

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

**PRESENT: Selvi.A.Keerthana, B.A., L.L.B.,
District Munsif, Ponneri.**

Thursday, the 04th day of June 2026.

I.A. NO.3 OF 2024

IN

O.S. No.88 OF 2024

L.R.Munusamy Naidu

..... Petitioner/Defendant

Versus

Suganya

..... Respondent/plaintiff

This petition came before me 18.04.2026 for final hearing in the presence of Mr.E.Prabu, Learned counsel appearing for the Petitioner and M/s.Swaraj Associates Mr.S.Balamurugan, learned counsel appearing for the Respondent. Upon hearing the arguments made by the learned counsels for the petitioner and the respondent, and on perusal of the material case records, this Petition having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This application is filed under Section 10 Read with Section 151 of Civil Procedure Code to stay all further proceedings in the above suit in OS.No.88 of 2024.

2. Brief averments of the affidavit filed by the petitioner are as follows:

2.1. The Petitioner herein is Defendant in the above suit. The Petitioners crave leave of this court to treat the pleadings in OS.111 of 2014 on this file of the Hon'ble Principal Subordinate Court which is pending and the OS.No.112/2014 before this court which was dismissed and challenged by way of A.S.No.28 of

2024 on the file of Hon'ble Principal Sub-Judge, Ponneri which proceedings are in respect of the suit schedule properties in the above suit are all filed by the petitioner against his brother Mr.Jayaprakash husband of the plaintiff as part and parcel of this affidavit. The petitioner filed the suit in OS.No.111 of 2014 for Specific performance as against his brother Mr.Jayaprakash. The OS.No.111 of 2014 is in respect of Survey No.487/3 measuring 76 cents and Survey No.489/2 measuring 28 cents both situated at Kattavoor Village, Ponneri Taluk. The defendant had entered in to an oral sale agreement, dated 02.09.2005 in respect of the above two items and on the same day handed over the physical possession of the same in part performance of the oral sale agreement.

2.2. The petitioner submits that the total sale consideration for sale of above two items was fixed Rs.1,49,000/- and for that it was agreed between petitioner and brother of the petitioner Jayaprakash proposed to acquire from Murugaiyan. On 02.09.2005 itself paid Rs.1,39,000/- out of Rs.1,49,000/- fixed as sale price for the house property of Murugaiyan and obtained sale agreement and power of attorney on 02.09.2005. The petitioner executed a sale deed, dated 11.09.2006 in favour of his brother by virtue of the power of attorney held by the petitioner in respect of house property acquired from Murugaiyan. The petitioner filed OS.112 of 2014 against his brother Mr.Jayaprakash for Specific performance of Agreement of Sale, dated 02.08.1991 in respect of Survey No.487/2 measuring 96 cents situated in Kattavoor Village, Ponneri Taluk. Mr.Jayaprakash was a minor then represented by his father Mr.Ramakrishna Naidu. The reason for sale and the mode of payment was specifically pleaded in the plaint in OS.No.112 of 2014. It is specific case that by virtue of sale letter, dated 02.08.1991 entire sale price was paid and the possession of the suit property was handed over to the petitioner in part performance of the agreement of sale.

2.3. The petitioner submits that the OS.No.112 of 2014 was dismissed on 18.09.2024 as against which his filed A.S.No.28 of 2024. The plaintiff herein filed the above suit as if she got a settlement deed, dated 17.02.2014 in respect of all three items of suit schedule properties which are subject matter of OS.No.111 of 2014 and OS.112 of 2014. The settlement deed is made pending litigation. The subject matter of the above suit namely the possession of the suit schedule properties is also the subject matter of OS.111 of 2014 and OS.No.112 of 2014, since the petitioner has claimed possession in part performance of the contract apart from specific performance. Hence, the matter in issue in the above suit filed by the plaintiff is also directly and substantially in issue in previously instituted suit between the petitioner and his brother and the plaintiff herein is claiming only alleged title through his brother.

2.4. The petitioner submits that any finding in either the interlocutory application for injunction or in the above suit would substantially affect the decision of the other previously instituted proceedings in O.S.No.111 of 2014 and A.S.28 of 2024. Hence it is just and necessary that the trial as well as all further proceedings in OS.No.88 of 2024 shall be stayed pending disposal of the OS.No.111 of 2014 and A.S.No.28 of 2024 pending on the file of Subordinate Judge, Ponneri. Hence this petition.

3. Brief averments of the counter filed by the Respondent are as follows:

3.1. The respondent submitted that in her husband Mr.Jayaprakash held the suit schedule mentioned properties in his name under the partition and obtained patta No.5249 in his name and was in continuous enjoyment of the same. Further out of his love and affection he has upon the respondent, he executed a settlement deed dated 17.02.2014 bearing Document Number 1743 of 2014 and also obtained patta bearing No.5264 in her name and being in possession and enjoyment of the same.

The plaintiff filed the suit OS.No.111 of 2014 on the file of the Hon'ble Sub Court Ponneri on 11.04.2014 and OS.No.112 of 2014 on the file of the Hon'ble District Munsif Court, Ponneri on 11.04.2014 both against her husband Jayaprakash in which the OS.No.112 of 2014 dealt by this court and dismissed on merits, the defendant attempted to infringe the peaceful possession and enjoyment of the plaintiff and which was prevented and against he made an attempt on 08.10.2024. Upon which the present suit stands filed to prevent the defendant from interfering with the peaceful possession and enjoyment by the plaintiff and the same is a fresh cause of action upon which the present suit stands filed by the respondent to protect interest over the suit schedule mentioned property and hence the same is not related to the other suits. The parties are in issue independently and the prayers made in the suit by the petitioner is different from the prayer made by the respondent herein in the main suit and hence the suits are not identical and substantial to each other and the plaintiff's suit on different footing with enforcement of legal right in this suit.

3.2. The petitioner/defendant was not granted any stay in the 1st appeal preferred by him before the Hon'ble subordinate Judge Ponneri. The petitioner having no defence against the respondent, resorting to delaying tactics by filing such petition to protract the proceeding and extend the time so as to achieve his unethical goal of grabbing land unlawfully from his being the true owner of the suit schedule mentioned property. The petitioner/defendant ought to have filed his written statement within the prescribed time which is going beyond the permitted period after the service of the summons and hence the defendant who entered appearance on 18.12.2024 ought to have been insisted to file his written statement and not having filing the same in time should have been set *exparte*. Hence prays for dismissal of this petition.

4. Evidence :

Neither the petitioner nor the respondent has placed any oral or documentary evidence before this court.

5. Point for determination :

Whether this petition can be allowed or not.

6. Discussion and Findings :

6.1. Heard. Records have been perused. The present petition has been filed by the petitioner/defendant seeking to stay the present suit pending disposal of O.S. No.111 of 2014 and A.S. No.28 of 2024, pending before the learned Principal Subordinate Judge, Ponneri. It is the case of the petitioner that the above proceedings have been filed by him against his brother, one Mr. Jaya Prakash, who is none other than the husband of the respondent/plaintiff herein. The O.S. No.111 of 2014 relates to land in Survey No.487/3 measuring an extent of 76 cents and Survey No. 489/2 measuring an extent of 28 cents. It is the specific case of the petitioner that he purchased the house property for his brother from one Mr.Murugaiyan, pursuant to an oral agreement of sale and a power of attorney dated 02.09.2005, for a sale consideration of Rs. 1,49,000/-. The petitioner/defendant had allegedly paid the entire sale consideration of Rs. 1,49,000/-. The sale deed was executed on 11.09.2006 in favour of the petitioner's brother. Ever since 02.09.2005, the petitioner has been in possession of the suit property. It is further submitted that O.S. No.112 of 2014 was filed against the petitioner's brother for specific performance based on a sale agreement dated 02.08.1991, in respect of Survey No. 487/2, measuring an extent of 96 cents. It is stated that the entire sale consideration was paid, and since then the petitioner has been in possession of the suit property. As the latter suit was dismissed, an appeal

has been filed against the said judgment. It is the case of the petitioner that the subject matter of both suits is one and the same, and that he is in possession based on part performance of the contract. Hence, it is contended that the matter substantially and directly involves the same issue in both suits. Therefore, the petitioner prays for staying the present suit until disposal of the aforesaid two suits.

6.2. With the above facts, it is seen that section 10 of the Code of Civil Procedure, 1908 deals with the stay of suits. The provision mandates that no Court shall proceed with the trial of a suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties, or parties claiming under them, litigating under the same title, where such previously instituted suit is pending before a Court competent to grant the relief claimed. The basic object of this provision is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same issue, cause-of-action, same subject-matter and the relief prayed for. For the applicability of Section 10 CPC, the following conditions must be satisfied:

- (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 previously instituted suit;
- (iii) The parties in both suits must be the same or claiming under the same parties;
- (iv) The parties must be litigating under the same title;
- (v) The previously instituted suit must be pending before a Court competent to grant the relief claimed in the subsequent suit.

6.3. In light of the above provision, it is necessary to place reliance on the case of *P.V. Shetty v. B.S. Giridhar*, AIR 1982 SC 83, the Hon'ble Supreme Court reiterated the above requirements and held that all the conditions must co-exist before Section 10 CPC can be invoked. Therefore, it is necessary to examine whether the ingredients of Section 10 CPC are attracted in the present case. The petitioner contends that he had earlier instituted a suit for specific performance against the husband of the plaintiff. Admittedly, the earlier suit is one for specific performance of an agreement, whereas the present suit has been filed seeking the relief of permanent injunction.

6.4. Therefore, the issues arising for determination in both suits are distinct. In the suit for specific performance, the principal questions would relate to the genuineness and enforceability of the agreement, as well as the readiness and willingness of the plaintiff therein to perform his part of the contract. On the other hand, in the present suit for permanent injunction, the primary issue for determination is the plaintiff's lawful possession of the suit property on the date of filing of the suit. Therefore, the matter in issue in the two suits cannot be said to be directly and substantially the same.

6.5. In this regard, it is useful to refer to the landmark decision of the Hon'ble Supreme Court in *National Institute of Mental Health and Neuro Sciences v. C. Parameshwara*, 2005 (1) CTC 156 (SC), wherein it was held that the fundamental test for attracting Section 10 CPC is whether the final decision in the previously instituted suit would operate as res judicata in the subsequent suit. The relevant portion of the above precedent is extracted hereunder for reference :

“The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel Suits in respect of the

same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues, which are directly and substantially in issue, in previously instituted Suit. The language of Section 10 suggests that, it is referable to a Suit instituted in the Civil Court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is whether on final decision being reached in the previous Suit, such decision would operate as res judicata in the subsequent Suit. Section 10 applies only in cases where the whole of the subject matter in both the Suit is identical. The key words in Section 10 are “the matter in issue is directly and substantially in issue” in the previously instituted suit. The words “directly and substantially in issue” are used in contra-distinction to the words “incidentally or collaterally in issue”. Therefore, Section 10 would apply only if there is identity of the matter in issue in both the Suits, meaning thereby, that the whole of subject matter in both the proceedings is identical”.

6.6. Applying the above principles to the facts of the present case, this Court is of the view that the decision in the earlier suit for specific performance would not operate as res judicata in the present suit for permanent injunction. The issues involved, the nature of enquiry required, and the reliefs sought in the two suits are materially different. It is also pertinent to note that the parties in both suits are not identical. The earlier suit for specific performance has been instituted against the husband of the present plaintiff, whereas the present suit has been filed by a different plaintiff. Therefore, the requirement of identity of parties, as mandated

under Section 10 CPC, is also not satisfied. Consequently, it cannot be said that the matter in issue in the present suit is directly and substantially in issue in the previously instituted suit. In such circumstances, the essential ingredients required for invoking Section 10 CPC are not satisfied. Thus, this court is of view that both the matters are not identical and involve different factors to deal with, hence, this court is of view that, doctrine of res subjudice does not find an application in the present matter. Hence, this Court finds no merit in the present petition and for the reasons stated above, this petition stands dismissed.

7. Result:

In the result, this Petition is dismissed. No costs.

Dictated by me to the steno-typist, directly typed by her in her desktop, corrected and pronounced by me in the open court, on this the 04th day of June 2026.

**DISTRICT MUNSIF
PONNERI**

Both side witnesses and documents:- NIL

**DISTRICT MUNSIF
PONNERI**

Fair/ Draft Order
I.A.No.3/2024
O.S.No.88/2024
Date:04.06.2026
DMC,PNI.