

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.1437 of 2016
and C.M.P.No.7877 of 2016

A.K.Thangamuthu

... Petitioner

Vs.

1.S.Annakodi @ Krishnaveni

2.V.Selvaraj @ Kottaikadu Selvaraj

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 17.02.2016 made in I.A.No.94 of 2016 in I.A.No.241 of 2015 in O.S.No.299 of 2011 on the file of the II Additional District Munsif Court, Erode.

For Petitioner : Mr.M.Guruprasad

ORDER

Challenging the fair and final order passed in I.A.No.94 of 2016 in I.A.No.241 of 2015 in O.S.No.299 of 2011 on the file of the II Additional District Munsif Court, Erode, the 1st defendant has filed the above Civil Revision Petition.

2.The 1st respondent/plaintiff filed the suit in O.S.No.299 of 2011 for partition and separate possession. After contest, the trial Court passed a preliminary decree for partition. Aggrieved over the same, the 1st defendant preferred an appeal in A.S.No.49 of 2014 on the file of the Principal Sub Court, Erode.

3.The learned counsel appearing for the petitioner submitted that the First Appeal filed by the 1st defendant was dismissed for non-prosecution on 03.02.2015. Thereafter, the 1st defendant filed an application in I.A.No.192 of 2015 to condone the delay of 249 days in filing the application to restore the Appeal, which was dismissed for non-prosecution on 03.02.2015. The learned counsel further submitted that Section 5 Application was allowed by the Lower Appellate Court on 27.04.2016 and the Application filed under Order 9 Rule 9 of the Code of Civil Procedure to restore the Appeal is pending before the Principal Sub Court, Erode. Further, the learned counsel submitted that during the pendency of Order 9 Rule 9 application before the Principal Sub Court, Erode, the 1st respondent/plaintiff filed the final decree application in

I.A.No.241 of 2015 before the trial Court, therefore, the 1st defendant filed an application in I.A.No.94 of 2016 to stay the final decree application till the disposal of the Appeal in A.S.No.49 of 2014.

4.When the petitioner had every opportunity to file a stay petition before the Lower Appellate Court, instead of moving the stay petition before the Appellate Court, he has filed the stay petition before the trial Court, which was rightly dismissed by the trial Court. Since the Order 9 Rule 9 application is pending before the Lower Appellate Court, I am of the view that the Lower Appellate Court can be directed to dispose of the said application within a time frame after the restoration of the First Appeal. After the restoration of the First Appeal, the petitioner/1st defendant can be given liberty to move a stay petition before the Lower Appellate Court.

5.Accordingly, I direct the Principal Subordinate Judge, Erode to dispose of the Order 9 Rule 9 Application filed by the 1st defendant in A.S.No.49 of 2014 within a period of two weeks from the date of receipt of a copy of this order and the petitioner/1st defendant is given liberty to move a stay petition before the Lower Appellate Court after the Appeal being restored to file.

6. With these observations, the fair and final order passed by the trial Court are confirmed. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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02.06.2016

Note: Issue order copy on 06.06.2016.

To

The II Additional District Munsif Court,
Erode.

M.DURAIWAMY,J.
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