

THE HONOURABLE SRI JUSTICE RAJA ELANGO

C.R.P.No.2257 of 2016 & C.R.P.(SR).No.9626 of 2016

COMMON ORDER:

The C.R.P.No.2257 of 2016, filed by the petitioners/defendants 3 & 4, under Article 227 of the Constitution of India, is directed against the order, dated 18.02.2016, in I.A.No.294 of 2015 in O.S.No.748 of 2010, on the file of the I Additional Senior Civil Judge, East Godavari District at Kakinada.

2. The C.R.P.(SR).No.9626 of 2016, filed by the petitioners/defendants 3 & 4, under Section 115 of C.P.C., is directed against the docket order, dated 06.04.2015, in I.A.No.215 of 2015 in A.S.No.17 of 2015, on the file of the IV Additional District Judge, Kakinada, East Godavari District.

3. The first respondent/plaintiff filed O.S.No.748 of 2010 praying to pass a preliminary decree to divide the plaint schedule property into four equal shares by metes and bounds and allot one such share to the plaintiff and to grant mesne profits from the date of suit and for costs, whereby and whereunder the I Additional Senior Civil Judge, Kakinada, allowed the O.S.No.748 of 2010 on 26.12.2014, and ordered the plaint schedule property to be partitioned into four equal shares and one such share shall be allotted to the plaintiff and one such share each shall be allotted to the defendants 1 to 3.

4. The first respondent/plaintiff has filed I.A.No.294 of 2015 in O.S.No.748 of 2010 under Order XX Rule 18 and Order XXVI Rule 13 C.P.C. for passing a final decree in terms of preliminary decree by appointing an Advocate Commissioner to implement the preliminary decree, whereunder and whereby on 18.02.2016, the I Additional Senior Judge, Kakinada, ordered the petition to appoint an Advocate Commissioner for division of the plaint schedule property in terms of preliminary decree with the assistance of Town Surveyor. Aggrieved by the same, the petitioners/defendants 3 and 4 filed the

C.R.P.No.2257 of 2016.

5. The petitioners/defendants 3 and 4 filed A.S.No.17 of 2015 before the IV Additional District Judge, Kakinada, to set aside the decree and judgment in O.S.No.748 of 2010 and the said appeal suit is still pending before the IV Additional District Judge, Kakinada.

6. The petitioners/defendants 3 and 4 have filed I.A.No.215 of 2015 in A.S.No.17 of 2015 before the IV Additional District Judge, Kakinada, praying to order stay of all further proceedings including execution of the decree in O.S.No.748 of 2010, dated 26.12.2014, pending disposal of the appeal, whereunder and whereby on 06.04.2015, the IV Additional District Judge passed the following order:

“In the result, the petition is dismissed by not granting the stay of further proceedings as prayed for in the petition, but they are entitled to file the final decree petition and there shall be stay of passing of final decree only and other proceedings may go on. That final decree can be passed only after the result of appeal AS 17/15.”

Aggrieved by the same, the C.R.P.(SR).No.9626 of 2016 is filed.

7. Heard and perused the material available on record.

8. Learned counsel for the petitioners submitted that in I.A.No.215 of 2015 in A.S.No.17 of 2015, the appellate Court had made it clear that passing of final decree is only after the result of the appeal suit, and therefore, the appointment of Advocate Commissioner in I.A.No.294 of 2015 in O.S.No.748 of 2010 amounts to passing of final decree and when the appeal suit is pending, which is nothing but continuation of the suit proceedings, the appointment of Advocate Commissioner is illegal and arbitrary.

9. Considering the facts and circumstances of the case and the submissions of the learned counsel for the petitioners, both the Civil Revision Petitions are disposed of by the following order:

The IV Additional District Judge, Kakinada, is directed to

dispose of the A.S.No.17 of 2015, as expeditiously as possible, in accordance with law, most preferably within a period of three (3) months from the date of receipt of a copy of this order and till the disposal of A.S.No.17 of 2015, the trial Court is directed not to proceed further and the trial Court is at liberty to proceed further only after the disposal of A.S.No.170 of 2015.

10. Accordingly, the C.R.P.No.2257 of 2016 and C.R.P. (SR).No.9626 of 2016 are disposed of. There shall be no costs. Miscellaneous Petitions, if any, pending in these civil revision petitions shall stand closed.

RAJA ELANGO, J

Date: 20th July, 2016

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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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