

S. Kumar Vs. Sudhakaran and ors.

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Court : Kerala

Decided On : Feb-12-2009

Reported in : AIR2009Ker170; 2009(2)KLJ298

Judge : K.T. Sankaran, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 10

Appeal No. : W.P.(C) No. 4629 of 2009(A)

Appellant : S. Kumar

Respondent : Sudhakaran and ors.

Advocate for Pet/Ap. : Vakkom N. Vijayan,; Reju V.,; P. Aniyar and;

Disposition : Petition dismissed

Judgement :

K.T. Sankaran, J.

1. The question involved in this Writ Petition is whether the defendant in a suit can invoke Section 10 of the Code of Civil Procedure to stay the suit, on the ground that the Execution Petition filed by him to execute the decree in his favour in the previously instituted suit is pending.

2. The writ petitioner is the decree holder in O.S. No. 468 of 1972, on the file of the Court of the Munsiff of Neyyattinkara. The suit was for partition. Final decree was passed in favour of the writ petitioner. he filed Execution Petition. Amin was appointed to execute the decree. The respondents herein obstructed the Amin. They also filed a claim petition before the executing court which was later withdrawn. Thereafter, the respondents filed O.S. No. 580 of 2008 before the Munsiff's Court, Neyyattinkara for injunction and other reliefs. In O.S. No. 580 of 2008, the respondents contended that they were not parties to O.S. No. 468 of 1972 and that the suit was instituted since in execution of the decree in the former suit, attempt was made to deliver the property belonging to them. In O.S. No. 580 of 2008 the trial court granted an order of temporary injunction. The writ petitioner challenged that order in Civil Miscellaneous Appeal and that appeal is pending.

3. The writ petition filed I.A. No. 210 of 2009 in O.S. No. 580 of 2008 under Section 10 of the Code of Civil Procedure to stay trial of the suit till the finality of the execution proceedings in O.S. No. 468 of 1972. The court below dismissed that application holding that the ingredients of Section 10 are not attracted to enable the petitioner to get an order of stay.

4. Section 10 of the Code of Civil Procedure 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 who they or any of them claim litigating under the same title where such suit is pending in the same or any other Court having jurisdiction to grant the relief claimed. The basic requirement for the application of Section 10 is pendency of two suits in which the parties are same or the parties in one suit are persons claiming title under the parties in the other suit. To attract Section 10, the matter in issue in one suit must be directly and substantially in issue in the other suit. The object of Section 10 of the Code of Civil Procedure is to prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two suits in respect of the same subject matter between the same parties. It is intended to avoid conflicting decisions being rendered by different courts. One of the tests to be applied in the matter of stay under Section 10 of the Code of Civil Procedure is whether the decision in one suit would operate as res judicate in the

other suit. If so, applying Section 10 of the Code of Civil Procedure, the subsequently instituted suit should be stayed. Though the pendency of the Appeal against the decree in the previously instituted suit can be treated as pendency of the suit, once the suit is finally disposed of, there is no scope for applying Section 10 of the Code of Civil Procedure. Pendency of the execution proceedings in the previously instituted suit is not a ground to stay the subsequent suit, invoking Section 10 of the Code of Civil Procedure. If the matter in issue was decided in the previously instituted suit, the writ petitioner could very well raise the plea of res judicate in the subsequent suit. If such a plea cannot be raised by the writ petitioner, that itself is an indication that the ingredients of Section 10 are not attracted. Section 10 lays down a procedure and it does not confer upon the parties any substantive right. In the present case, the respondents were not parties to O.S. No. 468 of 1972. The contention of the respondents (plaintiffs in O.S. No. 580 of 2008) is that they are not bound by the decree in O.S. No. 468 of 1972 and that the writ petitioner is not entitled to get delivery of the property claimed by the respondents in execution of the decree in O.S. No. 468 of 1972. The writ petitioner has no case that the respondents are bound by the decision in the previously instituted suit. The basic ingredients of Section 10 are not made out in order to enable the petitioner to invoke Section 10 of the Code of Civil Procedure. The court below was justified in dismissing the application.

The Writ Petition lacks merits and it is accordingly, dismissed.

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