

In the court of Additional District and Sessions Judge, Virudhunagar.

**Present : Thiru.T.V.Hemanadakumar, B.A.,L.LM.,
Additional District Judge, Virudhunagar.**

Tuesday, the 11th day of November, 2023.

IA.No.4/2023 in OS.2/2014

1) A.R.V.Jegannathan

2) J.Kalpna ... Petitioners/Defendants 6&7

Vs

1. J.Kirijarani

2. V.Vimala Chandrakantham

3. A.R.V.Jeyaraman

4. J.Sridharan

5. G.Vijayalakshmi

6. G.Janandhanan

7. A.R.V.Ramachandran (Died)

8. R.Muthala Athi Appasamy (Died)

9. M.Rajaram

10.A.R.V.Jegadheesan (Died)

11. J.Vasanthi

12. M.Sheelapriya

13. A.R.Venkatasamy Naicker & Sons, Partnership
Firm, Virudhunagar

14. A.R.V.Jegadheesan & Co., Partnership Firm, Virudhunagar

15.A.R.V.Ramachandran & Co.,

16.Tamilnad Mercantile Bank, Virudhunagar through its
Branch Manager.

17.Central Bank of India, Virudhunagar through its Branch Manager

18.S.Gopal Appasamy

19.D.Devarajan

- 20.T.Govindharaj
- 21.P.Chandramohan
- 22.G.Rajendran
- 23.C.Vadivel
- 24.A.R.R.Seenivasan
- 25.G.Veerasley
- 26.Sri Dhandayuthapani Kovil Trust, Virudhunagar,
through its trusty V.Vijayakumar.
- 27.S.A.Balasybramaniam
- 28.V.D.Nagapoosanam Nadar
- 29.V.Vijayakumar
- 30.V.Ramasamy
- 31.N.Sundaramoorthy
- 32.N.Pandi
- 33.S.M.R.Mahendran
- 34.E.Ramanujam
- 35.S.Rajagopal
- 36.E.Josva Milton
- 37.R.Chindhamani Ammal
- 38.R.Surendrakannan
- 39.R.Rajagopal
- 40.R.Parthasarathy (Died)
- 41.R.Senthamaraiselvi
- 42.J.Prema
- 43.Aparna ... Respondents/ Plaintiffs /Defendants
- 44.L.Dhamodharan 1 to 5, 8 to 44

This petition came before me for hearing on 31.10.2023 in the presence of

Thiru.N.Solairaj, Learned advocate for the petitioners, Thiru.M.Vivekananth, Learned advocate for the respondents 1 & 2, Thiru.C.Haribalakrishnan, Learned advocate for the respondents 3 & 42, other respondents remained exparte and hearing arguments on both sides, this court delivered the following ..

ORDER

Petition filed under section 10 and 151 CPC to stay the suit till the disposal of 2nd appeal in SA No.119/2008 pending before the hon'ble High Court of Madras.

2) It is alleged in the affidavit that the petitioners are the defendants 6 & 7 in this case. The respondents 1 to 5/plaintiffs filed the suit for partition. With respect to the suit property item numbers 61, 62, 63, 64, 67, 54, 87, 89, 36, 30, 31 these petitioners filed a suit for specific performance against the defendants as OS No.80/1996 on the file of District Munsif Court, Virudhunagaar. Since, the suit was dismissed, these petitioners filed appeal in AS No.20/2007 before Subordinate Court, Aruppukottai. That case was also dismissed. Against the order of dismissal, these petitioners preferred 2nd appeal in SA No.119/2008 before hon'ble Madurai Bench of Madras High Court and it is pending. So, with respect to the properties in item numbers item numbers 61, 62, 63, 64, 67, 54, 87, 89, 36, 30, 31 title will be decided only after the disposal of SA No.119/2008. Hence, till the disposal of SA No.119/2008, this suit has to be stayed.

3) The respondents 1 & 2 filed counter contending that the averments in the affidavit filed by the petitioners is false. The averment that these respondent filed the suit for partition alone is admitted. As a matter of fact, these petitioners

filed OS No.80/1996 before District Munsif Court, Virudhunagar and it was dismissed. The appeal before Subordinate Court, Aruppukottai in AS No.20/2007 was also dismissed. It is admitted that SA No.119/2008 is pending. The petitioners forged the signature of their mother created a document and on the basis of the forged document, they filed suit for specific performance. The trial court and 1st appellate court dismissed the suit. This suit is filed for partition and so, there is no connection between the earlier suit and this suit. The respondents 1 to 5/plaintiffs have stated about OS No.80/1996 in the plaint and admitted by the petitioners/defendants in the written statement. So, this petition after the case was listed for trial is only to delay the proceedings. Hence, this petition has to be dismissed.

4) The respondents 3 & 42 filed counter contending that 2nd appeal in SA No.119/2008 is pending more than 15 years and hon'ble High Court has not stayed the suit. The scheduled properties in this suit are joint family properties of A.R.Venkitasamy and Soundaravalliammal. So, said Soundaravalliammal has no legal right to execute agreement for sale. These respondents did not execute any agreement for sale to anybody. Only because petitioners' mother Soundaravalliammal died, these respondents also impleaded in the earlier suit. Hence, the petition has to be dismissed.

5) No evidence adduced and documents produced on both sides.

6) Heard both sides and documents perused.

7) Whether this petition deserves to be allowed is the point for consideration.

8) Point:

These petitioners are the defendants 6 & 7 in OS No.2/2014. In this petition, it is submitted that mother of plaintiffs Soundaravalliammal executed

an agreement for sale with respect to plaint schedule item numbers 61, 62, 63, 64, 67, 54, 87, 89, 36, 30, 31 in favour of these petitioners and they filed suit before District Munsif Court, Virudhunagar in OS No.80/1996 and since, the above suit was dismissed, the petitioners filed appeal in AS No.20/2007. It was also dismissed. So, against the dismissal order these petitioners now preferred 2nd appeal in SA No.119/2008 before hon'ble High Court of Madras and it is pending. So, the decision if any in earlier suit will affect the title of the scheduled property item numbers 61, 62, 63, 64, 67, 54, 87, 89, 36, 30, 31 and hence, prayed to stay this suit. The respondents counsel submitted that the present suit is a suit for partition and the issue in earlier suit and this suit are different. It is also submitted that the respondents' mother Soundaravalliammal did not execute such an agreement for sale and since, all the properties scheduled in the suit are joint family properties, Soundaravalliammal was not having any legal right to execute the agreement for sale. The learned counsel submitted that the issues in both suits are different and hence, cannot be stayed. In support of his argument, the learned counsel submitted a judgment of hon'ble High Court of Delhi in the case **PRAVEER CHANDRA Vs APRAJITHA & ORS**. In that case, the application under section 10 of CPC was filed to stay the suit for partition stating that probate petition was pending. The hon'ble High Court held that probate petition strictly speaking cannot be considered to be a previous suit under section 10 CPC and probate petition and suit for partition can be proceeded.

9) But, in this case, the earlier suit is a suit for specific performance of an agreement for sale. The present suit is filed by the respondents 1 to 5/plaintiffs for partition of their 2/7 share in the scheduled properties. It is the petitioners case that the plaintiffs' mother Soundaravalliammal executed an agreement for sale with respect to plaint schedule item numbers 61, 62, 63, 64, 67, 54, 87, 89,

36, 30, 31 and the petitioners herein filed OS No.80/1996 and after dismissal AS No.20/2007 was filed which was also dismissed. Now, the 2nd appeal in SA No.119/2008 is pending. The pendency of the earlier suit and SA No.119/2008 are stated in the plaint and in the written statement also. Admittedly, with respect to some of the plaint scheduled properties, earlier suit is pending for specific performance of an agreement for sale. If the earlier suit is decreed, then the above said plaint scheduled item properties 61, 62, 63, 64, 67, 54, 87, 89, 36, 30, 31 will not be available for partition in this case. So, any decision in previously instituted suit will affect the decision in this case with respect to some of the plaint schedule properties. So, the issue in previously instituted suit is directly and substantially issue in this case. So, till the disposal of second appeal in SA No.119/2008, this suit has to be stayed.

10) In the result, this petition is allowed and further proceedings in the suit in OS No.2/2014 is ordered to be stayed till the disposal of SA No.119/2008. No order as to costs.

Dictated to the steno-typist, typed by him, corrected and pronounced by me in open court, on this the 07th day of November, 2023.

Additional District Judge,
Virudhunagar.

Witness and Exhibits on the side of the Petitioners:

Nil.

Witness and Exhibits on the side of the Respondents:

Nil.

Additional District Judge,
Virudhunagar.

Additional District Court
Virudhunagar
IA No.4/2023 in OS No.2/2014
ORDER
Dated: 07.11.2023
