

(2011) 02 KL CK 0093
In the High Court Of Kerala
Case No : O.P. (C) No. 497 of 2011

Eledath Marakkar Haji and Others

APPELLANT

Vs

Paraparambil Moosakkutty Haji and Others

RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 151
Constitution of India, 1950 — Article 227
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2012) 3 ILR (Ker) 963 : (2012) 4 KLJ 16

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : Jamsheed Hafiz, for the Appellant;

Final Decision : Dismissed

Judgement

Mr. Justice K.T. Sankaran

1. The question involved in this Original Petition is whether the trial of a suit which was filed at an earlier point of time could be stayed invoking Section 10 of the CPC on the ground that a subsequently instituted appeal is pending before the Appellate Authority under the Kerala Land Reforms Act. The petitioners are defendants 2, 3 and 12 in O.S. No. 136 of 2008 on the file of the Sub Court, Tirur filed by respondents 1 to 3 for a permanent prohibitory injunction. The plaintiffs relied on a purchase certificate issued by the Land Tribunal in favour of their predecessor interest.

2. Defendants 2, 3 and 12 filed A.A. No. 53 of 2008 on the file of the Appellate Authority, Thrissur, challenging the order passed by the Land Tribunal granting purchase certificate in favour of the predecessor in interest of the plaintiffs. That appeal is also pending. Defendants 1, 2, 3, 5, 6 and 12 filed I.A. No. 3768 of 2009 before the court below u/s 10 of the CPC to stay the trial of the suit pending disposal of the appeal before the Appellate Authority. The court below dismissed the application, which is under challenge in this Original Petition. The

court below held that Section 10 of the CPC cannot be invoked to stay the trial of a suit pending disposal of appeal before the Appellate Authority. The court below relied on the decision in *Korb Chacko v. Mathew* 1995 (2) KLT 883.

3. Section 10 of the CPC provides that "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".

4. Section 10 is a Rule of Procedure. A decree passed in contravention of Section 10 is not a nullity. Section 10 applies only where the ingredients thereof are satisfied. The application u/s 10 should be presented to the court in which the subsequent suit is pending. That Section contemplates a previously instituted suit and subsequently instituted suit between the same parties or between the parties under whom they or any of them claim. They must be litigating under the same title. When all the ingredients of Section 10 are satisfied, the court will stay the subsequent suit. The order of stay should be passed not by the court in which the previously instituted suit is pending, but by the court where the subsequently instituted suit is pending.

5. In the present case, the application for stay was not filed before the authority where the subsequent proceeding is pending, but before the court in which the previously instituted suit is pending. Therefore, on that ground also, the application is not maintainable.

6. In *National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara*, , the Supreme Court held that 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. A Division Bench of this Court in *Sivaraj v. Padma* 1995 (2) KLT 912 held that Section 10 C.P.C. cannot be invoked to stay the appeal pending before the Rent Control Appellate Authority till the disposal of an appeal pending before the Appellate Authority under the Kerala Land Reforms Act. In *Mathew v. Sony Cyriac*, 1995 (2) KLT 128, it was held that a suit cannot be stayed till the disposal of a complaint filed u/s 138 of the Negotiable Instruments Act. In *Sathyanarayanan Chettiar v. Rent Controller* 1992 (2) KLT 298, it was held that Section 10 C.P.C. cannot be made applicable to the proceedings under the Rent Control Act. In *Govindankutty Mannadiar and others v. Lakshmikutty Amma* 1983 KLT 557 pending appeals before the Appellate Authority, challenging the order of the Land Tribunal, a suit was filed for recovery of possession. It was held that Section 10 cannot be invoked to stay the suit. In *Kallianikutty Amma v. Eacharan Nair* 1960 KLT 898, it was held that Section 10 cannot be invoked to stay the proceedings before the Rent Control Court for fixation of rent on the ground that

earlier suit for arrears of rent is pending. In *Korb Chacko v. Mathew* 1995 (2) KLT 883, it was held that a suit cannot be stayed pending disposal of an appeal before the Appellate Authority. In view of the aforesaid authoritative pronouncements, it cannot be said that the suit is liable to be stayed pending disposal of the appeal before the Appellate Authority. Moreover, even if Section 10 is applicable, the proceeding to be stayed is subsequently instituted proceeding. In the present case, the suit was filed earlier in point of time and the appeal before the Appellate Authority was filed later.

7. Alternatively, the learned counsel for the petitioners submitted that if Section 10 of the CPC as such is not applicable in the case, then it is to be held that there is no provision in the C.P.C. to deal with such a situation. If so, Section 151 of the CPC can be invoked and a stay can be granted as prayed for by the defendants. The contention put forward by the petitioners that Section 151 C.P.C. can be invoked to grant stay, is unsustainable. The learned counsel put forward a contention that there is no specific provision in the C.P.C. to stay the suit pending disposal of an appeal before the Appellate Authority and therefore, Section 151 C.P.C. can be invoked. Section 10 of the C.P.C. provides for stay of suit. If the ingredients of Section 10 are available, stay can be granted. Stay cannot be granted in cases where the ingredients of Section 10 are not attracted. A party cannot take shelter u/s 151 C.P.C. to get an order of stay, which cannot be granted u/s 10 C.P.C.

For the aforesaid reasons, I am of the view that the court below was right in holding that the application u/s 10 C.P.C. is not maintainable. No error of law or error of jurisdiction warranting interference under Article 227 of the Constitution of India is made out. Accordingly, the Original Petition is dismissed.