

**IN THE COURT OF THE PRINCIPAL SUBORDINATE JUDGE,
VILLUPURAM.**

Present: Thiru.N.S. Jayaprakash, B.Sc.,B.L.,

Principal Subordinate Judge, Villupuram.

Tuesday, the 09th day of January 2024

IA No.311/2023

in

OS No.308/2013

1. Geetha

2. Sampath

.... Petitioners/Defendants

//Vs//

1. Chinnaponnu

2. Ganesan

3. Ezhumalai

4. Arumugam

.... Respondents/Plaintiffs

This petition having been taken on file on 10.10.2023 and came up for final hearing in the presence of Tr.C.S.Rajendiran, learned Advocate on behalf of the Petitioners/Defendants and Tr.S.Mugilvannan, learned advocate on behalf of the Respondents/Plaintiffs, upon perusing the case records, upon hearing arguments of both side and having been stood over for consideration till this date, this court delivered the following:-

ORDER

The Petitioners/Defendants have filed this petition under Section 10 of CPC to granted an order of stay to stay the suit proceedings till the disposal of the writ appeal before the Hon'ble High Court of Madras.

2. The Affidavit supported by petition in Brief is as follows:-

2(1) The Petitioners are the Defendants in the main suit. The main suit was filed to declare a sale deed dated 03.03.2012 as null and void. A power of attorney was executed by the respondents in the name of the 1st petitioner by name Geetha on 13.07.1992. A sum of Rs.2,37,000/- was paid by the 1st petitioner to the respondents. On 31.03.1993, the 3rd respondent, along with other respondents had suddenly revoked the power of attorney deed. A legal notice dated 17.04.1993 was sent by the respondents and a reply was sent by the 1st petitioner on 24.04.1993. A suit in OS 31/2002 was filed by the petitioner before the Principal District Munsif Court, Villupuram seeking to declare the revocation deed dated 31.03.1993 as null and void. The respondents herein were set exparte in the said suit and a decree was passed on 05.08.2003. The respondents herein have filed a petition to condone the delay of 1530 days in re-presenting petition under Order 9 Rule 13 CPC. The said condonation petition was taken on file as IA No.1022/2013. The 1st petitioner herein appeared in the said case and the petition was dismissed on 09.01.2014. A revision in CRP No.2984/2014 was preferred by the respondents before Hon'ble High Court, Madras and the same was also dismissed on 26.02.2018.

2(2) The respondents have filed this suit with false claim. This petitioner had filed a petition to reject the plaint in IA No.603/2014 in this case and the same was dismissed on 27.03.2014. As against the same a revision was filed before Hon'ble High Court, Madras in CRP No.1819/2019. The 3rd respondent herein had filed a WP No.3111/2009 before Hon'ble High Court, Madras seeking to quash the Registration proceeding of Doc.No.3486/2019 on the file of Joint No.I Sub Registrar of Villupuram. The son of the 3rd respondent by name Baskar is also

added as party. The writ was allowed on 15.11.2021, by which Doc.No.3486/2019 was directed to be cancelled and not to release the document till the disposal of this case. The CRP No.1819/2019 was also dismissed by the Hon'ble High Court, Madras. A Writ Appeal in W.A.No.1569/2022 was filed by this petitioner against the orders in W.P. No.3111/2019 and the same is pending for admission before Hon'ble High Court, Madras. In such circumstances the trial cannot be proceeded in this case. Hence this petition for stay of suit.

3. The brief contents of the Counter is as follows:

The petition filed by the petitioner to restore petition is more vexatious, and not maintainable and is liable to be dismissed with costs. The affidavit filed by the petitioner are specifically denied except those which are admitted. It is true that a power of attorney was executed by the respondents on 13.07.1992 in favour of the 1st petitioner. The 1st petitioner colluded with her husband, the 2nd petitioner herein, and attempted to grab the properties. Hence, the power of attorney deed was cancelled by a revocation deed dated 13.07.1992. The same was also intimated to the 1st petitioner by a notice dated 17.04.1993. A reply with false averments was sent by the 1st petitioner on 24.04.1993. The 1st petitioner, after coming to no about the cancellation of power of attorney, had created a false document by putting anti-dated as 14.02.1993 mortgage deed in the name of one by name Kaliyan. The recitals of the mortgage deed is false. The mortgage deed lost its validity on 07.04.2005. The 1st petitioner filed a suit in OS No.31/2002 before the Principal District Munsif Court, Villupuram to declare the revocation dated 31.03.1993 as null and void and obtained an exparte decree. A petition to setaside the decree was filed and the same was returned. It was re-presented with a delay condonation petition. The said delay condonation petition was dismissed on 09.01.2014. As against the same, CRP No.2984/2014 was filed before Hon'ble High Court, Madras. Again, the power of attorney deed was cancelled on 27.03.2018 by the respondents. Whiles, the 1st petitioner executed a sale deed in favour of her son by name

Baskar on 03.03.2012 with false averments. These respondents have filed W.P.No.3111/2019 before Hon'ble High Court, Madras to quash the sale deed executed by 1st petitioner in favour of her son. The said Writ was allowed on 15.11.2021. It is not acceptable that Writ Appeal in W.A.No.1569/22 is pending and this suit has to be stayed till then. The petitioners herein have filed IA 603/2014 in this case for rejection of plaint and the same was dismissed on merits. As against the same, CRP No.1819/2019 was filed before Hon'ble High Court, Madras and the same was also dismissed on 28.03.2023. The Hon'ble High Court, Madras was pleased to direct this court to dispose the case within Six months. This petition is not filed as contemplated u/s.10 of CPC. The sale deed executed by the petitioners in favour of the 3rd defendant on 03.03.2012 has been sought for to be cancelled in the suit. But, the 3rd defendant is not arrayed as a party in this petition. This petition is liable to dismissed with.

4. Heard both sides. Perused Records. Neither Petitioner nor Respondent have examined any witnesses. Ex.R1 to Ex.R5 were marked by the respondents.

5. Point for Consideration:-

- (i). Whether the petitioner has shown sufficient cause to allow the petition in IA No.311/2023 in OS No.308/2013?
- (ii). Whether the petition is to be allowed or not?

6. On Point:-

7. Records Perused. Heard both sides.

8. The suit was filed by the Respondents/plaintiffs to declare a sale deed dated 03.03.2012 executed by the 1st petitioner/1st defendant in favour of the 3rd defendant as null and void with costs. The respondents/plaintiffs have stated that a sale agreement was executed by them in favour of the 1st petitioner/1st defendant on 13.07.1992. Since the petitioners are colluding to grab the property, the

respondents had cancelled the power of attorney on 31.03.1993 (Ex.R4). The petitioners have filed a case in OS No.31/2002 seeking declaration to declare the revocation deed dated 31.03.1993 as null and void. The said suit was decreed exparte. A petition to setaside the exparte decree was filed and returned. The same was represented with a delay condonation petition and the same was also dismissed in IA No.1022/2013. A revision was preferred by the respondents in CRP No.2984/2014 and the same was also dismissed by Hon'ble High Court, Madras on 26.02.2018. All the above facts are admitted by both parties.

9. The 1st petitioner/1st defendant had executed a sale deed dated 03.03.2012 in favour of the 3rd defendant. This suit was filed to declare the same as null and void. In this suit, a petition for rejection of plaint was filed in IA No.603/2014 by the petitioners and the same was dismissed on 27.03.2014. As against the same, a revision in CRP No.1819/2019 was filed by the petitioners. The same was also dismissed on 23.02.2023 with a direction to dispose this case within six months. All these facts are also admitted.

10. Whiles, the 1st petitioner had executed a sale deed in favour of the 2nd petitioner and the same was registered as Doc.No.3486/2019 at Joint No.I Sub Registrar, Villupuram. The respondents have filed W.P.No.3111/2019 before Hon'ble High Court, Madras seeking direction to Joint No.I Sub Registrar, Villupuram to quash the Doc.No.3486/2019. The said Writ Petition was allowed on 15.11.2021 and the sale deed executed by the 1st petitioner in favour of the 2nd petitioner vide Doc.No.3486/2019 was setaside and the registering authority was directed to keep document dated 03.03.2012 till the disposal of this case. All these facts are also admitted.

11. While this being the facts, the petitioners/defendants 1 and 2 have filed this petition to stay the suit till the disposal of Writ Appeal preferred against orders

passed by Hon'ble High Court, Madras in W.P. No.3111/2019.

12. At this juncture, it is pertinent to peruse Section 10 of CPC which reads as follows..

"Stay of suit. - No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation - The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."

The above provision is very clear that there must be a previously instituted suit between the same parties or between parties under whom they are any of them claim litigating under the same title, where such suit is pending in the same or any other court in India. The petitioners are contending that this suit has to be stayed till the disposal of the Writ Appeal. There is no other suit pending which was previously instituted. No suit has been instituted previous to this suit by the same party against the same parties. This being so, the contention of the petitioners is not acceptable. While there is no suit previously instituted pending in any Court, how the petitioners have filed this petition is not answered. By all means this petition is devoid of merits. Already this suit has been pending for a decade. A direction has been given by Hon'ble High Court, Madras to dispose the suit at the earliest. But,

the petitioners have filed this petition without any basis by invoking Section 10 CPC. The basic requirements of Section 10 CPC is not available as per the facts of this petition. Therefore, this petition requires rich dismissal.

In the result, this petition is dismissed with costs.

Dictated to the Steno-Typist, typed on computer, corrected, print out was taken and pronounced by me in the open court, on this 09th day of January 2024.

Principal Subordinate Judge,
Villupuram.

Petitioner's side Witness and Exhibits: -
NIL.

Respondent's side Witness : -
NIL.

Respondent's side Exhibits: -

Ex.R1	11.02.1986	Registration Copy of Sale deed
Ex.R2	12.02.1986	Registration Copy of Sale deed
Ex.R3	13.07.1992	Power of Attorney deed
Ex.R4	31.03.1993	Power of Attorney Cancellation deed
Ex.R5	14.02.1993	Mortgage deed
Ex.R6	27.03.2008	Power of Attorney cancellation deed

Principal Subordinate Judge,
Villupuram.