



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.03.2017

CORAM :

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THE HONOURABLE MR.JUSTICE DR.G.JAYACHANDRAN

**C.R.P. (PD) (MD) No.547 of 2017
and C.M.P. (MD) No.2523 of 2017**

1.B.Devasenathipathi
2.S.Srividhya

... Petitioners/Defendants 5 & 6

Vs.

1.Balasubramanian
2.Kalyanasundaram
3.N.rammohan
4.Santhini
5.J.Dharmambal
6.G.Kannamal Rajasree
7.J.Nataraj Kumar
8.J.Suresh
2 to 4, 7 to 10

..1st Respondent/Respondent/Plaintiff

...Respondents 2 to 8/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal Order dated 18.10.2016, in I.A.No. 66 of 2015 in O.S.No. 16 of 2009 on the file of the Additional subordinate Judge, Thanjavur.

For Petitioner : Mr.G.Karnan

O R D E R

The Civil Revision Petition is filed against the order passed in I.A.No. 66 of 2015 filed under Order 26 Rule 13 C.P.C to pass a final decree pursuant to the preliminary decree passed on 01.09.2012 in O.S.No. 16 of 2009.

2. Heard the learned counsel for the petitioner and perused the materials placed on record.

3. The Revision Petitioners, who are the defendants 5 and 6, in I.A.No.66 of 2015 have filed a counter stating that they have preferred an appeal against the preliminary decree and the same is pending along with condone delay application and therefore, the final decree application may be dismissed till the disposal of the first appeal.



4. The Trial Court, after considering the submission made by the rival parties, has held that Appeal Suit filed by the respondents 5 and 6 is not yet numbered and the application to condone the delay in preferring the first appeal is still pending and unless there is a specific order from the Appellate Court restraining the trial court from proceeding further in the matter, the final decree proceedings cannot be stayed and has proceeded with the application by appointing Thiru.R.Sivakumar, Advocate as an Advocate Commissioner to inspect the property along with qualified Surveyor to divide the suit property by metes and bounds and allot 1/5th share to the petitioner as per the preliminary decree. Aggrieved by the said order, the 5th and 6th respondents have preferred the revision on the ground that the order of the Trial Court appointing Advocate Commissioner pursuant to the final decree application is erroneous and the court below ought to have stayed all the further proceedings till the disposal of appeal suit preferred by the revision petitioners.

5. This Court finds no irregularity or error in the order passed by the trial court which is impugned before this Court by way of revision. In the said suit filed in the year 2009, the preliminary decree was passed on 11.09.2012 and pursuant to that, final decree application has been filed by the plaintiffs/decreed holders on 04.09.2015. Though the revision petitioners say that they have preferred an appeal against the preliminary decree till date they are not able to prefer an appeal against the preliminary decree and till date they are not able to number it and have not obtained any order from the first appeal court restraining the trial court from proceeding further.

6. Therefore, the Trial Court has rightly dismissed the application and proceeded further by appointing an Advocate Commissioner. It is always open to the revision petitioners to expedite his application and the appeal is pending for more than two years and get appropriate order from the appropriate forum instead he has ventured to file this revision petition under Article 226 of the Constitution of India, which is unwarranted.

7. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected C.M.P. (MD) No.2523 of 2017 is also dismissed.

Sd/-

Assistant Registrar(P&A)

/True copy/



To
The Additional Subordinate Judge,
Thanjavur,

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+1 cc to Mr.G.Karnan, Advocate in SR.No. 15896

CM

AE/MR/24.03.2017/3P/3C

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