

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CIVIL REVISION PETITION No.3634 of 2016

ORDER:

The Civil Revision Petition is filed by the petitioner/2nd appellant/defendant No.3, under Section 115 C.P.C, aggrieved by the order, dated 01.07.2016, passed in I.A.No.497 of 2016 in I.A.No.814 of 2015 in C.M.A.No.7 of 2014, by the II Additional District and Sessions Judge, Amalapuram.

2. Heard and perused the material available on record.

3. The first respondent/plaintiff had obtained a decree for specific performance against the petitioners/defendants 2 to 5, who are the legal representatives of the deceased sole defendant (1st petitioner). The said decree is an *ex parte* decree. The petitioners/defendants 2 to 5 have filed an application in I.A.No.698 of 2011 for setting aside the said *ex parte* decree and that application was dismissed by the trial Court by order, dated 16.07.2014. Thereafter, the petitioners/defendants 2 to 5 preferred C.M.A.No.7 of 2014, on the file of the II Additional District Judge, Amalapuram, challenging the validity of the orders, dated 16.07.2014, passed in I.A.No.698 of 2011 in O.S.No.106 of 2003, on the file of the Senior Civil Judge, Amalapuram. During the pendency of the said C.M.A., the sole plaintiff/decreed holder died. The legal representatives of the sole plaintiff/decreed holder had filed E.P.No.41 of 2015 for execution of the sale deed in respect of the E.P. schedule property, in terms of the *ex parte* decree and for delivery of the E.P. schedule property. While so, the C.M.A. which was filed by the petitioners/defendants 2 to 5 assailing the orders, dated 16.07.2014, dismissing the application filed seeking to set aside the *ex parte* decree, was dismissed as abated for not bringing on record the legal representatives of the 1st respondent/sole plaintiff. Therefore, the petitioners/defendants 2 to 5 have filed three applications, viz., (i) seeking for condonation of delay

in filing application to set aside the abatement caused due to the death of the respondent No.1/sole plaintiff; (ii) seeking to set aside the abatement caused due to the death of the 1st respondent/sole plaintiff; and (iii) seeking permission to bring on record the legal representatives of the deceased 1st respondent/sole plaintiff as respondents 2 and 3 in the said C.M.A. The said applications are pending before the Court below.

4. The petitioners/defendants 2 to 5 filed I.A.No.497 of 2016 under Order 41, Rule 5, read with 151 CPC, praying the Court to stay all further proceedings in E.P.No.41 of 2015, and the learned II Additional District & Sessions Judge, Amalapuram, by impugned order, dated 01.07.2016, dismissed the I.A.No.497 of 2016, on the ground that unless the petitions filed in C.M.A.No.7 of 2014 are disposed of, the C.M.A. cannot be restored and unless the C.M.A. is restored, interim orders cannot be passed in the main C.M.A. Hence, the present revision.

5. Learned counsel for the petitioner/defendant No.3 submits that if stay of E.P. proceedings is not granted, the petitioner would suffer irreparable loss.

6. Considering the facts and circumstances of the case, the Civil Revision Petition is disposed of directing the II Additional District Judge, Amalapuram, East Godavari District, to dispose of the applications, viz., (i) seeking for condonation of delay in filing application to set aside the abatement caused due to the death of the respondent No.1/sole plaintiff; (ii) seeking to set aside the abatement caused due to the death of the 1st respondent/sole plaintiff; and (iii) seeking permission to bring on record the legal representatives of the deceased 1st respondent/sole plaintiff as respondents 2 and 3 in the said C.M.A., pending in the C.M.A.No.7 of 2014, as expeditiously as possible, and thereafter, dispose of the C.M.A.No.7 of 2014 within a period of three (3) months from the date of receipt of a copy of this

order. Till then, the Execution Proceedings in E.P.No.41 of 2015, pending on the file of the Senior Civil Judge, Amalapuram, shall be stayed.

7. Accordingly, the Civil Revision Petition is disposed of. Miscellaneous Petitions, if any, pending in this civil revision petition shall stand closed.

RAJA ELANGO, J

Date: 27th July, 2016

KL



THE HONOURABLE SRI JUSTICE RAJA ELANGO

-

-

CIVIL REVISION PETITION No.3634 of 2016

Date: 27th July, 2016

KL