

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2015

C O R A M

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD) NO.1189 OF 2015
AND M.P.NO.1 OF 2015

1. Alagammal
2. Sundaram

... Petitioners

Vs.

Manickam

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 07.08.2014 passed in I.A.No.1184 of 2012 in O.S.No.711 of 1990 on the file of District Munsif, Mettur, Salem District.

For Petitioners : Mr. M.R.Jothimanian

ORDER

This Civil Revision Petition is directed against the order dated 07.08.2014 passed in I.A.No.1184 of 2012 in O.S.No.711 of 1990 by the learned District Munsif, Mettur, Salem District.

2.The respondent had instituted the suit in O.S.No.711 of 1990 against the petitioners herein claiming 1/3 share in the suit property. The suit was decreed on 05.01.1994. Based on the preliminary decree, the plaintiff has filed an application in I.A.No.1184 of 2012 for passing of a final decree. The application was opposed by the petitioners stating that after passing of the preliminary decree, there was a family arrangement and the delay in filing the application was not explained by the petitioners. The Trial Court appointed an Advocate Commissioner to divide the suit property into three equal shares and to allot one share to the plaintiff.

3.Mr.M.R.Jothimanian, learned counsel for the petitioners submitted that the petitioners had taken out an application to condone the delay to set aside the exparte preliminary decree, which was dismissed by the Trial Court. Against the order, the petitioners have filed a Special Leave Petition before the Honourable Supreme Court. It is further submitted that the petitioners have constructed a building as per the family arrangement and till the disposal of the Special Leave Petition, the Trial Court should not proceed with the final decree application.

4.I do not agree with the contentions of the learned counsel for the petitioners. The suit was filed in the year 1990 and the final decree

application is pending from 2012. Even according to the petitioner, there is no stay of trial proceedings, hence there is no impediment for the Court in appointing the Advocate Commissioner.

5.It is settled law that there is no limitation for filing an application to pass a final decree since the final decree application is the continuation of the preliminary decree. Therefore, I do not find any illegality or irregularity in the order impugned in this Civil Revision Petition.

6.In fine, the Civil Revision Petition is dismissed. However, it is open to the petitioners to move the Trial Court for referring the matter to mediation / lok adalat for amicable settlement. If there is any possibility of settlement, the matter can be referred as per the request of the learned counsel for the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

20.03.2015

Index : Yes/No
Internet : Yes/No
SRN/TK

K.KALYANASUNDARAM, J.
SRN/TK

To

The District Munsif
Mettur.
Salem District.

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