

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 2412 OF 2016

O R D E R:

This Revision is filed against the order dated 25.4.2016 passed in I.A.No. 71 of 2015 in A.S.No. 125 of 2015 by the VIII Additional District Judge, Chittoor. The Appellate Court passed the interim stay of execution of decree during the pendency of appeal on the ground that the appeal would become infructuous if no stay is granted. The stay was vacated as the petitioner reported not ready, the same is under challenge in the Revision Petition.

2. Sri T. C. Krishnan, learned counsel, filed caveat for second respondent and takes notice on behalf of the second respondent.

3. The suit was filed for partition. The only ground for vacating the stay is that the petitioner was not ready in the main appeal. In ordinary course of events or even according to the procedure under CPC, the Courts are normally granting stay of passing of final decree while permitting the Courts to go on with other proceedings. Even otherwise, under Order 41 Rule 5(3) of CPC the petitioner has to establish that the petitioner will sustain substantial loss if no interim stay is granted. The appellate Court vacated the stay for simple reason that the petitioner reported not ready. The appellate Court while vacating the stay granted has to consider the procedure prescribed under Order 41 Rule 5 of CPC and instead of following such procedure adopted a shortcut method.

4. Hence, the order dated 25.4.2016 passed in I.A.No. 71 of 2015 in A.S.No. 125 of 2015 is liable to be set aside. However, considering the nature of the Suit, I find that it is a fit case to order stay of passing of final decree while permitted the appellate Court to go on with all other proceedings.

5. In the result the order passed by VIII Additional District Judge, Chittoor in I.A.No. 71 of 2015 in A.S.No. 125 of 2015 is set aside, while modifying the order, granting stay of passing final decree while permitting the trial Court to go on with other proceedings. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 05.05.2016
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