

IN THE COURT OF THE MUNSIFF OF KANNUR

Present: Smt. Manju P., Additional Munsiff

Monday, the 9th day of November, 2020

(18th Karthika, 1942)

IA.1204/2019 In OS.258/2017.

Pushpavalli C.C., D/o. Narayani Amma,	}	
W/o. Janardhanan, aged 70 years, Old No. 8 A,	}	Petitioner/ Plaintiff.
new No.12, 6 th Cross Road, LIC Colony,	}	
Pammal, Chennai – 75, Tamil Nadu.	}	

Vs.

1 C.C. Saraswathi, D/o. Narayani Amma,	}	
aged 80 years, Chenicheri House, Edakkepuram,	}	Respondents/ Defendants.
Kannapuram amsom desom, P.O. Cherukunnu,	}	
Kannur Taluk & District, Pin:670301.	}	
	}	
2 C.H. Unnikrishnan, D/o. Narayani Amma,	}	
aged 68 years, 'Sreekripa', Mangad, Kalliasseri	}	
amsom, P.O. Kalliasseri, 670562,	}	
Kannur Taluk & District.	}	

This petition coming on 6th day of November, 2020 for final hearing before me in the presence of Sri. P. Sajeelv, Advocate for petitioner and of Sri. C. Krishnan, Advocate for respondents, and having stood over to this day for consideration, the court passed the following:-

ORDER

This interlocutory application is filed by the petitioner who is the plaintiff in O.S 258/2017 under Section 10 of C.P.C on 30.03.2019 to stay all further proceedings in O.S 258/2017.

2. **Brief of the Interlocutory Application:-** It is averred that the petitioner is the plaintiff in O.S 258/2017 and that the suit is filed for partition of the plaint schedule properties over which the parties got share on the strength of partition deed and on the death of co-sharer subsequent to partition. It is averred that O.S No. 312/2009 is pending before the Hon'ble Additional Sub Court, Thalassery for partition of the property along with other items, in which the earlier partition is challenged. It is averred that the plaintiff and defendants have got right over the property by virtue of the partition deed, which is under challenge in O.S No. 312/2009. It is averred that the Hon'ble Sub Court ordered the partition of the property by accepting the claim put forward by the plaintiff, the person excluded from the partition. Hence, it is averred that O.S 258/2017 based on the said partition deed cannot be proceeded with until the final order is passed in O.S No. 312/2009 before the Hon'ble Additional Sub Court of Thalassery. Hence it is prayed that all further proceedings in O.S 258/2017 may be stayed by the court till the final disposal of O.S No. 312/2009 before the Hon'ble Additional Sub Court, Thalassery in the interest of justice.

3. **Brief of the counter statement:-** It is contended that the petition is not maintainable either in law or on facts. It is also contended that no document is produced by the petitioner to show that the subject matter involved in O.S 258/2017 is the subject matter

involved in O.S 312/2009 of Additional Sub Court, Thalassery. It is contended that the allegation contained in the affidavit in support of the petition is not sufficient to invoke the provision of Section 10 C.P.C. It is also contended that if O.S 312/2009 before the Additional Sub Court, Thalassery is for partitioning the property involved in O.S 258/2017, then the second suit for partition of the same property is not maintainable. It is contended that hence O.S 258/2017 is not liable to be stayed under Section 10 of C.P.C. Hence it is prayed that this court may be pleased to dismiss the petition with costs to the respondents.

4. **The sole point to be considered is whether all further proceedings in O.S 258/2017 can be stayed u/s 10 of C.P.C till the final disposal of O.S 312/2009 of Hon'ble Additional Sub Court, Thalassery?**

5. Heard both sides.

6. **The point:-** I perused the application and counter filed to the application. I also perused the memo filed by the counsel for the plaintiff on 23.01.2020 in which it is stated that Jyothi Kumari, daughter of the 1st defendant has filed A.S No. 59/2019 before Additional District Court-III, Thalassery whereby the plaint schedule property in O.S 396/2017 along with the large extent of property was partitioned. No counter was filed by the respondent herein to the memo filed by the counsel for the plaintiff. It is true that O.S 258/2017 is a suit for partition and O.S 312/2009 is also a suit for partition. The counsel for the plaintiff/petitioner herein submitted that documents are filed in I.A 102/2020 in O.S 396/2017 and therefore I perused the documents filed along with I.A 102/2020 in O.S 396/2017. On

verifying those, it is found that it is not true to contend that the petitioner herein has produced no documents to show that the property involved in O.S 258/2017 is the property involved in O.S 312/2009. It is true that the subject matter involved and the parties in O.S 258/2017 are the same in O.S 312/2009 of Hon'ble Additional Sub Court, Thalassery. It is also decipherable from the memo filed that appeal is preferred by the daughter of the 1st defendant challenging the judgment passed in O.S 312/2009. Therefore, I am of the opinion that since the matter in issue in O.S 258/2017 is directly and substantially in issue in O.S 312/2009 this court should not proceed with O.S 258/2017 until the final disposal of O.S 312/2009 and therefore further proceedings in O.S 258/2017 can be stayed u/s 10 of C.P.C.

7. In the result, all further proceedings in O.S 258/2017 is stayed till the final disposal of O.S 312/2009 of Hon'ble Additional Sub Court, Thalassery.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in virtual sitting through google meet on this the 9th day of November, 2020)

ADDITIONAL MUNSIFF.

mmh/-

Fair Order in
IA.1204/2019 IN
OS.258/2017.

Dated.09/11/2020.

