

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2016

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

CRP (PD) Nos.293 to 295 of 2016

1. P.Usha
2. Malathy
3. Kalaivani

... Petitioners in both CRPs.

..VS..

1. S.Rajavelu
2. Janaki Bai Phalajsing Bajaj
Charitable Trust,
Rep. By its Managing Trustee,
P.Srichand Balaji,
S/o.Pahlajsingh
No.2, 2nd Cross, Balaji Road,
Krishna Nagar, Vellore - 1.
3. V.S.Renugopal
4. Selvakumari @ Visalatchi
5. Mahalakshmi @ Mala

... Respondent in CRP.No.293/16

... Respondent in CRP.No.294/16

... 1st Respondent in CRP.No.295/16

... 2nd Respondent in CRP.No.295/16

... 3rd Respondent in CRP.No.295/16

Prayer in CRP(PD)No.293 of 2016: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decree dated 07.09.2015 in I.A.No.187 of 2015 in I.A.No.111 of 2015, in O.S.No.70 of 2015 on the file of the District Judge, Vellore.

Prayer in CRP(PD)No.294 of 2016: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decree dated 07.09.2015 in I.A.No.188 of 2015 in I.A.No.111 of 2015, in O.S.No.70 of 2015 on the file of the District Judge, Vellore.

Prayer in CRP(PD)No.295 of 2016: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decree dated 07.09.2015 in I.A.No.190 of 2015 in I.A.No.111 of 2015, in O.S.No.70 of 2015 on the file of the District Judge, Vellore.

For Petitioners : Mr.C.Manohar Gupta

COMMON ORDER

The revision petitioners herein are the plaintiffs in O.S.No.70 of 2015 and the respondents herein is the defendants 43 to 45.

2. The plaintiffs/revision petitioners herein filed a suit in O.S.No.70 of 2015 for partition as against the defendants 1 to 52 along with an application in I.A.No.111 of 2015 in O.S.No.70 of 2015, seeking appointment of an Advocate Commissioner/Receiver to collect the rents from the respective respondents and to deposit the same into the Court. The said application was allowed by an order dated 29.05.2015 and an Advocate Commissioner was appointed for receiving rents. Aggrieved over the same, the 3rd defendant filed an application in I.A.No.186 of 2015 in I.A.No.111 of 2015 in O.S.No.70 of 2015 to vacate the order dated 29.05.2015. He also

filed an application in I.A.No.187 of 2015 in I.A.No.111 of 2015 in O.S.No.70 of 2015 to stay the operation of the order dated 29.05.2015 passed in I.A.No.111 of 2015 in O.S.No.70 of 2015, which was allowed by the Trial Court on 07.09.2015.

2.1. The 13th defendant filed an application in I.A.No.188 of 2015 to stay the order dated 29.05.2015 and also filed an application in I.A.No.189 of 2015 to vacate the order dated 29.05.2015. The Trial Court allowed I.A.No.188 of 2015 by an order dated 07.09.2015.

2.2. The defendants 43 to 45 / respondents herein filed an application in I.A.No.190 of 2015 for stay of the order dated 29.05.2015 and also filed an application in I.A.No.191 of 2015 to vacate the order dated 29.05.2015. The trial Court allowed the Application in I.A.No.190 of 2015 by an order dated 07.09.2015.

2.3. Challenging the stay orders passed in I.A.No.186 of 2015, I.A.No.188 of 2015 and I.A.No.190 of 2015, the revision petitioners filed these revision petitions.

3. The learned counsel appearing for the revision petitioners submitted that the Court, which passed the order appointing the Commissioner, should have taken both the applications together, i.e. the application to vacate the order as well as the application for stay together, but instead, it has taken up the stay applications alone and chosen to stay its own order and therefore, the orders allowing stay applications have to be set aside.

3.1. The learned counsel for the revision petitioners would contend that the Court has no power to stay its own order and that if at all, the power of the Court is to vacate the interim order already granted. This contention cannot be accepted, for the Court has power, in fact the duty is to correct its own mistake, provided, the earlier order is not valid and legal.

3.2. However, the other contention of the learned counsel for the petitioners that the Court should have taken up both the applications together, is perfectly justified. Hence, orders of the Court below staying the orders are set aside.

4. The Court below is directed to take up the applications for vacating

the order dated 29.05.2015 and the stay applications together and after hearing both sides, to pass orders in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

5. With the above direction, the Civil Revision Petitions are disposed of. No costs.

10.02.2016

Index: Yes / No

Internet: Yes / No

ogy

To

1. The District Court,
Vellore.

S.VIMALA, J.
ogy

CRP (PD) Nos.293 to 295 of 2016

10.02.2016