

(1947) 03 MAD CK 0022
In the Madras High Court

S. Komarappa Goundan

APPELLANT

Vs

S. Ramaswamy Goundan

RESPONDENT

Date of Decision : 26-03-1947

Acts Referred:

Citation : AIR 1948 Mad 150 : (1947) 60 LW 300 : (1947) 1 MLJ 365

Hon'ble Judges : Yahya Ali, J

Bench : Division Bench

Judgement

Yahya Ali, J.—This is an application for stay of the trial of O.S. No. 32 of 1946 on the file of the Sub-Court, Salem, pending the disposal of

S.A. No. 2081 of 1946 of this Court. In the counter filed by the respondent an objection was taken that the application is not maintainable as there

is no appeal in this Court with reference to any proceeding in the suit sought to be stayed. I have examined this aspect of the matter in my judgment

in K.R. Balaji Rao and Others Vs. M.G. Natesa Chetty, and relying on a number of cases cited therein I have come to the conclusion that if

certain conditions are satisfied there can be no question that the trial of an independent suit can be stayed by this Court in the exercise of its

inherent powers u/s 151 of the CPC in the course of other proceedings pending before it. The conditions to be satisfied would be firstly the two

pre-requisites mentioned in Section 151 of the Code itself, namely, that the stay has to be ordered in the ends of justice or to prevent abuse of the

process of the Court ; the other condition would be that the applicant for stay has no other remedy available to him in law which he can seek from

a competent Civil Court. I have pointed out in that judgment that if the applicant can get the particular suit stayed u/s 10 of the Code it would be

incumbent upon him to adopt that course before invoking the inherent jurisdiction of this Court u/s 151. In the present case what is urged by the

learned Counsel for the respondent is (although this point was not directly or indirectly raised in the counter) that O.S. No. 32 of 1946 is a later

suit and consequently an application could be made in the Sub-Court, Salem, for its stay u/s 10 of the Code. It is admitted that this is a later suit

but it is argued by the learned Counsel for the petitioner that Section 10 would not be applicable to the present case as the facts in the two cases

are not common except only with regard to one matter in issue relating to the partition of 1938. The premises on which this argument is based are

not denied ; and it follows having regard to the decisions which I shall presently refer to, that section in of the Code cannot apply to such a case.

2. It has been held in a long series of cases of this Court that the words "" the matter in issue "" in Section 10 should be deemed to denote the entire

subject in controversy. Venkatasubba Rao, J., in Sreeramulu v. Sreeramulu AIR 1922 Mad. 304 Srinivasa Aiyangar, J., in Kunnamangalath v.

Koman Nair (1924) 48 M.L.J. 251 and Curgenvin, J., in Vellachamy Vs. K. P. A. N. R. Muthiah Chetty and Others, enunciated this position

differing from the Calcutta decision in Jinnat Bibi Vs. Howrah Jute Mill Co. Ltd., which was a decision of a single Judge who had failed to notice

an earlier Calcutta decision in Bepin Behari v. Jogendra Chandra AIR 1917 Cal. 348. The earlier Calcutta decision was followed in the earliest of

the Madras cases referred to above in Sreeramulu v. Sreeramulu AIR 1922 Mad. 304. All these cases were again reviewed by Walsh, J., in two

judgments both of which are reported in the same volume, C. Murugesu Mudaliar Vs. C. Balasundarammal, and Mahaganpathi and Another Vs.

Natesa Iyer and Others, . The learned Judge pointed out that the use of the definite article "" the "" in "" the matter in issue "" in Section 10 suggests

that the rule will not apply where only "" a matter in issue is common"".

3. The only other question remaining to be considered is whether it is in the interests of justice to stay the trial of O.S. No. 32 of 1946. An

important question in the litigation is about the genuineness of the release deed whose foundation is the alleged partition of 1938 ; and the question

of the release and of the partition deed is undoubtedly common to both the cases. I therefore consider that it is in the interests of justice to stay the

trial in O.S. No. 32 of 1946 on the file of the Sub-Court of Salem, as to a very large extent the disposal of the appeal one way or the other here

will have an important bearing upon the material questions at issue in the suit sought to be stayed.

4. The petition is ordered.