

IN THE COURT OF I ADDITIONAL DISTRICT JUDGE, TIRUVALLUR

**PRESENT: Thiru.S.GANAPATHISAMY, B.A., B.L.,
I Additional District Judge, Tiruvallur**

Tuesday, the 11th day of October 2022

I.A.No.9/2022 in O.S.No.33/2014

G.R.Damodharan ... Petitioner / First Defendant

Vs.

1. G.R.Sridharan ... First Respondent / Plaintiff

2. G.R.Alavandar

3. G.R.Ramesh

4. Tmt.Manjula

5. Vinodh

6. Vivek

7. Vignesh

8. Tmt.Rasikala

9. Tmt.Gajalakshmi

10.Tmt.R.Kasthuri ... Respondents 2 to 10 / Defendants 2 to 10

This Petition coming on 29.08.2022 before me for final hearing in the presence of Mr.G.Srinivasan, learned counsel for the Petitioner / First defendant; Mr.P.D.Dilli Babu, learned counsel for the First Respondent / Plaintiff and upon hearing both side arguments; perusing the related records, and having stood over for consideration till this day, this Court delivers the following:-

ORDER

The petitioner / first defendant has come forward with this application u/s 10 of CPC to stay all further proceedings of this suit till the disposal of

O.S.No.102/2016 pending before the Additional District Munsif Court at Tiruvallur.

2. The averments of the affidavit filed in support of the application are briefly stated as follows :

The first respondent / plaintiff has filed this suit for partition by including the A schedule properties which are separate properties of the first defendant by means of a registered settlement deed dated 26.09.1994 executed by his father Rangiah Naidu in favour of the first defendant. The plaintiff exercised undue influence over his father for the revocation of the above settlement deed. The first defendant has filed a suit in O.S.No.102/2016 before the District Munsif Court, Tiruvallur against the plaintiff herein and other defendants for the relief of declaration that the registered cancellation of settlement deed is null and void. The above suit is continuation of earlier suit in O.S.No.181/2002. The first defendant filed an application in I.A.No.51/2018 in the suit to receive the additional written statement narrating all the above details and the same was allowed. The issue in this suit is substantially and directly similar to that of issue in O.S.No.102/2016. The first defendant has been examined as PW1 marking Ex.A1 to Ex.A30 and the suit in O.S.No.102/2016 has been posted for the plaintiff side further evidence. At the end of lengthwise cross examination

of PW1, some questions were put to PW1 that the first defendant has manipulated the settlement deed dated 26.09.1994. Therefore, he has filed an application before the Additional District Munsif Court to send for the original records from the Principal District Munsif Court in O.S.No.181/2002. The above application was allowed and the same is pending for compliance.

The plaintiff herein has been deliberately dragging on O.S.No.102/2016. The first defendant filed his proof affidavit as PW1 on 07.09.2017 by marking Ex.A1 to Ex.A30. The plaintiff herein remained in exparte and filed an application to set aside the exparte order. The first defendant again filed proof affidavit marking Ex.A1 to Ex.A30 on 07.08.2019 and his cross examination was completed only on 24.11.2021. The plaintiff had filed two transfer original petitions before the Principal District Court to transfer the original suit in O.S.No.102/2016 to this court for joint trial and he has not pressed the transfer original petitions. The suit in O.S.No.102/2016 before the Additional District Munsif Court is one at a stage ahead and it has been posted for the plaintiff side further evidence. But the trial in the suit in O.S.No.33/2014 is yet to commence. To prevent the contradictory outcome of the above suits, the proceedings of this suit should be stayed.

3. The averments of the counter filed by the first respondent / plaintiff are briefly stated as follows :

The plaintiff has filed this suit for partition and mesne profits against the petitioner and other defendants. All the defendants have filed their written statement in this suit which is ripe for trial. The other suit in O.S.No.102/2016 filed by the first defendant is barred u/s 14 of Tamil Nadu Patta Passbook Act as well as under Order 2 Rule 2 of CPC. The field visit and enquiry by the Revenue Divisional Officer, would disprove the possession over the suit property. The settlement deed was executed by the misrepresentation that it is a mortgage deed. The possession of the properties were not handed over in terms of the settlement deed.

The first defendant obtained patta on the same day of presentation of the application for patta, without observing the formalities such as publication of notice of enquiry in the village. The patta was granted without any enquiry. The fact that the plaintiff is the eldest son in the family has been suppressed. The first defendant has also suppressed the revocation of the settlement deed while obtaining the patta. The first defendant has influenced the revenue officials to obtain patta. The first defendant has also admitted in his evidence in O.S.No.102/2016 as to the order passed by Revenue Divisional Officer.

The Subordinate Judge in A.S.No.31/2009 observed that when there is a special bar for filing of suit in respect of these issues, the appellant approaching a Civil Forum has committed a technical error and such a lacuna cannot be entertained. In the application given for obtaining patta, the first defendant has left a space without mentioning the survey number and mentioned the service connection number 19 alone. But the verification with the copy of registered settlement deed obtained from the Sub-Registrar revealed that the survey number was mentioned as 74/1 which is not owned by Rangiah Naidu but by Rajaram Naidu. The petitioner has not filed the above suit with clean hands. He has not paid proper court fee.

This is a comprehensive suit and it should not be stayed. There is a direction from our Hon'ble High Court for the speedy disposal of this case. Hence, the application is liable to be dismissed.

4. Both side heard.

5. The point for consideration in this application is whether the proceedings of this suit shall be stayed until the disposal of the suit in O.S.No.102/2016 pending on the file of Additional District Munsif Court, Tiruvallur?.

6. The learned counsel for the petitioner / first defendant submitted that though O.S.No.102/2016 was filed subsequent to the suit, O.S.No.102/2016 is

one stage ahead and the trial in the suit is yet to commence and the plaintiff herein has been dragging on O.S.No.102/2016. The learned counsel for the first defendant relied on a decision reported in 2012 (5) CTC 482 in M.Ramasamy Vs. Pappathi wherein our Hon'ble High Court has held that the object behind section 10 of CPC is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matters and the earlier suit can be stayed till disposal of the later suit. Therefore, according to the learned counsel for the first defendant, there is no bar to stay the earlier suit till the disposal of the later suit.

7. The facts of the above decision are distinguishable. In the above decision, earlier suit was filed for the relief of partition and the subsequent purchaser had filed a subsequent suit for declaration and injunction and it was dismissed and the appeal was allowed and when the second appeal was pending, the partition suit was ordered to be stayed. But in this case the subsequent suit filed by the first defenant in O.S.No.102/2016 has not attained its finality. It is also in part heard stage. Furthermore, this is a comprehensive suit filed by the plaintiff for the relief of partition and the mesne profits. Instead of making a couner claim by the first defendant by seeking the relief of declaration of revocation of settlement deed is null and void in this suit itself, he thought fit to file a separate

suit in O.S.No.102/2016. The main issue raised in the above suit is one of the several issues in this suit pending before this court. Therefore, this is a comprehensive suit. This case has also been posted for the cross examination of PW1. Furthermore, there is a direction from our Hon'ble High Court to dispose of this case within a period of six months. Merely because of the suit in O.S.No.102/2016 is ahead in one stage, this suit cannot be stayed. Furthermore, this is the earlier suit filed by the plaintiff for the comprehensive relief of partition and the mesne profits. As already discussed, the first defendant would should sought for the relief of declaration in this suit itself that the revocation of settlement deed is null and void. There is no sufficient reason to stay the proceedings of this suit. The application is devoid of merits.

8. In the result, the petition is dismissed with costs of the first respondent / plaintiff.

Dictated by me to the Steno-Typist and transcribed by her in the computer, corrected and pronounced by me in the open Court on this the 11th day of October 2022.

Sd/S.GANAPATHISAMY
**I Additional District and Sessions Judge,
Tiruvallur**

Both side Witness & Exhibits:- Nil

Sd/S.GANAPATHISAMY
**I Additional District and Sessions Judge,
Tiruvallur**

Fair/Draft Order
I.A.No.9/2022
in O.S.No.33/2014 in
DD : 11/09/2022