

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE,
ADDITIONAL DISTRICT COURT, SIVAGANGAI.**

**Present: Tmt.R.Sathiathara,M.A.,M.L.,
Additional District Judge,
Additional District Court,
Sivagangai.**

Dated Wednesday, the 30th day of November 2022.

**2052 Thiruvalluvarandu Subakrith on Wednesday 14th day of
KarthigaiThingal**

I.A.No.1/2021

in

OS.No.40/2015

S.Govindarajan ... petitioner / defendant

-//Vs//-

P.Nagendran ... Respondent / Plaintiff

This petition is coming on 21.11.2022 before me in the presence of Thiru.K.Alagappan, counsel for the Petitioner and Thiru.L.Saravanan, counsel for respondent and on perusal of records and documents and on considering the evidence and on hearing arguments this court delivered the following

ORDER:

Petition filed under section 10 and 151 of CPC to stay the further proceedings of the present suit as stay obtained in O.S.No.64/2020 (Old O.S.No.158/2009).

The averments in the petition in brief is as follows:

2. The petitioner is defendant in the suit. This petitioner filed O.S.No.158/2009 (New O.S.No. 64/2020) on the file of District Munsif cum Judicial Magistrate court, Thiruppathur for the relief of declaration and permanent injunction and to declare the sale deed of respondent as null and void. In that suit this petitioner filed I.A.No.530/2017 to amend the plaint to include 3rd defendant and accordingly plaint was ordered to be amended on 25.10.2017. and amendment carried out and amended plaint filed and respondent / defendant filed written statement on 20.11.2020. Against the said order the respondent / defendant preferred revision on the file of Hon'ble Madurai Bench Madras High court in CRP (MD) No.2070/2008 and interim stay granted in CMP (MD) No.9164/2018 on 20.09.2018. The said suit itself counter claim for the present suit. Hence TROP No.1/2017 filed by the respondent in the District court, Sivagangai and it was allowed and the said O.S.No.158/2009 was transferred to this court and new Number assigned as O.S.No.64/2020. Since the suit filed by the petitioner is earlier

suit and the present suit cannot be proceeded as stay granted in the earlier suit and both parties are same and subject matter same this petition filed to stay the further proceedings of O.S.No.40/2015 in pursuance of stay order granted in earlier suit O.S.No.158/2009 (New O.S.No.64/2020)

The averments in the counter filed by the respondent in brief is as follows:

3. The respondent is ready and willing to proceed with the present suit and it has been held by Hon'ble Supreme court that stay already granted will be in force for further 6 months and as in the earlier suit stay granted on 20.09.2018 and more than 3 years expired there is no hindrance to proceed with the present suit and the revision petition filed against order in earlier suit is in no way connected with present suit. Hence petition to be dismissed.

4. Point to be decided:

1. Whether petition to be allowed to stay the further proceedings of the present suit as stay obtained in O.S.No.64/2020 (Old O.S.No.158/2009) as prayed for?

5. On the side of petitioner and respondent no oral and documentary evidence adduced.

Points for consideration:

6. The petitioner states that he filed the O.S.No.158/2009 (New O.S.No.64/2020) on the file of the District Munsif cum Judicial Magistrate, Thiruppathur for the relief of declaration and permanent injunction and to declare the sale deed of respondent as null and void. In that suit this petitioner filed I.A.No.530/2017 to amend the plaint to include 3rd defendant and accordingly plaint was ordered to be amended on 25.10.2017. and amendment carried out and amended plaint filed and respondent / defendant filed written statement on 20.11.2020. Against the said order, the respondent / defendant preferred revision on the file of Hon'ble Madurai Bench Madras High court in CRP (MD) No.2070/2008 and interim stay granted in CMP (MD) No.9164/2018 on 20.09.2018. The said suit itself counter claim for the present suit. Hence TROP No.1/2017 filed by the respondent in the District court, Sivagangai and it was allowed and the said O.S.No.158/2009 was transferred to this court and new Number assigned as O.S.No.64/2020. Since the suit filed by the petitioner is earlier suit and the present suit cannot be proceeded as stay granted in the earlier suit and both parties are same and subject matter same this petition filed to stay the further proceedings of O.S.No.40/2015 in pursuance of stay order granted in earlier suit O.S.No.158/2009 (New O.S.No.64/2020). The contention of the respondent is that the respondent is ready and willing to proceed with the present suit and it has been held by Hon'ble

Supreme court that stay already granted will be in force for further 6 months and as in the earlier suit stay granted on 20.09.2018 and more than 3 years expired there is no hindrance to proceed with the present suit and the revision petition filed against order in earlier suit is in no way connected with present suit. Though as per Section 10 of CPC no court shall proceed with the trial of the matter in dispute 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. The respondent filed TROP No.1/2017 to transfer the earlier suit O.S.No.158/2009 (New O.S.No.64/2020) to try along with present suit O.S.No.64/2020 (Old O.S.No.158/2009). Accordingly the said TROP allowed either for joint or simultaneous trial. Admittedly the parties are same and the subject matter of the both suit are same and the earlier suit is filed in the year 2009 and to enable the parties themselves to get the fruits of the decree and as the parties not taken steps for the interim stay already granted by the Apex court in the earlier suit to extend beyond 6 months as per the direction of the Hon'ble Supreme court and in the interest of justice the parties could proceed with the trial in the present suit also simultaneous with earlier suit as parties not taken steps to extend the interim stay already granted beyond 6 months as per the direction of the Hon'ble Apex court and as stay applied only by the petitioner here in earlier suit and he not opted for

extension and willing to proceed with trial and as the present suit is also of the year 2015 and to avoid dragging on the proceeding and in the interest of justice, the stay of the present suit under section 10 cpc will prolong the case further. Accordingly the point is answered as against the petitioner.

In the result petition dismissed. No cost.

Dictated to the typist and typed by him in the computer in my presence and corrected and pronounced by me in open court this the 30th day of November 2022.

Additional District Judge,
Sivagangai.

List of witness and documents on the side of the Petitioner and respondent: Nil

Additional District Judge,
Sivagangai.