

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1761 of 2016

and

CMP No.9332 of 2016

Balasundaram

.... Petitioner

vs

1. Saraswathi
2. Jayalakshmi
3. Saroja
4. Thesiyamanikandan
5. Vijaya
- 6.Iyyakkannu
7. Selvakumar
8. Balasubramaniam
- 9.V.R. Subramaniayampillai
- 10.B. Vijayaragavan
- 11.Natesan
- 12.Ponnusamy

.... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair order and decreetal order dated 25.8.2015 on the file of the Subordinate Judge, Sankari in I.A No.198 of 2013 in O.S.No4 of 2005

For Petitioner : Mr.V. Sairam

ORDER

Challenging the fair and decretal order in I.A.No.198 of 2013 in O.S.No.4 of 2005 on the file of Subordinate Court, Sankari, the first defendant in O.S.No.4 of 2005 has filed the above Civil Revision Petition.

2. The plaintiff filed a suit in O.S.No.4 of 2005 for partition. After contest, the trial Court passed a preliminary decree for partition on 31.08.2012. Pursuant to the preliminary decree passed in the suit, the plaintiff filed a Final Decree application in I.A.No.198 of 2013.

3. The defendants filed their counter and opposed the petition. The defendants in their counter have stated that they have preferred an appeal in A.S.No.16/2012 on the file of Principal District Court, Salem as against the preliminary decree passed in O.S.No.4/2013. Since the lower appellate court has not passed an order of stay, the trial court proceeded with the final decree application and appointed an Advocate Commissioner. The defendants could have filed a stay petition before the lower appellate court and obtained an order of stay of passing of final decree. Mere pendency of the appeal

cannot stall the final decree proceedings.

4. Taking note of this fact, the trial court had rightly rejected the contentions of the defendants and appointed an Advocate Commissioner to divide the suit property in accordance with the preliminary decree passed in the suit. In these circumstances, I do not find any error or irregularity in the order passed by the trial court and the civil revision petition is liable to be dismissed as devoid of merits. Accordingly, the same is dismissed. No costs. Consequently, connected CMP is closed.

14.07.2016

sr

Index:no
website:yes

To

The Subordinate Judge, Sankari

M. DURAISWAMY,J.,

sr

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