

(2014) 10 MAD CK 0270

In the Madras High Court

Case No : C.R.P. (PD) Nos. 2225 to 2227 of 2011

Mallika Dharmaraj

APPELLANT

Vs

The Executive Officer

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2, Order 14 Rule 1, Order 4 Rule 1, Order 6 Rule 6, Order 6 Rule 6

Citation : (2014) 5 LW 324 : (2014) 8 MLJ 720

Hon'ble Judges : K. Ravichandra Babu, J

Bench : Single Bench

Judgement

K. Ravichandrabaabu, J.—C.R.P. (PD). No. 2225 of 2011 is filed challenging the order dated 28.4.2011 passed in I.A. No.251 of 2011 in O.S. No.548 of 2004 on the file of the District Munsif Court, Tirupur.

2. C.R.P. (PD). No. 2226 of 2011 is filed challenging the order dated 28.4.2011 passed in I.A. No.252 of 2011 in O.S. No.1135 of 2004 on the file of the District Munsif Court, Tirupur.

3. C.R.P. (PD). No. 2227 of 2011 is filed challenging the order dated 28.4.2011 passed in I.A. No.253 of 2011 in O.S. No.1136 of 2004 on the file of the District Munsif Court, Tirupur.

4. All the above three interim applications were filed by the defendants in the respective suits, under Section 10 CPC seeking for stay of the trial of the suits until final disposal of S.T.A. No.39 of 1976 pending before this Court. The petitioners in all these Civil Revision Petitions are the plaintiffs in the abovesaid suits. Since the issue involved in all the three C.R. Ps. is one and the same, they are dealt with in common. For the sake of convenience, the petitioners in these CRPs. are referred to as the plaintiffs and the respondents in all these CRPs. are referred to as the defendants.

5(a). O.S. No.548 of 2004 was filed by the plaintiff for declaration to declare that

the suit property belongs to the plaintiff and for a direction to the defendants 2 to 4 to handover the possession of the suit property to the plaintiff by demolishing the superstructure raised by them.

(b) O.S. No.1135 of 2004 was filed by the plaintiff for declaration to declare her title to the suit property and for direction to the second defendant to handover the possession of the suit property to the plaintiff and for a direction to the second defendant to pay damages of Rs.7,200/- for use and occupation and for paying future damages at the rate of Rs.200/- per month.

(c) O.S. No.1136 of 2004 was filed by the plaintiff for declaration to declare his title to the suit property and to direct the second defendant to handover the possession of the same and for damages of Rs.5,400/- for use and occupation from the second defendant and for damages of Rs.3,600/- from the defendants 3 to 5 for use and occupation.

6. The case of the plaintiffs in all the above three suits is that an extent of 8.43 acres comprised in T.D.174, situated in old S.F. No.209/1 of Tirupur Village, Palladam Taluk, including the suit schedule property and other lands, were granted to one Mavalanga Naicker, the ancestor of the respective plaintiffs' vendor as Devadayam Inams for the purpose of performing "Ukkirana Uliam" for the two Temples, namely Arulmighu Veeraragha Perumal Temple and Arulmighu Visweswaraswamy Temple, located in Tirupur Town and that the Ukkirana Uliam is the service to secure ornaments and utensils of both the Temples. It is their further case that the service-holder at the time of Inam Settlement in the year 1863, was Mavalanga Naicker, the ancestor of the plaintiffs' vendor. Thus, it is contended that as per the Inams Abolition Act, the Special Settlement Tahsildar granted patta to all the heirs of service-holders, who were in possession and enjoyment of the suit properties, from whom the plaintiffs purchased the respective suit properties by way of sale deeds. Based upon such claim of title over the suit properties, the plaintiffs have filed the abovesaid suits.

7. The first defendant in all the abovesaid suits is the said Temples. It is the case of the Temples that the plaintiff has not purchased the suit properties from the respective vendors and defendants 2 to 4 are the tenants under the first defendant and all of them were paying monthly rent to the first defendant. It is the further case of the first defendant that the vendors of the plaintiffs do not have any valid title and possession of the suit properties and therefore, the sale deeds said to have been executed in favour of the plaintiffs cannot convey any title and that the first defendant is the true owner of the suit properties.

8. When the abovesaid suits filed in the year 2004 are pending, the first defendant and others filed the above interim applications in the year 2011, i.e. after a period of seven years, seeking for stay of the suits by contending that in respect of the very same suit properties, dispute is pending before this Court in S.T.A. No.39 of 1976 arising out of the proceedings of the Settlement Tahsildar, Coimbatore in granting patta in respect of the land in favour of T.V. Angappan

and two others and in respect of superstructure in favour of one V.K. Mahalingam and Karuppa Naicker. Thus, it is contended by the first defendant and others that since the issue involved in both the proceedings is one and the same between the same parties, the suits cannot be proceeded further till the disposal of S.T.A. No.39 of 1976 on the file of this Court.

9. The said applications were resisted by the plaintiffs by filing counter statements, contending that the subject matter in dispute is not one and the same and that the property in both the proceedings and that the parties therein are also not one and the same. Therefore, it is contended that the applications under Section 10 CPC are not maintainable.

10. The Court below allowed the applications and stayed the trial of those suits by passing a very cryptic order.

11. Mr. S.K. Rakhunathan, learned counsel appearing for the petitioners in all the three CRPs. submitted as follows:

Section 10 CPC applications filed by the defendants are not at all maintainable on the reason that the proceedings pending before this Court in S.T.A. No.39 of 1976 cannot be termed as a suit. The dispute between the parties in both the proceedings is not one and the same, apart from the fact that the parties are also not one and the same. There are no issues in common in both the proceedings. This Court is acting as a Tribunal under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (Tamil Nadu Act 30 of 1963) and hence, the STA proceedings are not suit. The petitioners herein who are the plaintiffs, are not parties to STA proceedings. The patta granted to the respective vendors of the petitioners, has not been challenged and not the subject matter of the STA proceedings. What is under challenge in the STA proceedings is against the refusal of granting patta to one Palanisamy.

12. Learned counsel for the petitioners relied on the following decisions in support of his submissions:

(a) 2008 (1) MLJ 300 (R. Subramanian Vs. Arulmighu Dhandayuthapani Swamy Thirukkcoil);

(b) Devanayagi Ammal and Others Vs. Manicka Konar and Ramu Konar, ;

(c) 2009 (3) MLJ 263 (Janagarajan Vs. Thiruvaduthurai Aathinam) and

(d) National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara, .

13. Per contra, Ms. R. Gowri, learned counsel appearing for the first respondent submitted as follows:

The Ryotwari patta was granted to the first respondent-Temples and the order passed by the Settlement Tahsildar, Coimbatore in S.R. No.5 of 1969, dated 31.8.1974 was also included in the list of documents in the suits filed by the

plaintiffs. The suit properties form part of Ryotwari patta, which is the subject matter of the STA proceedings. Since the title to the properties is the subject matter in the STA proceedings, the issue in both the proceedings is one and the same. The properties fall under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, which is a special enactment to deal with these lands. Under Section 7 of the said Act, which deals with the constitution of Tribunals, it is contemplated that such Tribunal shall consist of one person who shall be a Judicial Officer not below the rank of a Subordinate Judge and that such Tribunal shall have the same powers as are vested in a Civil Court. Therefore, the proceedings culminated from the abovesaid special enactment are also to be treated and construed as suit. Likewise, under Section 30(3) of the said Act, appeal to the Special Appellate Tribunal, namely the High Court, is contemplated and powers to the High Court are vested as that of a Civil Court. Section 47 of the said Act bars filing of civil suit and therefore, the jurisdiction of the Civil Courts are barred and consequently, proceedings initiated under the Act is on par with the civil suit, and therefore, Section 10 CPC applies to this case. Under Section 9 CPC, it is contemplated that the Courts shall have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Hence, when a civil suit is barred under Section 47 of the abovesaid Act, if the nature of the proceedings is of civil nature, it is to be treated as a suit only. The impugned orders in these Civil Revision Petitions, though did not elaborately discuss all these aspects, however dealt with the issue, and therefore, the same need not be interfered with. Parties mean the persons claiming under the parties who have title or right. The plaintiffs are the purchasers from the legal heirs of the service-holder. In the STA proceedings, larger extent of properties are dealt with, whereas portion of such larger extent is the subject matter in these three suits. Sl.No.35 of the list of documents in one of the suits, namely the order of the Settlement Tahsildar, is the subject matter in the STA proceedings. Therefore, both the parties and the properties in both the proceedings, are one and the same. The plaintiffs purchased the properties only from the service-holders, who in turn purchased the same from one Mahalingam. In C.M.A., the title of the said Mahalingam was rejected, against which only, the present STA is filed and pending before this Court. The petitioners' purchase is also hit by "lis pendens".

14. In support of her submissions, learned counsel for the first respondent relied on the decision of the Supreme Court reported in Vankamamidi Venkata Subba Rao Vs. Chatlapalli Seetharamaratna Ranganayakamma, .

15. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the first respondent and perused the materials placed before this Court.

16. The point for consideration in these Civil Revision Petitions is as to whether the settlement proceedings arising out of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, which culminated into Special Tribunal Appeal

(S.T.A) before this Court, is a suit so as to attract Section 10 CPC.

17. From the above discussed facts and circumstances, it is seen that the petitioners herein who are the plaintiffs, claim that the STA proceedings pending before this Court, is not a suit and consequently, the impugned orders of the Court below in granting stay of the abovesaid suits till the disposal of S.T.A. No.39 of 1976, by invoking Section 10 CPC, are not sustainable. In order to appreciate the said contention, it is better to refer Section 10 CPC, which reads as follows:

"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 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."

18. A bare perusal of the abovesaid provision of law would show that the following are the mandatory requirements to seek for stay of suit:

(a) There must be two suits;

(b) The matter in issue in both the suits must be directly and substantially common and

(c) It should be between the same parties or between parties under whom they or any of them claim title.

19. Out of the above three mandatory requirements, the first requirement is the prime one and only when such requirement is satisfied, the question of considering the other two requirements, would arise. In other words, one who seeks to invoke Section 10 CPC, has to primarily satisfy that both the proceedings are suits as contemplated under Section 10 CPC.

20. In this case, no doubt, elaborate arguments were advanced by both sides with regard to the questions as to whether both the proceedings are between the same parties or not and whether the issue in both the proceedings is common or not. As I have already pointed out, answering these questions would arise only when the answer to the first question, namely as to whether both the proceedings are suits, is in affirmative. Therefore, I would like to go into that question first and decide based on the pleadings, arguments and the case laws cited on both sides.

21. It is true that the Code of Civil Procedure, 1908 has not defined the word "suit". However, Section 9 CPC contemplates that the Court shall have jurisdiction to try all suits of civil nature excepting suits which are either expressly or impliedly barred. Section 15 CPC contemplates that every suit shall

be instituted in the Court of the lowest grade competent to try it. Section 26 CPC contemplates that every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. Likewise, the parallel procedure is contemplated under Order 4 Rule 1 CPC, which reads as follows:

"Order IV: Institution of suits:

Rule 1: Suits to be commenced by plaint: (1) Every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2)."

22. From a perusal of Section 26 CPC read along with Order 4 Rule 1 CPC, it is clear that institution of the suit shall be by presenting a plaint and such plaint shall comply with the rules contained in Orders 6 and 7 CPC so far as they are applicable. Sub-rule (3) to Rule 1 of Order 4 CPC specifically contemplates that if the requirements specified under sub-rules (1) and (2) are not complied with, the plaint shall not be deemed to have been duly instituted.

23. Thus, it is evident that if a proceedings is claimed or required to be construed as suit, such proceedings must satisfy the abovesaid requirements of law. If such requirements are absent, such proceedings cannot be termed or construed as a suit at all. Order 6 CPC deals with the pleadings generally. Under the abovesaid provision, it is contemplated as to what is the meaning of the pleading and what it should contain. Sub-rule (3) therein specifically contemplates the form of pleading. Order 7 Rule 1 CPC deals with the particulars to be contained in the plaint. Therefore, it is evident that not that every pleading or petition or application can be claimed as a plaint, unless such pleading is made strictly as contemplated under Orders 6 and 7 CPC.

24. With regard to the framing of issues, Order 14 Rule 1 CPC deals with the same, which reads as follows:

Order XIV: Settlement of issues and determination of suit on issues of law or on issues agreed upon:

Rule 1: Framing of issues -- (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds:--

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after examination under Rule 2 Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence."

25. A perusal of the abovesaid provision would show that issues would arise when there is affirmation of law by one party and denial of the same by the other as well as material propositions of law or fact alleged and denial of the same by the respective parties. Sub-rule (5) of Order 14 Rule 1 CPC specifically contemplates that the issues shall be framed by the Court after reading the plaint and the written statement and after examination under Rule 2 of Order 10 CPC and after hearing the parties or their pleaders. The Court, before framing the issues, has to ascertain upon what material proposition of fact and law the parties are at variance.

26. Therefore, it is evident that the issue referred to under Section 10 CPC is the issue as framed under Order 14 Rule 1 CPC. In other words, the issue must be one and the same in both the proceedings, which means that the issue as framed under Order 14 Rule 1 CPC and not the dispute that has arisen between the parties, may be common in both the proceedings. To put it more clear, it is only the "issue" and not the "dispute" must be one and the same between the same parties.

27. Keeping the above principles in mind, if the facts of the present case are looked into, it would undoubtedly show that the patta proceedings before the Settlement Tahsildar, Coimbatore under the said Inams Abolition Act, cannot be construed as a suit, as none of the requirements as discussed supra, is satisfied to claim the said proceedings as a suit. It cannot be the contention of the parties that the Settlement Tahsildar is a Court or exercising the power of the Court. On the other hand, undoubtedly, he was exercising his power administratively or quasi-judicially empowered under the special enactment. No doubt, such proceedings before the Settlement Tahsildar have subsequently culminated into the filing of an appeal before this Court and the same is pending. Here again, it is not in dispute that such appeal is termed only as a Special Tribunal Appeal, and therefore, this Court is only exercising its power as the Tribunal to deal with the above appeal and consequently, such Tribunal cannot be construed to mean as though dealing with a suit of civil nature in order to attract Section 10 CPC.

28. At this juncture, the decision of the Honourable Supreme Court reported in

National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara, can be safely relied upon. Paragraph 8 of the abovesaid decision reads as follows:

"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....."

(emphasis supplied)

29. Further, this Court, in the decision reported in 2008 (1) MLJ 300 (R.Subramanian Vs. Arulmighu Dhandayuthapani Swamy Thirukkcoil) has observed in paragraphs 10 and 11 as follows:

"10. A plain reading of Section 10, C.P.C. would show that the issues involved in the present Suit should be directly or substantially in issue in a previously instituted Suit. Though the term "Suit" has not been anywhere defined in the Code, Order 4, Rule 1, C.P.C. provides that every Suit shall be instituted by presenting a (Plaint in duplicate to the Court) or such officer as it appoints in this behalf.

11. Thus, to construe a proceeding as a Suit one has to see whether the same has been instituted by presenting a Plaint. Order 7, C.P.C. prescribes as to what are all the particulars to be contained the Plaint. If Order 4 and Order 7 C.P.C., are closely analysed, it would leave no doubt that the Petition filed under Section 19 of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961, is not a Suit, since the same has not been instituted by presenting a Plaint before a Civil Court. Therefore, in my considered opinion, Section 10, C.P.C., is not at all applicable."

30. Further, in a recent decision of the Honourable Supreme Court reported in Aspi Jal and Another Vs. Khushroo Rustom Dadyburjor, , it has been observed in paragraph 10 as follows:

"10..... The basic purpose and the underlying object of Section 10 of the Code is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the Plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two Courts in respect of the same relief and is aimed to protect the Defendant from multiplicity of proceeding....."

31. Learned counsel for the first respondent relied on a decision of the Supreme

Court reported in Vankamamidi Venkata Subba Rao Vs. Chatlapalli Seetharamaratna Ranganayakamma, to contend that the jurisdiction of the Civil Court is excluded in regard to matters covered under the settlement proceedings initiated under the abovesaid Inams Abolition Act, and therefore, the present suit filed by the petitioners herein are not maintainable. In my considered view, such is not the issue before this Court for deciding these Civil Revision Petitions, more particularly, with regard to the maintainability of the suits. On the other hand, the issue is as to whether the present suits are liable to be stayed under Section 10 CPC or not. Therefore, in my considered view, the abovesaid decision is not helping the first respondent in any manner. In view of the above stated discussion of the facts and law, the contention of the learned counsel appearing for the first respondent is liable to be rejected.

32. Considering all the above facts and circumstances, I am of the firm view that the proceedings initiated before the Settlement Tahsildar for grant of Ryotwari patta, are not the "suit" so as to attract the provisions of Section 10 CPC, even though such proceedings have subsequently culminated into the Special Tribunal Appeal and are pending before this Court. Since the first question with regard to the nature of the other proceedings, is answered in negative as above, I am not going into the other question to find out as to whether the issues are one and the same in both the proceedings and as to whether the parties are one and the same in both the proceedings, as such exercise is wholly unnecessary. The Court below unfortunately has not considered the above aspects. Accordingly, I find that the orders under challenge are not sustainable.

33. Consequently, the Civil Revision Petitions are allowed. The impugned orders of the Court below are set aside. Since the suits are of the year 2004, the trial Court is directed to take up the suits and dispose of the same on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order. No costs.