

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.135 of 2015

ORDER:

Heard the learned counsel for petitioners and the learned counsel for respondents.

2. The petitioners herein are plaintiffs in O.S.No.71 of 2005 on the file of the Court of the Senior Civil Judge, Kothapeta (for short, trial Court). They filed the above suit for partition of the suit schedule properties. The trial Court decreed the suit by its judgment and decree dated 30.01.2010. Against the said judgment and decree, the first respondent herein filed A.S.No.70 of 2011 on the file of the Court of II Additional District Judge, East Godavari at Amalapuram (for short, appellate Court). When the final decree proceedings were going on, the first respondent herein filed I.A.No.1088 of 2014 in A.S.No.70 of 2011, after four years from the date of passing of the decree and three years from the date of filing of the appeal seeking stay of all further proceedings in O.S.No.71 of 2005 including final decree proceedings. The said petition was objected by the petitioners herein on the ground that the first respondent did not pay even the costs and they demanded payment of costs and past profits. Without considering the plea of the petitioners herein, when an order was passed in favour of the first respondent herein granting stay of all further proceedings in O.S.No.71 of 2005 on the file of the trial Court, the present Civil Revision Petition is filed.

3. A perusal of the order of the appellate Court reveals that the suit was decreed with costs and past profits. The appeal was filed by the first respondent herein without payment of any amount and the stay was sought after three years of filing of the appeal. An advocate was appointed in the final decree proceedings and he filed a report also. Though the appellate Court noticed that the filing of the appeal does not operate as a stay of the proceedings, it granted unconditional stay.

4. In the circumstances, the impugned order of the appellate Court dated 28.10.2014 in I.A.No.1088 of 2014 in A.S.No.70 of 2011 is modified granting stay of all further proceedings in O.S.No.71 of 2005 dated 31.01.2010 on the file of the trial Court, subject to payment of costs, as imposed in O.S.No.71 of 2005, by the first respondent herein within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the petitioners/plaintiffs are permitted to withdraw the same without furnishing any security. The appellate Court shall endeavour to dispose of A.S.No.70 of 2011, as expeditiously as possible, but not later than three months from the date of receipt of this order.

5. Accordingly, the Civil Revision Petition is partly allowed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 24.11.2015

Note: Issue CC in one week.

B/o. TJMR