

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD)No.4178 of 2017

and

C.M.P. No.14720 of 2017

M.Karunakaran

.. Petitioner

Vs

1.Kuppammal
2.Chandrasekaran
3.M.Jagadeesan
4.R.Vanithamani
5.C.Varalakshmi
6.V.Kalavalli

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 06.10.2017 made in E.A.No.161 of 2016 in E.P.No.129 of 2015 in O.S.No.535 of 2009 on the file of the Subordinate Court, Tambaram.

For Petitioner : Mr.K.Aravindran

For Respondents : Mr.A.V.Arun

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 06.10.2017 passed in E.A.No.161 of 2016 in E.P.No.129 of 2015 in O.S.No.539 of 2009 on the file of the Subordinate Court, Tambaram.

2. The case of the petitioner is that the revision petitioner is the first defendant and the first respondent is the plaintiff in O.S.No.539 of 2009 before the Subordinate Court, Tambaram, seeking partition of the suit property. The first respondent filed an application in I.A.No.309 of 2013 in O.S.No.535 of 2009 under Order 26 Rule 13 of C.P.C.to pass a final decree in O.S.No.535 of 2009 by appointing an advocate commissioner to sub divide the suit property in terms of preliminary decree and the same was passed. The revision petitioner filed an application in I.A.No.529 of 2015 to condone the delay of 15 days in filing an application to set aside the exparte final decree. The respondents entered appearance and filed a counter and the same is pending and they filed E.P.No.129 of 2015 in O.S.No.535 of 2009 to stay all further execution proceedings pending disposal of I.A.No.529 of 2015.

3. The respondent filed counter and opposed the said application and submitted that the petitioner has not stated any proper ground to stay the execution proceedings and only to drag on the proceedings, the petitioner has come out with the said application and prayed for dismissal of the application and the same was dismissed.

4. Against the said order of dismissal dated 06.10.2017, the present Civil Revision Petition is filed.

5. The learned counsel for the respondent would submit that no interim stay is granted and the same is pending and therefore, the order passed by the Court below is liable to be set aside.

6. From the above said facts, it is made clear that the revision petitioner filed an application in I.A.No.529 of 2015 to condone the delay in filing the application to set aside the ex parte final decree. The above said application is pending and rejection of the instant application would cause hardship at this stage. Hence, this Court directs the trial Court to dispose of the I.A.No.529 of 2015 in O.S.No.535 of 2009 within a time frame.

7. In view of the submissions made by the learned counsel for both sides, this Court is inclined to direct the Sub Court, Tambaram, to dispose of the I.A.No.529 of 2015 in O.S.No.535 of 2009, as expeditiously as possible, preferably, within a period of two weeks from the date of receipt of a copy of this Order. The respondents shall not precipitate till an order is passed in the above said I.A.

D.KRISHNAKUMAR,J

kkd

8. With the above direction, this civil revision petition is disposed of.

No costs. Consequently, connected civil miscellaneous petition is closed.

05.12.2017

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Index : Yes/No

Internet : Yes/No

Note : Issue Order Copy on 08.12.2017

To

The Sub Court,
Tambaram.

CRP No.4178 of 2017

and

CMP.No.19573 of 2017

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