

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Civil Revision Petition No.2052 of 2015

Dated 14th August, 2015

Between:

Sadineni Venkamma

...Petitioner

And

Linga Pitchamma and others

...Respondents

Counsel for the petitioner: Sri Srinivas Bodduluri

Counsel for respondent No.1: Sri Thota Rama Koteswara Rao

The Court made the following:

ORDER:

This civil revision petition is filed against order, dated 15.12.2014, in I.A.No.54 of 2013 in A.S.No.17 of 2013, on the file of the learned X Additional District Judge, Gurazala.

I have heard Sri Srinivas Bodduluri, learned counsel for the petitioner, and Sri Thota Rama Koteswara Rao, learned counsel appearing for respondent No.1.

Respondent No.1 filed O.S.No.9 of 2008 on the file of the learned Senior Civil Judge, Gurazala for partition and a preliminary decree was passed on 29.02.2012 in the said suit. Feeling aggrieved by the same, the petitioner, who is defendant No.1, filed A.S.No.17 of 2013. In the said appeal, she has also filed I.A.No.54 of 2013 for stay of all further proceedings in pursuance of the preliminary decree. By the order under revision, the lower appellate Court has dismissed the said application.

A perusal of the order of the lower appellate Court shows that the only ground on which it has rejected the petitioner's application for stay is that the petitioner has failed to establish that respondent No.1 is proceeding to initiate further proceedings, including final decree proceedings before the trial Court.

As rightly pleaded by the learned counsel for the petitioner, the reasoning of the lower appellate Court suffers from a gross error. An appeal against a decree is a statutory right and as a convention in all appeals arising out of preliminary decrees for partition, the appellate Court invariably stays passing of final decree while permitting other proceedings to go on before the trial Court. Instead of passing such an order, the lower appellate Court has dismissed the application filed by the petitioner for stay.

For the above-mentioned reasons, the order under revision is set aside. I.A.No.54 of 2013 is disposed of by granting stay of passing of final decree only, while permitting the trial Court to proceed with all other proceedings. Since the appeal is of the year 2013, the lower appellate Court is directed to dispose of the same within a period of four months from the date of receipt of a copy of this order.

The civil revision petition is accordingly allowed.

As a sequel to disposal of the civil revision petition, CRP.MP.No.2719 of 2015 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

14th August, 2015
VGB