

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,
I Additional District Munsif, Nagercoil.

Monday, on the 25th day of November, 2024.

I.A. No. 4 of 2024

in

O.S. No. 252 of 2016

CNR. No.TNKK04-000497-2016

1. Rajakani

2. Kavitha

3. Selvi

4. Suyambukani

... Petitioners/Defendants

-vs -

Elizabeth Mary

... Respondent/Plaintiff

This Petition came before this Court on 12.11.2024 for final hearing in the presence of Mr. S. Muthukaruppa Pillai, Learned Counsel for the Petitioners and Mr. K. Subhakaravel, Learned Counsel for the Respondent. Upon hearing the Arguments of both sides and Upon perusing the case records and having stood over till date for Consideration, this Court hereby delivers the following:

ORDER

1. The Petitioner had filed the above Petition Under Section 10 and 151 Code of Civil Procedure, seeking an order to stay the proceedings in the above suit, till the

Final Judgement is passed in A.S. No. 17 of 2022 on the First Additional Subordinate Judge, Nagercoil.

2. The Defendants have filed the above Petition. The case is posted for further examination of Plaintiff. In connection, with the suit property, Appeal Suit No. 17 of 2022 is pending on the file of the I Additional Sub-Ordinate Court, Nagercoil. As per the Judgement passed in O.S. No. 471 of 2012 on the file of Munsiff Court, Nagercoil, the suit property, belongs to the Petitioners. The Possession of the Property was given to the Petitioners in the Execution Petition No. 25 of 2017 filed in O.S. No. 471 of 2012.

3. In view of an Opinion, stated in another case, before the Hon'ble Madras High Court, Madurai Bench, stating that if they want, they could file Regular Appeal against the Judgement made in O.S.No. 471 of 2012, the Respondent had filed A.S.No. 17 of 2022, against the Judgement made in O.S.No. 471 of 2012, belatedly. The above case is being conducted, regarding the delivery of possession of the suit property, through Court in O.S.No. 471 of 2012. The property in the above suit and A.S.No. 17 of 2022 are same.

4. The Appeal Suit No. 17 of 2022 against the Judgement dated 10.02.2015 made in O.S. No. 471 of 2012 is pending in the stage of hearing Arguments. If the above suit is proceeded with, prior to passing Final Order in A.S. No. 17 of 2022, there is high possibility of passing contradictory Judgements. Hence it is good to conduct, the above suit, after passing of Final Order in A.S.No. 17 of 2022. If the

above suit is proceeded with prior to disposal of A.S.No. 17 of 2022, the Petitioners will be put to many hardship and loss. Hence the above Petition, seeking stay.

5. The Respondent had filed counter stating that the above Petition is unsustainable under law, frivolous, vexatious in nature. The Respondent has filed the above suit seeking to declare the decree dated 10.02.2015 passed in O.S.No.471 of 2012 on the file of Principal District, Munsiff Court, at Nagercoil as null and void and unenforceable under law and to declare the symbolic paper delivery effected by the defendants on the basis of the decree in O.S. No. 471 of 2012 is also null and void and unenforceable under law and will not bind the Plaintiff's Right over the Plaint Schedule Property and also for Permanent Injunction, against the Defendant, from interfering with the Plaintiff's Possession and enjoyment of the Plaint Schedule Property.

6. The Respondent had stated that he had purchased the Plaint Schedule Property from S.Paulpandian, Power Agent of Muthusamy Nadar, Jegan, Tamilselvi under Sale Deed dated 19.06.2006 bearing Doc. No. 2139 of 2006 Kottaram Sub-Registry. Upon Purchase of the Plaint Schedule Property measuring eight cents, she entered possession and started enjoying the same by effecting mutation in her name in all Revenue Records.

7. The Respondent had further stated that when the Original Owner of the Plaint Schedule Property was in possession and enjoyment of the Plaint Schedule Property along with larger extent of Property, the Petitioner's mother Thanganadachi

had trespassed into a Portion of the property of the above said Muthusamy Nadar and put up a thatched shed thereon. The Petitioner's mother had also executed a Settlement Deed in favour of the Petitioners, in respect of the Northern Portion of Thirty Three Cents out of the Total Extent of Sixty Five Cents. Hence the Original Owner Muthuswamy filed O.S. No. 163 of 2004 against the Petitioners' mother for recovery of possession and to set aside the Settlement Deed executed by the Petitioners' mother, in their favour. The said suit was decreed on 08.04.2004, as prayed for.

8. The Decree Holder Muthusamy filed E.P. No. 373 of 2004 and taken delivery of possession of the Property from the Petitioners' mother on 01.12.2004. Thereafter the Original Owner Muthuswamy divided the entire sixty five cents into many Plots and Sold the same to many persons. The Respondent is one among the Purchaser of the Plots. By Concealing all material facts, the Petitioners have filed suit in O.S.No. 471 of 2012 before the Munsiff Court, Nagercoil against the Previous Owner of the Property namely Muthusamy and his Children based on the invalid Settlement Deed bearing Doc. No. 1393 of 2003, Kottaram SRO., executed by their mother.

9. Based on the above said decree, the Petitioners filed Execution Petition and came to the Property with Rowdy Elements and tried to evict the Respondent and others from the Plaintiff Schedule Property. Hence the Respondent had verified the Papers regarding the suits and filed the above Suit. This Respondent is not aware of

the Pendency of the Appeal Suit No. 17 of 2022 before the First Additional Sub-Ordinate Court at Nagercoil. The Respondent is not a Party to that Appeal Suit. The Respondent has no knowledge about the Pendency of the Petition before the Hon'ble High Court and about the alleged Opinion given to file Regular Appeal. The parties are different in this case and A.S.No. 17 of 2022.

10. The Plaint Schedule Property has not been recovered by the Petitioners in E.P. No. 25 of 2017 in O.S.No. 471 of 2012. The above suit is a Comprehensive Suit filed, challenging the decree and symbolical paper delivery. The nature of the relief sought in the above suit and the nature of the relief sought in A.S.No. 17 of 2022 are not the same. The above suit is Previous Suit, filed during the year 2016. The Appeal Suit No. 17 of 2022 is filed only during the year 2022. The issues framed in this suit is different from A.S.No. 17 of 2022. There is no chance of conflict of Judgement. There is no merit in the above Petition. The Petitioners are not bonafide. The above suit, need not be stayed. Hence the Respondent Prayed for dismissal of the above Petition.

11. The Point for consideration is whether the above Petition has to be allowed or not?

12. In order to invoke Section 10 of Code of Civil Procedure, it has to be seen, whether the Petitioner has made out a case, by fulfilling the ingredients of that Section. The Petitioner had exhibited the Decree dated 10.02.2015 made in O.S.No. 471 of 2012 on the file of the Principal District, Munsiff Nagercoil as Ex. P1. The

Petitioner had exhibited the Memorandum of Grounds of Appeal in A.S.No. 17 of 20221 as Ex. P2. In Ex. P1, the Plaintiffs are 1. Rajakani 2. N. Kavitha, 3. N. Selvi and N. Suyambukani all daughters and son of Thanka Nadachi. The Defendants therein are 1. Muthuswami, 2. Jegan son of Muthusami and 3. Tamilselvi daughter of Muthuswami. The suit in O.S.No. 471 of 2012 has been filed seeking Declaration, Recovery of Possession and Injunction and for recovery of Past Mense Profit. The Property in O.S. No. 471 of 2012 is 0.26.5 Are, Puraiyidam, Comprised in Old Sy. No. 1101, Re-Survey No. 547/3, Kanyakumari Village. That suit has been decreed as Prayed for.

13. The Ex. P2 Appeal Memorandum has been filed by 1. C.Selva Daniel, 2. S.Fathima and 3. Kalaiselvi Respondents 3 to 4 in E.P.No. 25 of 2017 in O.S.No. 471 of 2012. The Respondents in the Appeal Suit No. 17 of 2022 are 1. Rajakani 2. N. Kavitha, 3. N. Selvi and N. Suyambukani all daughters and son of Thanka Nadachi. The Ex. P2 Appeal Memorandum has been filed against the Decree dated 10.02.2015 made in O.S.No. 471 of 2012 on the file of the Principal District, Munsiff Nagercoil. In Ex. P2, prior to the Grounds of Appeal, the Appellants therein have narrated the Statement of Facts, the same would disclose that on 27.01.2011 the 1st Appellant therein namely Selva Daniel had purchased 6.355 cents of land in Re.Sy. No. 547/2A1 and 547/3A, Kanyakumari Village, the 2nd Appellant therein namely S.Fathima had purchased 5.34 cents of land in Re.Sy. No. 547/2A and 547/3, Kottaram Village, along with more areas also and the 3rd Appellant therein namely Kalai Selvi had purchased 3.469 cents of land in Re.Sy. No. 547/3, Kottaram

Village, from Xavier Amalan, who had purchased property from the Plaintiff in O.S. No. 163 of 2004 and his children Jegan and Thamizh Selvi through their Power Agent Paul Pandian.

14. The learned counsel for the Petitioner had contended that though the Appellants in Ex. P2 A.S.No. 17 of 2022 are different persons, they also claim right under the Plaintiff in O.S.No. 163 of 2004 as like the Respondent/Plaintiff herein. The suit schedule property in the above suit is said to situate in Kanyakumari Village, however in Ex. P2, the 2nd and 3rd Appellants' property is said to situate in Kottaram Village, however in it's Schedule at page No. 8, it is described as Kanyakumari Village. The Appellants therein as well as the Respondent herein have pleaded as if they have purchased their respective extent of land from the Plaintiff in O.S. No. 163 of 2004 and his children Jegan and Thamizh Selvi through their Power Agent Paul Pandian, prior to the institution of the suit in O.S. No. 471 of 2012.

15. Ex. P1 Suit in O.S.No. 471 of 2012 has been filed against the Respondent's Predecessor-in-title, after they have divested their interest in favour of the Respondent herein. In Ex. P1, it is seen that the 1st Defendant therein namely Muthusami had died and the 2nd and 3rd Defendants therein namely Jegan and Tamilselvi have remained exparte. It is commonly seen that a Person, who had divested his interest in the property, shows no interest to defend the suit instituted against them, in respect of that Property, already sold by him. The Petitioners have not stated as to whether they are aware of the Sale in favour of the Respondent herein

and Appellants in Ex. P2, prior to instituting Suit in O.S. No. 471 of 2012. Apparently it is seen that the Respondent herein claims right under the Defendants in O.S.No. 471 of 2012, however such purchase made by the Respondent is not pending suit or after the disposal of the suit in O.S. No. 471 of 2012.

16. As discussed above, Only after the Purchase of the Respondent herein from the Defendants in O.S. No. 471 of 2012, the very suit in O.S. No. 471 of 2012, has been instituted by the Petitioner. As such, it cannot be held that the Respondent herein is claiming right under the Defendants' in O.S. No. 471 of 2012 in the context of Section 10 of the Code of Civil Procedure. Moreover, the Respondent had pleaded that even prior to suit in O.S. No. 471 of 2012, the Respondent's predecessor-in-title had filed O.S.No. 163 of 2004 and obtained decree in their favour against the Petitioners' herein. It apparently appears that the Parties have been filing one suit after another by suppressing the earlier suit. Apart from that it is also proper to mention that the Respondent herein are not claiming right under the Appellants in A.S.No. 17 of 2022.

17. Apart from the above finding i.e. the Respondent herein and the Appellant in Ex. P2 are Different and that the Respondent is not claiming under the Appellants in Ex. P2 or the Defendants in O.S. No. 471 of 2012 in the context of Section 10 of Code of Civil Procedure, the next point that requires answer in the above Interlocutory Application is whether conducting Trial in the above suit, will invite contradictory Judgement in the above suit and Ex. P2 Appeal Suit No .17 of 2022. In

O.S.No. 471 of 2012, the Petitioners herein have sought for declaration of title, recovery of possession and for Mense Profit. In the Present Suit namely O.S.No. 252 of 2016, the decree passed in O.S. No. 471 of 2012 and delivery effected therein are sought to be declared as null and void and Permanent Injunction, relief is also claimed. As such, in Ex. A2 Appeal Suit, the granting of relief by the Trial Court by answering the issues framed in O.S.No. 471 of 2012 regarding the Petitioners title, Right to recovery possession and claim Mense Profit, will be decided. In the above suit, the pivotal issue that has to be answered is Whether the Judgement and Decree passed in O.S. No. 471 of 2012, granted against the Respondent's Predecessor-in-title, in a suit instituted against them, after they having divested their interest over the suit property, will bind the Respondent/Plaintiff. As such there won't be any possibility of Contradictory Judgements.

18. Though the Appellants in Ex. P2 have challenged the decree dated 10.02.2015 made in O.S. No. 471 of 2012 in entirety, they have purchased only portions of the Property covered in O.S.No. 471 of 2012, if at all the Appellants in Ex. P2 succeeds in their Appeal, the decree obtained in O.S. No. 471 of 2012 will remain setaside in respect of that portion of the Property, purchased by the Appellants therein. With regard to the above suit schedule property, the Respondent herein has to work out his Remedy Independently i.e. by Prosecuting the above suit. In case, if Ex.P2 Appeal fails, the same will not bind the Respondent herein, for the reason that the Appellants in Ex. P2 is not conducting the case on behalf of the Respondent/Plaintiff herein. As such, the Respondent/Plaintiff need not await the out

come of A.S.No. 17 of 2022, as the matter in issue in it and the above suit are not directly and substantially in issue in the above suit and that the parties are not same or not claiming under the parties in that suit. Hence this Court is of the considered view that the proceedings in the above suit, need not be stayed i.e. the Petitioners are not entitled for the Petition Relief.

In the result, the above Petition is dismissed. No Cost.

Dictated to the Steno-Typist, transcribed and typed by her in the Computer, corrected and pronounced by me, in open Court this, the 25th day of November, 2024.

Sd/-

I Additional District Munsif,
Nagercoil.

Petitioners' side witnesses : Nil.

Petitioners' side documents :

Ex.P1	25.04.2022	Plaint copy of A.S. No. 17/2022.
Ex.P2	10.02.2015	Decree in O.S. No. 471/2012

Respondent's side witnesses & documents : Nil.

Sd/-

I Additional District Munsif,
Nagercoil.

*I ADMCourt, Nagercoil.
Draft/Fair Order in
I.A.No.4/2024 in
O.S.No.252/2016
Date:25.11.2024.*