petition coming on for hearing before me on 18/10/2024 and the court on 26/10/2024 passed the following:-

ORDER

This IA has been filed by the petitioner to stay the suit U/s.10 of Code of Civil Procedure.

2. Petitioner is the defendant in this case. Petitioner contended that she filed an OP No.1333/2021 before the Family Court, Kollam to declare sale deed No.1289/18

of Eravipuram SRO is null and void and the plaintiff herein is one of the respondent in that OP. Said OP is still pending before the Hon'ble Family Court, Kollam. The subject matter of the above numbered suit and OP 1333/2021 are one and the same and the parties are also same. Since the parties and subject matter of the suit are one and same the trial of this case is to be stayed. Hence the IA.

3. Respondent filed objection by contending that he is the bonafide purchaser of plaint schedule property. He purchased the property after giving valid sale consideration to the seller who is the father in law of the petitioner. Hence there is no possibility to declare sale deed No.1289/2018 of Eravipuram SRO was null and void. The intention behind this IA is only to harass the plaintiff. OS 47/2022 couldn't be stayed until the disposal of OP 1333/2021 as sought by the petitioner. OS 47/2022 and OP 1333/2021 are filed on the basis of different causes of action and relief sought in those cases are also different. Hence it will not comes under the purview of Sec.10 of Code of Civil Procedure. Hence prayed for the dismissal of IA.

4. Now the only point that arises for consideration is:

Whether the trial of the suit is to be stayed u/s.10 of the Code of Civil Procedure until the disposal of OP 1333/2021.

5. Heard both sides.

6. **The point:-** OS 47/2022 is filed for recovery of possession of B schedule building from the petitioner/defendant and to recover an amount of Rs.25,000/- per month as damages from 25/09/2021 till the date on which the defendant vacates the premises and for permanently restraining the defendant from trespassing and

committing waste in plaint A schedule property and the B schedule building, on 17/01/2022. Plaintiff produced copy of original petition in OP No.1333/2021 along with the plaint. Upon reviewing the OP, it is found that the plaintiff herein is the 3rd respondent in the said OP and the defendant is the petitioner therein. OP No.1333/2021 seen filed to declare the sale deed No.1289/2018 of Eravipuram SRO as null and void and for permanently restraining the respondents from making any obstructions to the peaceful enjoyment of the property by the petitioner and from committing any waste therein. The plaintiff herein claimed title over the plaint schedule property on the basis of the very same sale deed No.1289/2018 of Eravipuram SRO. The subject matter of this suit and OP 1333/2021 are one and the same. In **Aspi Jal and Another** Vs. **Khushroo Rustom Dady Burjor** 2013 KHC 4271 the Hon'ble Apex Court held that *"for applicability of Sec.10, the entire subject matter of two suits must be the same. The basic purpose and the underlying object of Sec.10 of the code 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"*. Herein this case, the subject matter of OS 47/2022 and OP 1333/2021 are one and the same and the parties also same. Hence inorder to avoid the possibility of contradictory verdicts by two courts in respect of the same subject matter, I am of the view that Sec.10 of Code of Civil Procedure can be invoked in this case. In the result, IA allowed OS 47/2022 is stayed until the disposal of OP 1333/2021.

In the result, IA allowed. No costs.

(Dictated to the C.A, transcribed and typed by her, corrected and pronounced by me in open court on this, the 26th day of October, 2024).

Sd/-
Ragi.S.,
Principal Munsiff.

APPENDIX : NIL

Id/-
Principal Munsiff

// True copy//

Sd/-
Ragi.S.,
Principal Munsiff

Typed by : Marybindu. C.
Compared by : Sandhya. S