

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.4661 OF 2015

ORDER

The petitioner is the plaintiff in O.S.No.3 of 2007 on the file of the learned II Additional Junior Civil Judge, Tadepalligudem. The said suit was filed for partition of the suit schedule properties into five equal shares and allotment of one share to the plaintiff. The plaintiff also sought recovery of a sum of money towards arrears of the usufruct of the suit schedule property along with future mesne profits and costs. The suit was decreed by the trial Court on 05.11.2014. Aggrieved thereby, the second defendant in the suit filed A.S.No.2 of 2015 before the learned Senior Civil Judge, Tadepalligudem, West Godavari District. Therein, he also filed I.A.No.50 of 2015 under Order 41 Rule 5(1) CPC seeking stay of operation of the decree of the trial court. By order dated 08.07.2015, the appellate Court stayed the operation of the judgment and decree in the suit subject to deposit of the costs by the appellant.

Aggrieved thereby, the plaintiff in the suit is before this Court by way of this Civil Revision Petition under Article 227 of the Constitution. Notice having been ordered, the first respondent/second defendant in the suit, who filed A.S.No.2 of 2015 before the appellate Court, entered appearance through Sri K.Suresh Reddy, learned counsel.

In an appeal arising out of a decree passed in a suit for partition, the usual interim order that is passed pending the appeal is that the final decree proceedings may go on but passing of the final decree alone should be stayed. Learned counsel appearing for the parties also concede this settled position.

The order passed by the appellate Court is accordingly modified to the extent of permitting the final decree proceedings to go on in the event an application is filed by the plaintiff in the suit for that purpose. However, no final decree shall be passed pending the disposal of the appeal.

The Civil Revision Petition is disposed of accordingly. Pending miscellaneous petitions shall stand closed in the light of this final order.
No order as to costs.

SANJAY KUMAR, J

19th JANUARY, 2016
PGS