

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE(FTC),
VELLORE, VELLORE DISTRICT.

PRESENT: Tmt.P.REVATHY, M.A.,M.L.,
Additional District Judge(FTC),Vellore.

Dated this the 16th day of February 2023, Thursday

I.A.NO.4/2022 in
O.S.NO.182/2021

- - - - -

M.Arulmozhi

..Petitioner/1st defendant.

/Vs/

1. P.Nalini
2. P.N.Usha
3. P.N.Amudha
4. R.Kasthuri
5. R.Nitin
6. R.Neena

..Respondent/Plaintiff

..Respondents/Defendants 2 to 6

This petition is coming before me on 13.02.2022 for final hearing in the presence of Thiru.T.Rajkumar, counsel for the petitioner/1st defendant and of Thiru.S.Babu, Counsel for the 1st respondent/Plaintiff and of Thiru.V.T.Venkatesan, Counsel for the 2nd respondent and notice to 3rd respondent dispensed with and the respondents No.4 to 6 are called absent set exparte and upon hearing the arguments of both sides and upon perusing the entire case records and having stood over for consideration, till this date this court delivered the following:-

ORDER

Petition filed by the petitioner under Sec.10 r/w. Sec.151 of CPC prays to stay the further proceedings of this suit till the disposal of the

OS.No.5/2020 on the file of III ADJ Court, Shimoga and Civil Mis.No.61/2021 on the file of II ADJ Court, Shimoga.

2.The averments of the affidavit is as follows:-

The petitioner herein is the 1st defendant in the main suit. She is one of the daughter of Late.P.Neelamegham and the plaintiff herein is his sister. Her children viz., M.Mahesh and M.Madan have filed a petition in P & SC No.7/2020 on the file of III Additional District Judge, Shimoga for grant of probate of the Will dated 01.08.2018 executed by Sri P.Neelamegham, S/o.Periaswamy Mudaliar, on the ground that they are the legatee of the said P.Neelamegham. The petitioner is also legatee and the Plaintiff is also a legatee under the aforesaid Will executed by his father. Her father had executed the said Will dated 01.08.2018 and bequeathed all the present suit schedule properties except item No.1,2,5 and 6.

In the petition in P & SC No.7/2020, the petitioner and the Plaintiff herein has been arrayed as Respondent No.1 and 2. The Plaintiff herein appeared in that petition through her counsel and objected the same by filing her objection statement. As such the said petition has been converted as a suit and has been registered as O.S.No.5/2020. After framing of Issues, the trial has commenced and the Plaintiffs have adduced their evidence and also examined several witnesses including the attesting witness and scribe of the testament executed by her father P.Neelamegham.

The petitioner's son M.Magesh had also filed a petition in P & SC No.3/2020 on the file of II Additional District Judge, Shimoga for grant of probate of the Will dated 16.06.2015 executed by P.Neelamegham in respect of item No.5 and 6 of the present suit schedule properties, on the ground that he is a legatee of the said P.Neelamegham.

The Court was pleased to allow the said petition vide order dated 13.01.2021 and Probate Certificate has been issued in favour of his son M.Magesh. On 15.11.2021 the plaintiff herein and the 2nd defendant herein filed a petition in Civil Mis. No.61/2021 on the file of II ADJ Court, Shimoga seeking revocation of Probate Certificate issued by the court in respect of the Will dated 16.06.2015 executed by P.Neelamegham and the same is pending for consideration.

Except Item No.1,2,5 and 6 of the suit properties, all other suit properties are the subject matter of the aforesaid suit OS.No.5/2020 since P.Neelamegham bequeathed the said properties in favour of the legatees under the Will executed by him. So it is very clear that, the subject matter of this suit is also the subject matter of the suit OS.No.5/2020 and the petition P & SC No.3/2020. The Plaintiff herein, who appeared in the aforesaid suit OS.No.5/2020 and filed written statement and having challenged the Probate Certificate issued in P & SC No.3/2020, obviously is very much aware of the said fact and that the suit OS.No.5/2020 and petition Civil Mis. No.61/2021 are pending for consideration. But the Plaintiff has clandestinely suppressed

the said material fact that the aforesaid suit OS.No.5/2020 petition Civil Mis.No.61/2021 are pending for consideration and filed this suit with a malafide intention to start a frivolous litigation at Vellore.

Though the Plaintiff has alleged that the petitioner claim that the properties have been bequeathed by her father in favour of her children by way of Will, she has alleged that the Wills have not seen the light of the day till now, even though she has the copies of all the Wills executed by her father.

The matter in issue of this suit is also directly and substantially in issue in the previously instituted aforesaid suit OS.No.5/2020 between the same parties as well as the petition P & SC No.3/2020 and in respect of the same subject matter. But by concealing the same this suit has been filed. The petitioner advised that there cannot be two simultaneous suits between the same parties apart from a petition challenging the issuance of Probate in Civil Mis.No.61/2021 in respect of the same subject matter.

By suppressing the pendency of that suit and Civil Mis.No.61/2021 and the contentious issue between the parties, the plaintiff has filed this false and vexatious suit with a malafide intention. Hence the petitioner filed this petition prays to stay the further proceedings of this suit till the disposal of the OS.No.5/2020 on the file of III ADJ Court, Shimoga and Civil Mis.No.61/2021 on the file of II ADJ Court, Shimoga.

3. Brief averments of the counter filed by the 1st respondent and adopted by the 2nd respondent is as follows:-

This petition is not maintainable either in law or on facts. All the affidavit averments are denied except those that are admitted by the respondents herein. The subject matter of this suit is different from both the matters pending in the Additional District Judge II and III Courts at Shimoga. This above suit is a comprehensive suit covering all the properties left behind by late.P.Neelamegam who died intestate on 16.08.2019. Furthermore the parties in the suit pending on the file of this court and the other two matters namely O.S.No.5/2020 on the file of III ADJ Court, Shimoga and P & SC No.3/2020 on the file of II ADJ Court, Shimoga are different. The petitioner is not a party in both the cases. Likewise, some of the parties in the present suit were deliberately not impleaded in the litigations at Shimoga. The relief calimed in P & SC No.3/2020 pending on the file of II ADJ Court, Shimoga is to grant probate of the alleged Will dated 16.06.2015 in favour of the Magesh who is not a party in the present suit. Likewise the said Mahesh and his brother Madam filed P & SC No.7/2020 to grant probate of an alleged Will dated 01.08.2018 in their favour. Since the respondent contested the claim the same was converted as suit in OS.No.5/2020 by the III ADJ Court, Shimoga. The respondent as legal heir of Late.P.Neelamagam is en titled to 1/5th share in all the properties left behind by her father and as such only in this suit for partition she can get relief for allotment of her share. The alleged Wills said to have been executed by Late.P.Neelamegam

are all forged and fabricated at the instance of the petitioner.

The petitioner in P & SC No.3/2020 suppressing the existence of other legal heirs of Late.P.Neelamegam prayed for grant of probate and obtained an exparte order necessitating the respondent to file Civil Miscellaneous application to revoke the grant of probate. The same is pending consideration and there is also stay of further proceedings in the said matter. All the three matters are in different stages and in different courts of law. Therefore to stay this suit on the specious plea of those pending matters is neither permissible nor feasible. The scope and subject matter of all the three proceedings are different. The stages of cases are also different without any certainty and time frame work. Further the findings in OS.No.5/2020 and P & SC.No.3/2020 by the respective courts at Karnataka are not bindings on this court.

According to section 10 of CPC trial of suit alone is contemplated. Whereas the present suit is pending in the stage of written statement only. Hence the application is premature and cannot be entertained at all. The petition has been deliberately filed to protract the proceedings. According to the amended CPC the defendants are bound to file written statement within 60 days. In the present suit the defendants have not filed written statement for more than 5 months. Just to avoid filing written statement this petition has been filed with ulterior motives and the respondent prays to dismiss the petition.

4. The point for consideration in this petition is;

1. Whether the petition is to be allowed or not?

5. Point:

The petitioner stated that she is the 1st defendant in the main suit. She is one of the daughter of Late.P.Neelamegham and the plaintiff herein is his sister. Her children viz., M.Mahesh and M.Madan have filed a petition in P & SC No.7/2020 on the file of III Additional District Judge, Shimoga for grant of probate of the Will dated 01.08.2018 executed by Sri P.Neelamegham, S/o.Periaswamy Mudaliar, on the ground that they are the legatee of the said P.Neelamegham. The petitioner is also legatee and the Plaintiff is also a legatee under the aforesaid Will executed by his father. Her father had executed the said Will dated 01.08.2018 and bequeathed all the present suit schedule properties except item No.1,2,5 and 6. The petitioner's son M.Magesh had also filed a petition in P & SC No.3/2020 on the file of II Additional District Judge, Shimoga for grant of probate of the Will dated 16.06.2015 executed by P.Neelamegham in respect of item No.5 and 6 of the present suit schedule properties, on the ground that he is a legatee of the said P.Neelamegham. And further stated that the matter in issue of this suit is also directly and substantially in issue in the previously instituted aforesaid suit OS.No.5/2020 between the same parties as well as the petition P & SC No.3/2020 and in respect of the same subject matter. But by concealing the same this suit has been filed. The petitioner advised that there cannot be two

simultaneous suits between the same parties apart from a petition challenging the issuance of Probate in Civil Mis.No.61/2021 in respect of the same subject matter. Hence the petitioner filed this petition prays to stay the further proceedings of this suit till the disposal of the OS.No.5/2020 on the file of III ADJ Court, Shimoga and Civil Mis.No.61/2021 on the file of II ADJ Court, Shimoga.

But the respondent denied the allegations and stated that the subject matter of this suit is different from both the matters pending in the Additional District Judge II and III Courts at Shimoga. This above suit is a comprehensive suit covering all the properties left behind by late.P.Neelamegam who died intestate on 16.08.2019. Further more the parties in the suit pending on the file of this court and the other two matters namely O.S.No.5/2020 on the file of III ADJ Court, Shimoga and P & SC No.3/2020 on the file of II ADJ Court, Shimoga are different. The petitioner is not a party in both the cases. Likewise, some of the parties in the present suit were deliberately not impleaded in the litigations at Shimoga. The relief calimed in P & SC No.3/2020 pending on the file of II ADJ Court, Shimoga is to grant probate of the alleged Will dated 16.06.2015 in favour of the Magesh who is not a party in the present suit. Likewise the said Mahesh and his brother Madam filed P & SC No.7/2020 to grant probate of an alleged Will dated 01.08.2018 in their favour. Since the respondent contested the claim the same was converted as suit in OS.No.5/2020 by the III ADJ Court,

Shimoga. The respondent as legal heir of Late.P.Neelamagam is entitled to 1/5th share in all the properties left behind by her father and as such only in this suit for partition she can get relief for allotment of her share. The alleged Wills said to have been executed by Late.P.Neelamegam are all forged and fabricated at the instance of the petitioner.

According to section 10 of CPC trial of suit alone is contemplated. Whereas the present suit is pending in the stage of written statement only. Hence the application is premature and cannot be entertained at all. The petition has been deliberately filed to protract the proceedings and just to avoid filing written statement this petition has been filed with ulterior motives and the respondent prays to dismiss the petition.

On perusal of records it is seen that the present suit is filed for partition of the properties left by the deceased Neelamegam and in the schedule of property there are 42 items mentioned and out of the said 42 items, only item No.1 and 2 pertains to Vellore City and the remaining item No.3 to 42 are situated in Shimoga city, Karnataka State. Even though the petitioner stated that her Children Magesh and Madhan have filed a petition in P & SC No.7/2020 on the file of III Additional District Judge, Shimoga for grant of probate of Will dated 01.08.2018 and her son Magesh has filed a petition in P & SC No.3/2020 for probate of the Will dated 16.06.2015 and the Plaintiff, Smt.Usha Palani and the 2nd defendant in the suit have filed a petition in Civil Mis. No.61/2021 on the file of II Additional District Judge,

Shimoga and further stated that except item No.1, 2, 5 and 6 of the suit properties, all other suit properties are subject matter of OS.No.5/2020 but to prove the said proceedings are with regard to the same properties, the petitioner herein has not filed the copy of the petitions filed in the above stated proceedings. Further as per section 10 CPC, "The previous suit is pending should have jurisdiction to grant the relief sought in the subsequent suit." Further the four essential conditions for the application of Sec.10 of CPC are (1) That the matter in issue in the second suit is also directly and substantially is issue in the first suit. (2) That the parties in the second suit are the same are parties under whom they are any of them claim litigating under the same title. (3) That the Court in which the first suit is instituted is competent to grant the relief claimed in the subsequent suit. (4) The previously instituted is pending, in the same court in which the subsequent suit is brought are in any court in India or in any court beyond the limits of India established are continued by the Central Government or before the Supreme Court."

In the present case, the petitioner stating that there are two cases pending before the IInd and IIIrd Additional District Court, Shimoga with regard to the Will executed by Neelamegham in favour of the sons of petitioners herein. Further the said sons of petitioners are not parties in the present suit. Further the Plaintiff and the defendants 1 to 3 are the daughters of Neelamegham and the defendants 4 to 6 are the legal heirs of pre-

deceased son of deceased Nelamegham and the present suit is filed for Partition of the properties of the Neelamegham. The petitioner stated that suit properties are the self acquired properties of the Neelamegham and claimed partition of 1/5th share in the suit properties. In the present suit whether the plaintiffs and defendants are entitled for share in the suit properties will be decided and the rights of parties will be decided in the present suit only. Even though the petitioners stated with regard to the suit properties except item No.1, 2, 5 and 6, the petitioners father executed a Will on 01.08.2018 and with regard to item No.5 and 6 executed a Will on 16.06.2015 in favour of her son Magesh and with regard to the probate of the said Wills proceedings are pending in II and III Additional District Court, Shimoga. But the issues in the said proceedings are not the same with that of the present suit even though the Wills are alleged to have been executed with regard to the suit properties but the copies of the said Wills and the copies of the petitions filed for probating the said Wills are not filed in this petition. Hence it cannot be presumed that the issues in the proceedings pending before the II and III Additional District Court, Shimoga are one and the same with that of the issues in the present suit.

Hence from the above stated discussions, this court decides that present petition cannot be entertained and it has to be dismissed.

/12/

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

Dictated to steno typist, typed by her directly, corrected and pronounced by me in open court, this the 16th day of February 2023.

**Additional District Judge(FTC),
Vellore.**

Annexure:

Both side witnesses and Exhibits:

NIL

**ADJ (FTC),
Vellore.**

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE(FTC),
VELLORE, VELLORE DISTRICT.

PRESENT: Tmt.P.REVATHY, M.A.,M.L.,
Additional District Judge(FTC),Vellore.

Dated this the 16th day of February 2023, Thursday

I.A.NO.4/2022 in
O.S.NO.182/2021

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M.Arulmozhi, aged 65 years, W/o.S.Murthy, Hindu, residing at "Hosudi Manae"
Neelamegam Arecanut Farm, Hosudi Village, Shivamogga-577 22, Karnataka
State.

..Petitioner/1st defendant.

/Vs/

1. P.Nalini, aged 60 years, W/o.S.Prakash, Hindu, residing at No.6/2J.P.Street,
Thendral Nagar Extension, Sathuvachari, Vellore-632 009.

..Respondent/Plaintiff

2. P.N.Usha, aged 52 years, W/o.Dr.V.Palani, Hindu, Residing at Perandapalli,
Hosur-635 109, Krishnagiri District.

3. P.N.Amudha, aged 50 years, W/o.S.Ramu, Hindu, Residing at Sakthi Nagar, I
Cross, III Main Road, Melmaruvathur, Acharapakkam-603 319, Chengalpet
District.

4. R.Kasthuri, aged 60 years, W/o.Late.P.N.Ravi, Hindu, "Neela Sankari
Sadhana" Sagar Road, Gadikoppa, Shivamogga-577 22, Karnataka State.

5. R.Nitin, aged 38 years, S/o.Late.P.N.Ravi, Hindu, "Neela Sankari Sadhana"
Sagar Road, Gadikoppa, Shivamogga – 577 22, Karnataka State.

6. R.Neena, aged 30 years, W/o.Nijesh, Hindu, "Neela Sankari Sadhana" Sagar
Road, Gadikoppa, Shivamogga – 577 22, Karnataka State.

..Respondents/Defendants 2 to 6

Petition filed by the petitioner under Sec.10 r/w. Sec.151 of CPC prays to
stay the further proceedings of this suit till the disposal of the OS.No.5/2020 on
the file of III ADJ Court, Shimoga and Civil Mis.No.61/2021 on the file of II
ADJ Court, Shimoga.

This petition is coming before me on 13.02.2022 for final hearing in the presence of Thiru.T.Rajkumar, counsel for the petitioner/1st defendant and of Thiru.S.Babu, Counsel for the 1st respondent/Plaintiff and of Thiru.V.T.Venkatesan, Counsel for the 2nd respondent and notice to 3rd respondent dispensed with and the respondents No.4 to 6 are called absent set exparte and upon hearing the arguments of both sides and upon perusing the entire case records and having stood over for consideration, till this date this court doth order and decreetal order as follows:-

DECREETAL ORDER

1. That the petition be and the same is hereby dismissed;
2. That there is no cost.

Given under my hand and the seal of this court, on this the 16th day of February 2023.

**Additional District Judge(FTC),
Vellore.**