

IN THE COURT OF MUNSIFF, THIRUVALLA

Present:-Sri. Aravind S.J, Munsiff.

Thursday the 21st day of August 2025/ 30th day of Sravana 1947 SE.**IA 05/2025 in OS 37/2019**

Between

1. Solomon.K.Varghese, Koloorthadathil House, Thuvayoor South P.O, Kadampanadu Village, Adoor Taluk, Pathanamthitta.
2. Mary Solomon, W/o Solomon.K.Varghese, Koloorthadathil House, Thuvayoor South P.O, Kadampanadu Village, Adoor Taluk, Pathanamthitta.

(Adv. Eapen A.C)

Petitioners
Defendants 4&5

And

1. Annamma George, aged 86, W/o late V.T.George, PRIJA 18 A, Varampathu House, Pothujanam Road, Thiruvananthapuram, rep. By Power of Attorney Holder Ajish.V.John
2. Thomas George, aged 56, S/o late V.T.George, PRIJA 18 A, Varampathu House, Pothujanam Road, Thiruvananthapuram, rep. By Power of Attorney Holder Ajish.V.John
3. Andrews George, aged 54, S/o late V.T.George, PRIJA 18 A, Varampathu House, Pothujanam Road, Thiruvananthapuram, rep. By Power of Attorney Holder Ajish.V.John
4. Beena George John, aged 51, D/o V.T.George, PRIJA 18 A, Varampathu House, Pothujanam Road, Thiruvananthapuram now residing at 9233 Cold Hollow Lane, Missouri City, Texas 77459, USA rep. By Power of Attorney Holder Ajish.V.John, aged 51, S/o Varampathu George Johny, residing at 731261A, Varampathu Chathiath, Pachalam P.O, Kochi, Ernakulam Village.

Respondents
Plaintiff &
Defendant 1 to 3

5. C.V.P Properties Pvt. Ltd, having its Regd. Office at Cross Junction, Thiruvalla rep by the Managing Director John.C.P.
 6. John.C.P, S/o John.C.Paulose, Chandraviruthil House, Thiruvalla P.O & Taluk, Pathanamthitta .
- (Adv. V.A.Joseph for R1 to 4,
Adv. Kurien Joseph for R5 & R6)

This petition is filed under section 10 of the Code of Civil Procedure.

This petition having been finally heard on 19.08.2025 and stood over for consideration on 21.08.2025 on the same day the court passed the following:-

ORDER

The petition is filed under S. 10 of CPC.

2. The Petition averments in brief are as follows: The petitioners are the 4th and 5th defendants in the suit. The plaintiffs had filed the suit for a decree of perpetual prohibitory injunction against the defendants from trespassing into the plaint schedule room. The case was posted for trial on 09-07-2025. The petitioners had purchased the plaint schedule shop room from the 1st plaintiff, her deceased husband V.T. George and defendants 1 and 2 by paying valid consideration through sale deed No. 2302/2004 of the Thiruvalla SRO. The 1st plaintiff and her deceased husband along with defendants 1 and 2 have executed the sale deed in favour of the petitioners on 03-08-2004 suppressing the compromise decree dated 08-03-2004 in O.S. 86/2003 of the Sub Court, Tiruvalla collusively obtained by them with defendants 1 and 2. On 10-08-2010, the petitioners got information about the collusive decree and they have filed a suit before the Hon'ble Sub Court, Tiruvalla as O.S. 147/2010 against defendants 1 and 2 and 1st plaintiff and her deceased husband Mr. V.T. George for declaring their right over the plaint schedule property. The said suit was dismissed by the Hon'ble Sub Court. Thereafter the petitioners had filed appeal before the Hon'ble District Court and it was also dismissed. The subject matter in the present case and in O.S 147/2010 of the Sub Court are one and the same. The petitioners have already filed a

second appeal before the Hon'ble High Court of Kerala as RSA No. 193/2019 and the same is pending before the Hon'ble High Court of Kerala. The parties in this case and the said appeal pending before the Hon'ble High Court of Kerala and the subject matter in both the cases are one and same. The above said appeal is in continuation of O.S. 147/2010 of the Hon'ble Sub Court, Thiruvalla. The present suit is to be stayed till the final disposal of RSA No. 193/2019 which arose from O.S. 147/2010 of the Sub Court, Tiruvalla. Hence the petition.

3. The plaintiffs filed objection contending as follows: The petition is not maintainable either under law or on facts. It is false to allege that the petitioners had obtained the plaint schedule property by virtue of sale deed No. 2302/2004. The room which was transferred to the petitioners is not room bearing No. 1/1 and they have only obtained right to construct the building bearing No. 1/1. The father of the plaintiffs 2 to 4 and the husband of the 1st plaintiff, Sri. V.T. George had filed a suit as O.S. No. 86/2003 against the 1st and 2nd defendants herein and the said suit was compromised between the parties. It was agreed that the rooms bearing No. 1/1 and 1/2 was to be constructed before 05-09-2004 and the same was to be transferred to Sri. V.T. George. It was also agreed that if defendants 1 and 2 did not do so within the period specified, the said V.T. George had right to file execution petition before the court. The said V.T. George had obtained delivery of the said property by virtue of the proceedings in E.P. No. 56/2004 on 23-03-2005. The right to construct the building was only granted by virtue of deed No. 2302/2004 and its structural works were already completed. The petitioners had right to complete the structure of the building bearing No. 1/1 and the said right alone is granted to the petitioners for an amount of Rs. 75,200/-. The 1st plaintiff and her husband, Sri. V.T. George had not executed any documents with respect to the property in favour of defendants 4 and 5. As the defendants 1 and 2 did not complete the agreed work as agreed in the compromise petition, the said V.T. George was also entitled to an amount of Rs. 6,20,000/- as compensation and the said amount was obtained by him. O.S. 147/2010 was filed for setting aside the decree in O.S. 86/2003 and for recovery of possession. The said suit

was dismissed on 19-03-2013. The appeal as A.S. 91/2013 filed before the Hon'ble Appellate court was dismissed on 18-10-2016 and it is true that second appeal was filed before the Hon'ble High Court of Kerala as RSA No. 193/2019. However the said suit was not called in the Hon'ble High Court of Kerala after 2021. There is no need to stay the proceedings in the present suit. The present petition is filed only to protract the trial of the court. Hence, the present petition is liable to be dismissed.

4. Heard both sides.

5. The following points arose for consideration

1. Whether the suit is liable to be stated under S. 10 CPC?

3. What is the order as to costs?

6. **Point No.i:-** The bone of the contention of the petitioners who are the 4th and 5th defendants in the present suit is that they have filed O.S. 147/2010 before the Hon'ble Sub Court, Thiruvalla and with respect to the same subject matter, and the appeal against the dismissal of the said suit is pending before the Hon'ble High Court of Kerala as RSA No. 193/2019. It is contended that the subject matter and the parties in both the cases are the same and thus the suit is to be stayed till the disposal of the aforesaid RSA under S. 10 of CPC. Per contra, the Plaintiff had contended that the present petition is filed only to protract the trial of the case.

7. It is pertinent to consider S. 10 of CPC and the same is reproduced hereunder for easy reference. *“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].”*

8. Therefore, the court is precluded from proceeding with the trial of a suit

in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties. A perusal of the plaint would itself show that the plaintiffs have obtained possession of the scheduled rooms on 23-02-2005 through process of court in E.P. No 56/2004 which arose out of the compromise decree passed in O.S. No. 86/2003. It has also pleaded that a suit as O.S. 147/2010 was filed and that the said suit was dismissed by the Hon'ble Sub court and the appeal was also dismissed by the Hon'ble Appellate court. The decree passed in O.S. 147/2010 was produced and it would show that the same was filed by the petitioners herein against the 1st plaintiff and her husband Sri. V.T. George who is admittedly the father of plaintiffs 2 to 4 and against the 1st and 2nd defendants herein. It is an admitted fact that the said suit was filed for setting aside the decree passed in O.S. No. 86/2003 and for recovery of possession of the property scheduled herein.

9. The honourable Apex Court in **National Institute of Mental Health and Neuro Sciences v. C. Parameshwara** (AIR 2005 SC 242) held that *"The object underlying S.10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. 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". Therefore, S.10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject matter in both the proceedings is identical." As already stated the parties in both the suits are identical. The present suit could also be tried before the Hon'ble Sub Court. It is also well settled that the appeal is a continuation of the suit and S. 10 can be invoked to stay the further proceedings in the subsequent suit if an appeal is pending against the decree in the previously instituted suit.

10. It could be seen that the right and possession of the plaintiff over the plaint schedule property stems from the decree passed in O.S. No. 86/2003 and that the very decree is challenged by the petitioners in the previously instituted suit, O.S. 147/2010. The decision in the earlier suit for declaration and recovery would operate as res judicata in the present suit. Therefore it cannot be said that the subsequent suit is based on a different matter in issue. This court in the present suit has to find whether petitioner is in lawful possession of the plaint schedule property and this is directly interconnected with the relief sought for in O.S. 147/2010. Therefore this court is of the opinion that this is a fit case to invoke S. 10 of CPC. Thus point No.1 is found in favour of the petitioner.

11. **Point No. 2:** Based on the discussions in point No. 1, the present petition is liable to be allowed.

In the result, the petition is allowed as follows:-

- (1) O.S. No. 37/2019 is stayed under S. 10 of CPC till a decision is passed in RSA. No. 193/2019 by the Hon'ble High Court of Kerala.**
- (2) There is no order as to costs.**

Dictated to the Confidential Assistant, transcribed, and typed by her, corrected, and pronounced by me in open court on this the 21st day of August, 2025.

Sd/-

ARAVIND S.J.
MUNSIFF

APPENDIX

NIL

//True copy//

Id/-
MUNSIFF

MUNSIFF

Fair/ copy of order in
I.A No 05/2025 in OS 37/2019
Dated 21.08.2025