

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE
VIRUDHUNAGAR**

**Present : Tmt.S.K.ANGALAESWARI, B.A., B.L.,
ADDITIONAL DISTRICT JUDGE,
VIRUDHUNAGAR.**

Friday, the 04th day of July, 2025

**I.A.No.06/2024 in
OS.No.29/2023**

L.Hari Krishnan. ... Petitioner/7th defendant

Vs

1. R.Jeyagowri ... 1st respondent/plaintiff

2. R.Sulochana

3. R.Subbulakshmi

4. R.Venkateswaran

5. Jeevarathinam Harikrishnan

6. L.Santhanalakshmi.

7. Sona Reddy.

8. Santhana Krishnan.

9. S.Illangovan

10.The Manager,

TamilNadu Grama Bank,

Madurai Road, Virudhunagar.

11.The Bank Manager,

TamilNadu Grama Bank,

Perungalathur Branch,

Near Tambaram,

Chengalpattu District.

... Respondents 2 to 11/
Defendants 1 to 6, 8 to 11.

This petition came up before me for final hearing on 10.06.2025 in the presence of Thiru.B.Ravi Raja, learned advocate for the petitioner and Thiru.G.Mariappan, learned advocate for the 1st respondent and 2nd and 3rd respondents remained exparte and Thiru.I.Ramamurthy learned advocate for 4th respondent and Thiru.B.Ravi Raja, learned advocate for respondents 5 to 9 and Thiru.D.Vijayakannan, learned advocate for respondents 10 and 11 and upon

considering all material records in this case and having stood over till this day for my consideration, this court deliver the following . . .

ORDER

This petition is filed by the petitioner/7th defendant under Section 10 read with 151 CPC to stay further proceedings in this case till the disposal of the Probate Proceeding in OP.No.1 of 2023, which is pending before this court.

2) The averments of the Petition affidavit in brief are as follows:

It is alleged in the affidavit that this court has passed an order in I.A.No.8/2023 and IA.No.9/2023 in OP.No.1/2023 on 22.04.2024. Wherein a retired Hon'ble District Judge Mr.P.Mohandoss was appointed as receiver of the various properties impugned in the present partition suit. The same properties are also impugned in probate petition as the petitioner is the named executor of registered Will of Late K.K.S.R.Rajagopal dated 27.09.2019. Further it is not out of place to mention that there also appears to be a registered Will dated 16.07.2005, which was subsequently cancelled on 15.10.2012. Thereafter the Will dated 27.09.2019 was registered. The testator died on 06.02.2022. Despite the above, the 4th respondent Venkateswaran is in actual physical possession of all the title deeds as well as the properties and is refusing to share the same with the other coparceners of the family. He also claiming he has an unregistered Will dated 15.01.2022. While so, the 4th respondent filed C.M.A.(MD)No.536 of 2024 before Hon'ble Madurai Bench of Madras High Court and interim order has been passed in C.M.P.No.6930 of 2024 in CMA(MD)No.536/2024 on 15.05.2024 by referring the matter to Mediation Centre and further status quo has been ordered to be maintained by this court. The fate of this partition suit depends upon the Probate of the Will dated 27.09.2019 in

OP.No.1/2023. Hence the present suit in OS.No.29/2023 ought to be stayed till the disposal of OP.No.1/2023 to avoid multiplicity of proceedings. Hence this petition.

3) **The averments of the Counter affidavit filed by 1st respondent in brief are as follows:**

The contention of the 1st respondent is that this petition is not maintainable in law and facts. The averments in the petition in para 3 are all false. It has to be proved by the petitioner. The main suit has been filed for partition and to declare the Will dated 27.09.2019 is null and void. The petition in POP1/2023 has been filed by the petitioner to effect the Will dated 27.09.2019, which is said to have been executed in favour of petitioner. After proving the Will in this case, the petitioner can seek to effect the Will. Therefore, the petition in POP 1/2023 can be decided only after the decision of this case. The petition in POP 1/2023 and this case have been filed seeking different remedies. So, this petition has been filed only to delay both the proceedings. Since the parties in the petition in POP 1/2023 are also parties to this case, the validity of the will can be proved in this case. Therefore, there is no need to stay this case.

4) **The averments of the Counter affidavit filed by 4th respondent in brief are as follows:**

It is alleged in the counter filed by 4th defendant that in the main case, the plaintiff sought relief for partition. In the petition in POP 1/2023, relief has been sought to effect the Will dated 27.09.2019. In this situation it will be beneficial for both the parties to conduct both the cases together. If this case is stayed until the disposal of POP 1/2023, it will cause hardship to all the respondents. Further, the father of the 4th respondent, K.K.S.R. Rajagopal, has bequeathed his properties to the 4th respondent by executing a will on 15.01.2022. Hence, the Will dated 27.09.2019

said to have been executed by K.K.S.R.Rajagopal is invalid in law. Therefore, there is no need to stay this case until the disposal of POP petition. The petition has to be dismissed.

5) **Point for Determination:**

Whether this petition is deserve to be allowed or not?

6) **Point:**

Heard and Records perused. For sake of convenience the rank of the parties arrayed in this petition to be referred hereunder.

It is a case of the petitioner is that he is the named executor of registered Will dated 27.09.2019 of Late.Mr.K.K.S.R.Rajagopal. The above said Will dated 27.09.2019 was registered before the Sub-Registrar Office, Virudhunagar. The testator died on 06.02.2022. Further the petitioner contended that it is not out of place to mention that there also appears to be a registered Will dated 16.07.2005, which was subsequently cancelled on 15.10.2012 by the testator. The above said Will dated 16.07.2005 purporting to give all the items in the name of the Mr.R.Venkateswaran/4th Respondent was also cancelled within few months by giving cogent reasons. Despite the above R.Venkateswaran/4th Respondent is in actual physical possession of all the title deeds as well as the properties in the name of the testator and he is refusing to share the same with the other Legal Representative of the deceased K.K.S.R.Rajagopal. He is also claiming that he has an unregistered Will dated 15.01.2022. The 1st Respondent who is the daughter of Late.K.K.S.R.Rajagopal filed the above suit in O.S.No.29/2023 for partition against other respondents. However, the purported Will or its contents have not been disclosed till date. Hence it is clearly a case of fabrication. Therefore the contention of the learned counsel for the

petitioner was that the fate of this partition suit depends upon the Probate of the Will dated 27.09.2019 in O.P.No.1/2023.

Furthermore, the learned counsel for the petitioner relaying upon the judgment *in Ashok Kumar Ray Versus Smt.Reba Biswas reported in 2017 SCC OnLine Ori 21 : AIR 2017 Ori 48 : (2017) 2 CCC 114 and judgment in Charulata Panda and another Versus Upendra Kumar Mohapatra and others reported in 2017 SCC OnLine Ori 298 : (2017) 124 CLT 585* for the above propositions of law. Hence the contention of the learned counsel for the petitioner that the present suit for partition in O.S.No.29/2023 ought to be stayed till the outcome of the probate proceedings in O.P.No.01 of 2023 pending before this Hon'ble Court to avoid multiplicity of proceedings and contradictory decisions between the same parties and same properties.

On contrary to above said submission the contention of the 1st respondent is that the prayer of suit in O.S.No.29/2023 and also probate O.P.No.01/2023 were not one among the same. Hence there is no necessity to stay the proceeding the suit in O.S.No.29/2023. Moreover the contention of the 1st respondent is that the above application filed by petitioner to prolong the proceedings. Therefore she prayed before this court for dismissal of the above application.

The contention of the 4th respondent is that his father deceased K.K.S.R.Rajagopal was executed a Will dated 15.01.2022 in his favour. As such the Will dated 27.09.2019 is not valid in the eye of law. Hence the probate O.P. No.01/2023 and Suit in O.S.No.29/2023 have to be tried together. Therefore for staying the proceeding of suit in O.S.No.29/2023 is not maintainable.

By considering the overall facts and also the circumstances of this case and also by perusing the records this court finds that before going to the merits of this application it is just and necessary to extract the law namely Section 10 of CPC here under,

Section 10 : 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 have 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.

Explantion: *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.*

Conditions for Section 10 of CPC

For the appliction of section 10 of CPC, the following conditions must be satisfied:

- * There must be two suits, one previously instituted and the other subsequently instituted.
- * The matter in issue in the subsequent suit must be directly and substantially in issue in the previous suit.
- * Both the suit must be between the same parties or their representatives.
- * Such parties must be litigating under same title in both the suits.
- * The previously instituted suits must be pending in the same court in which the subsequent suit is brought or in any other court in India or beyond the limits of India having the like jurisdiction.

* The court in which the previous suit is instituted must have jurisdiction to grant the relief claimed in the subsequent suit.

In the light of the above said provision it is a settled preposition of law that the main purpose of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigation with the same cause of action, subject matter and relief sought.

Moreover Section 10 of CPC would provide that Civil Court shall not proceed with the trial of the suit subsequently instituted when the matter is the same in previously instituted suit.

Further also during the course of the argument the counsel for the petitioner filed the Typed set of papers and relied the following judgments,

(i) Sunil Gupta Vs. Kiran Girhotra & Others before Hon'ble High Court of Delhi reported in 2009 DLT 157 705 in paragraph No.5 held that,

".....5.Probate Court is seized with the matter. Is is directed that the Probate Court shall decide which of the two Wills is the genuine and the last Will. Since the Probate Court is seized with the matter, the civil suit filed by the plaintiff seeking cancellation and declaration in respect of the Will dated 30th October, 1997 will have to wait as the Probate Court has exclusive jurisdiction to determine the genuineness or otherwise of a Will....."

(ii) Apsi Jal And another Vs. Khushroo Rustom Dadyburjor before Our Supreme Court of India reported in 2013 (4) SCC 333 in paragraph No.8 held that,

".....8. 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 suits is identical. The key words in Section 10 are “**the matter in issue is directly and substantially in issue**” in the previous instituted suit. The words “**directly and substantially in issue**” are used in contradistinction 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 the subject-matter in both the proceedings is identical.....”*

(iii) **Dinesh Kumar Pathak and Another Vs.Smt.Sashi Sharma before Hon’ble High Court of Orissa, Cuttack Bench in paragraph No.14** held that,

“14.The decision in the probate proceeding on the question of proof of Will will have a direct impact on the suit. The decision in the partition suit would also operate as res-judicata in the probate proceeding. In such contingency, when both the proceedings are pending, the suit for partition shall remain stayed till disposal of probate proceeding.....”

(iv) **Charulatha Panda and Another Vs. Upendra Kumar Mohapatra and others** before Hon'ble High Court of Orissa, Cuttack Bench reported in C.M.P.No.252/2016 in Paragraph No.9 held that,

“9. The suit schedule property is the subject-matter of dispute in the partition suit as well as probate proceeding. The jural relationship amongst the parties inter se is finally decided in the preliminary decree. The decision in the probate proceeding on the question of proof of ‘Will’ will have a direct impact on the suit. The decision in the partition suit would also operate as res judicata in the probate proceeding. In such contingency, when both the proceedings are pending, the suit for partition shall remain stayed till disposal of probate proceeding...”

(v) **Thaiyalnayagi @ Damayanthi Vs. Rajeswari and three others** before Our Hon'ble High Court of Madras reported in C.R.P.(P.D) No.1513 of 2018 in Paragraph No.6 held that,

“6.Hence, this Court is of the opinion that unless and otherwise a decision is taken in the above will by this Court, no decision can be arrived in O.S.No.13 of 2011. Therefore, it would be appropriate to stay all further proceedings in the suit till a decision is taken by this Court with regard to the entitlement of will...”

(vi) **Pushpavalli Vs. K.R.Parvathi** before Hon'ble High Court of Madras reported in C.R.P.No.3941 of 2015 in Paragraph No.5 held that,

“5.Therefore, the issue involved in the Probate Original Petition will have a direct bearing on the main issue involved in the suit. In both the cases the genuineness of the Will is the main issue to be decided.

Therefore, this Court deems it appropriate that the further proceedings in the partition suit filed by the first respondent shall be stayed till the disposal of the TOS. No.7 of 2020 on the file of this court..”

(vii) Anila Shashikant Bhai Kothari Vs. Nipun Navnit Mehta before Our Hon’ble High Court of Madras reported in C.R.P.(P.D.P No.4388 of 2024 in Paragraphs 13, 14 held that,

“....13. In case, the Bombay High Court comes to a conclusion that the “WILL” projected by the third defendant is an act of fabrication and dismisses the testamentary petition on that ground or on the ground that it does not have territorial jurisdiction to deal with the proceedings and further steps are not taken thereafter, then the suit in Salem deserves to be continued to its logical conclusion. The issue before both the Courts is whether Sreekant Surajmal Mehta died intestate or had left behind the Will.

14. As rightly contended by Mr.G.Rajagopal, the plaint before the Salem Court concedes to the fact that the third defendant has projected a “WILL” and has also initiated proceedings for grant of probate before the Bombay High Court. This implies the previously instituted proceeding is pending before the said Court.”

In the light of the above citations and also on perusal of records this court finds that probate O.P.No.01/2023 was originally filed before the District Judge, Trichirappalli on 06.04.2022 and numbered as probate O.P.No.160/2022 on 12.04.2022. The above suit in O.S.No.29/2023 numbered on 27.01.2023 and made over to this court. Hence it is settled principle of law that under Section 10 of CPC only the later suit would be stayed under the section, earlier suit would not be stayed.

Moreover this court concluded that unless the genuineness of the Will is decided the claim of the respondents for share in the estate of deceased K.K.S.R.Rajagopal cannot be decided. Therefore the issue involved in the probate Original Petition will have a direct bearing on the main issue involved in the suit for partition. As such in both the cases the genuineness of the will is the main issue to be decided. Hence this court deems it appropriate that the further proceeding in the partition suit filed by the 1st respondent shall be stayed till the disposal of the probate proceedings.

As discussed above as the basic requirements to invoke section 10 CPC had been satisfied. Hence this court inclined to allow the application.

In the result, this petition is allowed. No order as to cost.

Dictated to the steno-typist, directly typed by her in the computer, corrected and pronounced by me in open court, on this the 04th day of July, 2025.

Additional District Judge,
Virudhunagar.

Witness and Exhibits on the side of the Petitioner:

Nil.

Witness and Exhibits on the side of the Respondents:

Nil.

Additional District Judge,
Virudhunagar.