

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.PD.No.4342 of 2015
and M.P.No.1 of 2015

1.Palanivelu
2.Muthusamy
3.Chinnasamy
4.Kandasamy
5.Kandasamy

..Petitioners

-Vs-

Muniappan

..Respondent

Civil Revision Petition filed under Section 227 of the Constitution of India, praying to set aside the docket order in I.A.No.360 of 2015 in O.S.No.58 of 2009 on the file of Subordinate Court, Tiruchengode.

For petitioners : Mr.N.Senthil Kumar

ORDER

Heard.

2. The petitioners herein/defendants in O.S.No.58 of 2009/respondents in I.A.No.360 of 2015 have come forward with

this Civil Revision Petition, challenging the impugned docket order passed in I.A.No.360 of 2015, wherein the court below ordered notice to the petitioners herein in passing a final decree allotting 4.71 ½ acres to the respondent herein/plaintiff in O.S.No.58 of 2009 thereby passing final decree in pursuance of the preliminary decree dated 31.10.2014.

3. The plaintiff, who is the respondent herein filed a suit for partition and separate possession of his share and sought for a direction to divide 4.71 ¼ acres from Item-1 and Item-II into two equal halves with reference to good and bad soil by metes and bounds and allotting 4.71 ¼ acres in item-I and equal half of item-II of suit properties to the plaintiff by appointing a commissioner and for a permanent injunction restraining the defendants from alienating or encumbering any part of the suit properties till passing a final decree of partition including the plaintiff's share in Items-I and II.

4. After contest, the suit in O.S.No.58 of 2009 was dismissed as far as the suit first item of the property is concerned and as far as the 2nd item of the property is concerned, a preliminary decree

was passed. Against which, the plaintiff preferred appeal in A.S.No.45 of 2013 before the Additional District Court, Namakkal and the same was allowed by judgment dated 31.10.2014. Against which, the petitioners herein, who are the defendants in the suit filed Second Appeal No.666 of 2015 before this Court and the petitioners herein obtained interim stay in respect of passing of final decree alone by order dated 04.08.2015. But the respondent herein filed I.A.No.360 of 2015 for appointment of Advocate Commissioner and to make a local inspection of the petition mentioned property, measure the same and divide the property into 4.71 ½ acres and to file a report with plan and thereby passing a final decree.

5. The learned counsel appearing for the petitioners herein would submit that notice has been issued in the above said I.A., and posted for filing counter and in such circumstances, if the Advocate Commissioner is appointed to inspect the property and file a report, the same will be detrimental to the passing of final decree.

6. As stated above, in the suit for partition in O.S.No.58 of

2009, the court below dismissed the suit in respect of Item-I, against which A.S.No.45 of 2014 was filed by the plaintiff, in which, he succeeded and preliminary decree was granted, against which, the petitioners herein, who are the defendants in the suit have preferred Second Appeal No.666 of 2015 before this Court, in which, this Court, on 04.08.2015, has passed the following order in M.P.No.1 of 2015 in S.A.No.666 of 2015:-

"There shall be an order of interim stay in respect of passing of final decree alone."

7. In my considered view, the above order passed in M.P.No.1 of 2015 in S.A.No.666 of 2015, would not be a bar to the plaintiff/respondent herein to file application in I.A.No.360 of 2015 for passing final decree. There is no stay in respect of filing application for appointment of Commissioner, seeking to make a local inspection of the petition mentioned property, measure the same and divide the property into 4.71 ½ acres and to file a report with plan.

8. In such circumstances, I do not find any merit in the

present Civil Revision Petition. Accordingly, this C.R.P., is dismissed.

No costs. Consequently, connected MP is closed.

nvsri

06.11.2015

To

The Subordinate Judge, Tiruchengode.

R. MALA, J.

nvsri

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