

IN THE COURT OF DISTRICT MUNSIF, LALGUDI

Present: Thiru.S.Pragatheeshwaran, M.A.,B.L.,
Principal District Munsif,
Lalgudi.

Tuesday the 14th day of July 2026

IA.No.09/2026 in OS.No.253/2019

1) Rajeswari

2) K.P.Selvam

...Petitioners/1,2 Defendants

VS

1) Jothi

...1st respondent/Plaintiff

2) Kannaiyan

3) Padhmavathy

4) Jeyalakshmi

..... 2 to 4 Respondents/3 to 5 Defendants

This petition has come up for final hearing on 14.07.2026 before this court in the presence of Advocate Mr.D.gowthaman, learned counsel of these Petitioner and Respondents set exparte, upon perusal of material records and having stood over for consideration till this day, this court delivers the following....

ORDER

Petition filed Under Section 10 of CPC

1) The petitioner/1st defendant has filed this petition under section 10 CPC to stay further proceedings till the disposal of AS.No.28/2019 on the file of Hon'ble Subcourt Lalgudi. The petitioner has further submitted that the respondent/Plaintiff has already filed a suit against this petitioner in OS.No.57/2017, wherein, the relief of Permanent injunction sought for by the respondent/plaintiff was not granted vide Judgement dated: 06.02.2019. The said OS.No.57/2017 filed by the respondent/plaintiff was allowed having regard to the other reliefs. The petitioner/1st defendant preferred an appeal against the said judgement before the Hon'ble Subcourt Lalgudi in AS.No.28/2019. The respondent/plaintiff did not file any appeal

against the said judgement. The issue regarding to the possession of the property was already decided in OS.No.57/2017, therefore, no appeal was filed by the respondent/plaintiff. Therefore, once the issue was decided and the same is pending at appellate stage, no 2nd suit on the very same issue be filed. Hence, this petition.

2) On the other hand, the respondent/plaintiff did not filed his counter despite sufficient opportunity given. Hence, respondent set exparte on 24.06.2026.

3) Now the question before this court that whether this petition is liable to be allowed or not?

4) Petitioner side enquiry heard. Upon perusal of material records, it is seen that the main suit is pending at the stage of cross continuation of Dw1. At this juncture, this present petition is filed to stay the proceedings till the disposal of AS.No.28/2019. Further it is seen that the certified copy of the judgement passed in OS.No.57/2017 dated: 06.02.2019 was marked as Ex.A5 in the main suit. Upon perusal of Ex.A5, this court has found that the issue regarding to the possession was framed and there is a finding on the issue was observed as possession follows title and possession of the suit property is only with the respondent/plaintiff, and further observed as the respondent/plaintiff has failed to prove the disturbance caused by the petitioner/defendant. On the ground that, respondent/plaintiff failed to prove the disturbance caused by the petitioner/defendant to his peaceful possession and enjoyment over the suit property, this court has denied the relief of Permanent injunction in OS.No.57/2017.

5) Therefore, It is clear that in OS.No.57/2017 this court has observed that respondent/plaintiff is in possession of the suit property by the principles possession follows title. Further the respondent/plaintiff has filed this present suit in OS.No.253/2019 as after the decree and judgement passed in OS.No.57/2017, on 02.09.2019, the petitioner/defendant attempted to interfere with the plaintiffs peaceful possession and enjoyment over the suit property. Therefore, this court has find that the cause of action for this suit is different from the findings rendered in

OS.No.57/2017, the alleged interference by the petitioner/defendant is only after the date of decree and judgement passed in OS.No.57/2017. Hence, this court has concluded that the appeal against the decree and judgement passed in OS.No.57/2017 is no way connected with the present cause of action.

6) It is useful to refer the dictum of Hon'ble Supreme court of India, held in "***Aspi-jal vs khushroo rustom dadyburjor 2013 (4) SCC 333***" wherein was held that section 10 applies only where the matter directly and substantially in issue are identical alone. Further this court has found that, to invoke Section 10 of CPC the matter directly and substantially in the issue must be identical in both suits, here in the case on hand, cause of action is different, therefore, this court holds that though the appeal is a continuation of the suit, the issue in both suits are not identical. Further this court has found that, the plea of *res subjudice* must be taken at the earliest possible stage and it ought not be allowed to take such a stand at the later stage of nearing conclusion of trial.

7) Hence, this court concluded that the reason adduced by the petitioner/defendant to stay the proceedings till disposal of AS.No.28/2019 is not satisfactory and untenable. With the above observation this court is inclined to dismiss the petition.

In the result, this petition is dismissed. No cost.

This order dictated by me to the steno-typist typed by him, corrected and pronounced by me in the open court this the 14th day of July 2026.

District Munsif,
Lalgudi.

Petitioners side witness and evidence - Nil

Respondents side witness and evidence – Nil

District Munsif,
Lalgudi.