



2024:KER:12813

(CR)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

TUESDAY, THE 20TH DAY OF FEBRUARY 2024 / 1ST PHALGUNA, 1945

OP (FC) NO. 78 OF 2024

AGAINST THE ORDER IN IA.6/24 IN OP 1505/2023 OF FAMILY
COURT, KUNNAMKULAM DATED 22.1.2024

PETITIONER/PETITIONER/RESPONDENT:

RADHIKA

AGED 55 YEARS, W/O.CHENANGAM PARAMBIL
UNNIKRISHNAN, THANAVEEDHI ROAD,
MULLASSERY VILLAGE, CHAVAKKAD TALUK,
THRISSUR, PIN - 680509

BY ADV RAJIT

RESPONDENT/RESPONDENT/PETITIONER:

UNNIKRISHNAN

AGED 60 YEARS,
S/O. CHENANGAM PARAMBIL AYYAPPAN,
THANAVEEDHI ROAD,
MULLASSERY VILLAGE & DESOM,
CHAVAKKAD TALUK, THRISSUR, PIN - 680509

BY ADVS.

A.PARVATHI MENON

P.SANJAY(K/000381/1992)

BIJU MEENATTOOR(K/620/1992)

PAUL VARGHESE (PALLATH) (K/000171/2017)

KIRAN NARAYANAN(K/000131/2018)

RAHUL RAJ P.(K/547/2020)

P.A.MOHAMMED ASLAM(K/000843/2017)

MUHAMMED BILAL.V.A(K/1033/2023)

MEERA R. MENON(K/002575/2023)

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 14.02.2024, THE COURT ON 20.02.2024 DELIVERED THE
FOLLOWING:



C.R

J U D G M E N TDated this the 20th day of February, 2024C. Pratheep Kumar, J.

This petition is filed by the petitioner in I.A.No.6/24 in OP.No.1505 of 2023 on the file of the Family Court, Kunnamkulam, against the order dated 22.1.2024.

2. Petitioner is the wife of the respondent. She filed the above O.P claiming exclusive title over the property covered by document No.1617/1998 of SRO Mullassery and for permanent prohibitory injunction. At the same time, the respondent filed O.P.568/2018 before the Family Court, Thrissur against the petitioner claiming partition of his $\frac{1}{2}$ share from the property covered by the very same document. O.P. 568/2018 was subsequently transferred to the Family Court, Kunnamkulam, wherein it was renumbered as OP.2435/2023.

3. In the OP filed by the respondent, evidence was taken by the Family Court and the case stands posted for final arguments, whereas, in the OP filed by the petitioner, even the service of



process was not complete. In I.A. No.6/24 the petitioner prayed for staying the suit filed by the respondent under Section 10 of the Code of Civil Procedure. As per the impugned order, the learned Family Court Judge dismissed the I.A. Dissatisfied with the above order, the petitioner approached this Court by invoking the power under Article 227 of the Constitution of India.

4. Now, the point that arise for consideration is the following:

Whether a previously instituted suit can be stayed under Section 10 of CPC on the ground that a subsequent suit filed between the same parties, in respect of the same subject matter, is pending before the same court?

5. Heard both sides.

6. The point:

According to the learned counsel for the petitioner, since the subject matter in dispute in both the suits are one and the same, disposal of one of the same will cause prejudice to the petitioner. The evidence to be let in and the dispute to be resolved in both the suits is one and the same. Therefore, the learned counsel for the petitioner prayed for staying the suit filed by the respondent under Section 10 of CPC.



7. On the other hand, the learned counsel for the respondent vehemently opposed the application on the ground that in the earlier suit, the entire evidence was recorded and the case stands posted for final arguments, while in the petitioner's suit, even the process is not complete. Moreover, according to her, by invoking the power under Section 10 of CPC, only a subsequent suit can be stayed and not the previously instituted case.

8. Section 10 of CPC states as follows:

“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.”

9. The above provision it is clear that if the matter in issue in a subsequent suit is also directly and substantially in issue in a previously instituted suit between the same parties, it is the subsequent suit which is to be stayed under Section 10 of CPC and not the earlier one.



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10. In the instant case, the earlier suit is that of the respondent and it is posted for final arguments. The suit filed by the petitioner is the subsequent one, in which even the process is not complete.

11. In the above circumstances, considering the fact that OP. No.1505/2023 filed by the respondent being the one filed earlier, it cannot be stayed under Section 10 of CPC. The point answered accordingly.

In the result, this Original Petition (Family Court) is dismissed.

Sd/-
ANU SIVARAMAN,
JUDGE

Sd/-
C. PRATHEEP KUMAR,
JUDGE

sou.



APPENDIX OF OP (FC) 78/2024

PETITIONER EXHIBITS

- EXHIBIT P1 A TRUE COPY OF THE ORIGINAL PETITION IN O.P.1505/23 FILED BY THE RESPONDENT BEFORE THE FAMILY COURT KUNNAMKULAM DATED 15.11.2023
- EXHIBIT P2 A TRUE COPY OF THE COUNTER STATEMENT O.P 568/2018 FILED BY THE PETITIONER TO EXT.P1 BEFORE THE FAMILY COURT THRISSUR DATED 21.01.2020
- EXHIBIT P3 A TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER I.A.NO.6/2024 IN O.P NO.1505/2023 ON THE FILES OF THE FAMILY COURT, KUNNAMKULAM DATED 05.01.2024
- EXHIBIT P4 A TRUE COPY OF THE ORDER DATED 22.01.2024 IN I.A.NO.6/2024 IN O.P NO.1505/2023 ON THE FILES OF THE FAMILY COURT, KUNNAMKULAM