

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5727 OF 2011

ORDER:

The unsuccessful petitioners/appellants in ASSR.no.10281 of 2011 on the file of the Court of the learned I Additional Chief Judge, City Civil Court, Hyderabad filed this Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 assailing the order dated 07.12.2011 of the said learned Judge passed in I.A.no.2816 of 2011 filed by the said petitioners/appellants in the said unnumbered appeal requesting to grant stay of all further proceedings in the suit viz., O.S.no.31 of 2007 on the file of the Court of the learned III Additional Senior Civil Judge, City Civil Court, Hyderabad filed for partition by the plaintiffs/respondents.

2. I have heard the submissions of the learned counsel for the petitioners/appellants ('the appellants', for brevity) and the respondents/plaintiffs ('the respondents', for brevity) and perused the material record.

3. To begin with, it is necessary to state the facts which led to the filing of this revision petition by the appellants before this Court.

The plaintiffs brought the aforementioned suit for partition. An *ex parte* preliminary decree was passed by the Court below on 07.08.2007. The appellants filed applications to set aside the *ex parte* preliminary decree and also for condonation of delay in seeking to set aside the *ex parte* preliminary decree. The application for condonation of delay was dismissed on 11.03.2010 giving liberty to the appellants to participate in the final decree proceedings. Against the said order of dismissal passed by the Court below, the matter was carried to higher Courts. However, the said order was confirmed and became final. The appellants filed the aforementioned unregistered appeal in ASSR.no.10291 of 2011 assailing the preliminary decree. As delay had occasioned in preferring the said appeal, an application for condonation of delay is filed. In the said appeal, an interlocutory

application viz., I.A.no.2484 of 2010, was earlier filed requesting for grant of stay of final decree proceedings. Though an interim order was earlier granted, eventually that petition was dismissed. Subsequently, a final decree was passed on 30.10.2009. In the said pending unregistered appeal, the instant application viz., I.A.no.2816 of 2011, is filed seeking the self-same relief of stay of proceedings in the suit, which had already culminated in a final decree.

4. In this backdrop, the Court below dismissed the application *inter alia* observing that the petition is not maintainable as earlier an application filed for the self-same relief was dismissed and the said order has become final.

5. The learned counsel for the appellants would submit that when the petitions for setting aside the *ex parte* decree and for condonation of delay are filed, the respondents herein suppressed the fact that a final decree was already passed and that therefore the petitions were dismissed giving liberty to contest and participate in the final decree proceedings and that on account of the suppression of the said fact in regard to the passing of the final decree, about which the respondents are aware, injustice has been done to the appellants and that therefore the trial Court ought to have granted stay as prayed for.

6. On the other hand, learned counsel for the respondents would submit that a final decree has already been passed and that no proceedings are pending before the trial Court and that after the suit culminated in the final decree, the Civil Revision Petition has become infructuous and is liable for dismissal.

7. I have bestowed my attention to the facts and given earnest consideration to the submissions.

8. In view of the detailed narration of the facts and submissions of the learned counsel and the undisputed fact that the final decree has already been passed and the further fact that an earlier application seeking the self-same relief was dismissed by the

Court below, this Court is of the well considered view that this revision is misconceived and is liable for dismissal.

9. Having regard to the facts and the reasons aforementioned, this Court finds that the Court below is justified in passing the order impugned and that the revision petition is devoid of merit.

10. In the result, the Civil Revision Petition is dismissed. However, it is made clear that this Court did not express any opinion on the maintainability of the unregistered appeal. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

M. SEETHARAMA MURTI, J

Date:27.06.2016

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