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**(2014) 10 MAD CK 0331**

**Madras High Court**

**Case No:** C.R.P. (PD). No. 3871 of 2014 and M.P. No. 1 of 2014

T.O. Thangavelu

APPELLANT

Vs

T.N. Rajendran

RESPONDENT

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**Date of Decision:** Oct. 28, 2014

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 10

**Citation:** (2014) 6 CTC 439 : (2014) 5 LW 285 : (2015) 1 MLJ 490

**Hon'ble Judges:** K. Ravichandra Babu, J

**Bench:** Single Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

K. Ravichandrabaabu, J.

This Civil Revision Petition is filed challenging the order dated 7.7.2014 made in I.A. No. 787 of 2013 in O.S. No. 203 of 2012 on the file of the Principal District Munsif Court, Thiruchengode in dismissing the application filed by the revision petitioners under Section 10 CPC seeking for stay of the abovesaid suit till the disposal of C.M.A. No. 1838 of 2011 pending before this Court arising out of the order made in P.O.P. No. 78 of 2008, dismissing the said pauper petition.

2. The petitioners are the defendants in the abovesaid suit. The respondent herein as plaintiff filed the said suit in O.S. No. 203 of 2012 seeking for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit properties. Earlier, the petitioners herein and another, filed pauper petition in P.O.P. No. 78 of 2008 on the file of the District Court, Namakkal seeking permission to file the suit, as "informa pauperis", for the relief of declaration of their title to "B" schedule property, setting aside the sale deeds, dated 4.9.2006 and 29.9.2008 and for permanent injunction restraining the defendants therein from interfering with their peaceful possession and enjoyment of "B" schedule property.

3. The plaintiff in O.S. No. 203 of 2012 is the fifth respondent in the above pauper O.P. The said pauper O.P. was rejected on 25.3.2011. Challenging the same, C.M.A. No. 1838 of 2011 was filed by the revision petitioners herein and the same is pending before this Court. Therefore, the petitioners seek for stay of the subsequent suit filed by the respondent herein by contending that the issue involved in both the proceedings, namely C.M.A. No. 1838 of 2011 and O.S. No. 203 of 2012 is one and the same between the same parties. The Court below rejected the said application by holding that on the date of filing the above application, no suit is pending and that the petitioners are trying to drag on the proceedings, especially when the witnesses on the side of the plaintiffs were cross-examined and the matter was posted for examination of the defendant's side witness.

4. Mr. V.R. Rajasekaran, learned counsel appearing for the petitioners submitted that both the proceedings are one and the same and therefore, rejection of application filed under Section 10 CPC is not correct. He further submitted that when once permission is granted to file the suit as "informa pauperis", it dates back to the date of filing of the plaint and therefore, it should be construed that the present proceedings pending before this Court in C.M.A. is also a suit with the same issue arising between the same parties. In support of his submissions, learned counsel for the petitioners relied on the decision of the Honourable Supreme Court reported in [Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another](#), and the decision of the Kerala High Court reported in [Xavier alias Appachan Vs. Fr. George](#), .

5. Per contra, Mr. P. Valliappan, learned counsel appearing for the respondent submitted that when once the pauper O.P. is dismissed, there is no suit as on date pending. Therefore, Section 10 CPC is not attracted. He further submitted that pendency of the C.M.A. before this Court arising out of the order of dismissal passed in the pauper O.P., cannot be equated with that of a suit. It is his further submission that even otherwise, the verdict in the subsequent suit will not operate as res-judicata, since the subsequent suit is only for bare injunction, whereas the petitioners' suit is for declaration of their title to "B" schedule property and for declaring the two sale deeds as null and void. In support of his submissions, he relied on the decisions of this Court reported in [Kamala and Others Vs. Kulanthaivel and Another](#), and [A. Philoman Raj Vs. S. Kunna Gounder, A. Arockiasamy and A. Chinnappan](#), .

6. Heard the learned counsel appearing for the parties and perused the materials placed on record.

7. The point for consideration in this Civil Revision Petition is as to whether the C.M.A. pending before this Court arising out of dismissal of pauper O.P., can be construed as a suit so as to attract Section 10 CPC for staying the subsequent suit filed by the respondent herein.

8. It is not in dispute that the petitioners herein and another have filed P.O.P. No. 78 of 2008 on the file of the District Court, Namakkal, seeking permission to file the suit for declaration and for permanent injunction, as "informa pauperis". It is needless to say that only when such permission is granted, it can be said that the suit is instituted by the petitioners. It is true that once the permission is granted, it dates back to the filing of the pauper O.P. But at the same time, it is also to be noted that if the pauper O.P. is dismissed, it cannot be said that the suit is either instituted or pending. No doubt, the petitioners have filed C.M.A. before this Court and the same is pending in C.M.A. No. 1838 of 2011. Still, such appeal has arisen only out of the order of dismissal of pauper O.P. and therefore, the issue that is pending before this Court in the above appeal is not the issue to be raised and considered in the main suit and on the other hand, it is the issue as to whether the petitioners are entitled to file the said suit as "informa pauperis". Therefore, certainly it cannot be said that the issue in both the proceedings is one and the same. Apart from that, as rightly pointed out by the learned counsel for the respondent, as on date, no suit is pending and only the petition seeking permission to file the suit as "informa pauperis", is pending in the appellate stage. Therefore, such petition cannot be construed or equated with that of a suit so as to attract Section 10 CPC.

9. Learned counsel appearing for the petitioners relied upon the decision of the Honourable Supreme Court reported in [Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another](#), to contend that the suit commences from the moment the petition seeking permission to sue as "informa pauperis", is presented. There is no quarrel about the said proposition. But the fact remains in this case is that the said petition was already rejected and only an appeal as against such rejection is pending. In the very same decision, it has been observed that if the claim made by the applicant that he is a pauper, is not established, the application may fail. Therefore, I am of the view that the abovesaid decision is not helping the petitioners in any manner.

10. The other decision relied on by the learned counsel appearing for the petitioners, reported in [Xavier alias Appachan Vs. Fr. George](#), again for the same proposition that the suit is deemed to be instituted when a petition for permission to sue as "informa paupers" is filed. In fact, the learned Judge of the Kerala High Court, by following the decision of the Honourable Supreme Court reported in [Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another](#), has held that the suit must be deemed to have been commenced when the petition for permission to sue as indigent person has been made. In view of my discussion with regard to the decision of the Honourable Supreme Court reported in [Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another](#), I find no assistance from the decision of the Kerala High Court also in favour of the petitioners.

11. Learned counsel appearing for the respondent relied on the decision of this Court reported in [A. Philoman Raj Vs. S. Kunna Gounder, A. Arockiasamy and A.](#)

[Chinnappan](#), to contend that the issue in question should be decided finally in the form of a suit and such decision rendered in the earlier suit, should operate as res-judicata. I have already pointed out that the issue to be decided in the abovesaid C.M.A. is as to whether the petitioners are entitled to file the suit as "informa pauperis" and such issue cannot be termed as the same issue to be considered and decided in the suit filed by the respondent herein.

12. Learned counsel appearing for the respondent further relied on the decision of this Court reported in [Kamala and Others Vs. Kulanthaivel and Another](#), to contend that mere filing of appeal cannot be construed as pendency of a suit. In paragraphs 14 and 17 of the said decision, this Court observed as follows:

"14. On coming to the instant case on hand, it is palpable that previously instituted Suit in O.S. No. 135 of 2008 is not pending anywhere. As stated hereinbefore the Revision Petitioner have merely filed an Appeal with a delay and still it is pending unnumbered on the file of the learned Principal District Judge, Namakkal and therefore, it cannot be construed or presumed that the previously instituted Suit is pending."

"17. In the light of the above decision, this Court would like to point out that it is the pendency of the previously instituted Suit that constitute a bar on the trial of the subsequent Suit. Therefore, since the previously instituted Suit is not pending and the pendency of the Application to condone the delay in filing the Appeal cannot be regarded as the pendency of the Suit, the present Suit in O.S. No. 187 of 2011 cannot be stayed and therefore, the learned Trial Judge has correctly dismissed the Application in I.A. No. 496 of 2013 which does not require any disturbance as this Court has also given due concurrence to the Order passed by the learned Trial Judge, in the Application in I.A. No. 496 of 2013 and therefore, the present Civil Revision Petition is liable to be dismissed."

13. Considering all the facts and circumstances, I am of the view that the order of the Court below in dismissing the application filed under Section 10 CPC is just and proper and does not warrant any interference. Accordingly, the Civil Revision Petition fails and the same is dismissed. No costs. The Miscellaneous Petition is closed.