

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2016

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

CRP(NPD)No.933 of 2016

and

C.M.P.No.5261 of 2016

1. R.Bhaskar

2. R.Babu

3. R.Hari

4. Yasodha

5. Kasturi

6. Saroja Ammal

.... Petitioners/Defendants

..VS..

R.Devaki

.... Respondent/Plaintiff

Civil Revision Petition filed under Section 115 of Civil Procedure Code, praying to set aside the order dated 15.02.2016 made in I.A.No.2347 of 2015 in O.S.No.5093 of 2008 on the file of the VII Assistant Judge, City Civil Court at Chennai, by allowing the Civil Revision Petition.

For Petitioner : M/s.Anna Shobana

ORDER

This Civil Revision Petition has been filed challenging the order dated 15.02.2016 made in I.A.No.2347 of 2015 in O.S.No.5093 of 2008 on the file of the learned VII Assistant Judge, City Civil Court at Chennai, wherein, an

Advocate Commissioner was appointed to inspect and measure the suit property and to file a report and sketch as to feasibility of dividing the suit property into seven equal shares and to allot one share to the petitioner therein/respondent herein.

2. It is not in dispute that in the Second Appeal in S.A.No.302 of 2015 filed by the petitioners herein, this Court, by an order dated 23.04.2015 (M.P.No.1 of 2015), has stayed the order to the extent of passing of final decree alone and not the rest of the proceedings.

3. It is also brought to the notice of this Court that O.P.No.621 of 2009 filed by the 2nd, 3rd and 6th Petitioners herein, seeking the relief of letters of administration, has already been dismissed for non-prosecution.

4. It is contended that the suit is based on the Will and when the proof of registered Will is pending probate, the appointment of Advocate Commissioner would be a vain and futile exercise. This contention cannot be accepted at this stage. Moreover, as there is an order of stay to the extent of passing of final decree, that would be sufficient to take care of the interest of the revision petitioners.

5. Therefore, the Civil Revision Petition has no merits and accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.03.2016

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To

Learned VII Assistant Judge,
City Civil Court,
Chennai.

S.VIMALA, J.

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