

**IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,  
THANJAVUR.**

**Present :Tmt. A. Malarvizhi, M.L.,  
II Additional District & Sessions Judge,  
Thanjavur.**

**Wednesday the 10<sup>th</sup> day of April 2024  
(Thiruvalluvar Aandu 2054 –Panguni Matham 28<sup>th</sup> day)**

**I.A. No. 16/2024 in O.S. No.250/2023**

Nambikkai Mery

**.....Petitioner/defendant**

*/Vs/*

Savarimuthu

**.....Respondent/Plaintiff**

This petition having come up for final hearing before me on **1.4.2024** in the presence of **Thiru.K.Senthilkumar**, Advocate for the Petitioner/defendant and of **Thiru.A.Sagayaraj**, Advocate for the respondent/plaintiff and upon perusal of the entire material records pertaining to the case and the matter having stood over for consideration till this date, this court delivered the following

**ORDER**

(1) This petition has been filed by the petitioner under order 10 and 151 of CPC to stay the proceedings till the Judgment of suit O S 79/2022 on the file of the District Munsif court, Thanjavur.

(2) Heard both sides. Records perused. The petitioner/defendant filed the said I.A. for stay the further proceedings of the main suit O.S. No.250/2023. The petitioner counsel argued that, the main suit was filed by the respondent/plaintiff against the petitioner/defendant to declare the

respondent/plaintiff is the owner of the suit property with consequential relief of recovery of possession. The suit is at the stage of filing written statement. A suit in OS No 79/2022 was filed by the petitioner before the court of District Munsif, Thanjavur . The suit property of this suit and O.S 79/2022 are one and the same. The defendant of that suit is the plaintiff of this suit. O.S 79/2022 is filed for declaration of the sale deed dated 7.8.2018 in Document No 1669/2008 is null and void and consequential relief of permanent injunction against the 1<sup>st</sup> defendant who is the plaintiff of this suit. Since this suit OS 250/23 is subsequently filed between the same parties with respect to same property. The direct and substantial issue to be decided in both suits is whether the petitioner has executed sale deed dated 7.8.2008 in favour of the respondent of this suit is also same. The respondent filed this suit by suppressing the earlier suit O.S 79/2022. So the further proceedings of the suit has to be stayed u/s 10 of CPC till the disposal of the OS 79/2022.

(3) The respondent argued that the averments stated in the affidavit are neither maintainable in law nor on facts and the petition is not maintainable. The suit filed before this court is for larger relief than the relief sought by the petitioner/defendant before the Principal District Munsif Court, Thanjavur in O.S No 79/2022. Hence, both suit has to be tried together to avoid a multiplicity of proceedings and contradictory judgments. The petitioner/defendant should have filed a transfer original petition before the competent court. Instead of that this petition was filed which is not

maintainable. So, the petition is to be dismissed.

(4) Both side arguments and records considered. The following conditions must be satisfied for application of sec.10 of CPC

(i) There must be two suits, one previously instituted and the other subsequently instituted.

(ii) The matter in issue in the subsequent suit must be directly and substantially in issue in the previous suit.

(iii) Both the suits must be between the same parties or their representatives.

(iv) The previously instituted suit must be pending in the same court in which the subsequent suit is brought or in any other court in India or in any court beyond the limits of India established or continued by the Central Government or before the Supreme Court.

(v) The court in which the previous suit is instituted must have jurisdiction to grant the relief claimed in the subsequent suit.

(vi) Such parties must be litigating under the same title in both the suits.

It is found from the plaint in O.S 79/2022, It was filed on 22.3.2022. the plaintiff is the defendant of this suit and the defendant is the plaintiff of this suit. So, parties of both suits are same. This O.S 250/2023 was filed on 16.11.2023 which is the subsequent suit. The suit property of both suits are one and the same. The direct and substantial issue to be decided in both suits is whether the plaintiff of OS 79/2022 (defendant of O.S 250/2023) has executed sale deed in favour of the defendant of O.S 79/2022 (plaintiff of O.S 250/2023) with respect to the suit property. Therefore the conditions to invoke sec. 10 of CPC are applicable to this suit. Hence, this court decides to stay

the further proceedings of this suit, in order to avoid conflict of decisions.

Hence this petition is liable to be allowed.

In the result this petition is allowed.

Dictated directly to Steno-Typist Grade III, typed by her in computer, corrected and pronounced by me in the open court, this the **10<sup>th</sup> day of April 2024.**

**II Additional District & Sessions Judge,  
Thanjavur.**

**Petitioner and Respondent side  
Exhibits and Witnesses : Nil**

**II Additional District & Sessions Judge,  
Thanjavur.**

**Order**

**IA. 16/2024 in O.S.No.250/2023**

**Dated: 10.4.2024**