

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.03.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP(PD) No.939 of 2020
and
CMP No.5008 of 2020

1. K.A.Eswaran
2. Kaliasammal

... Petitioners

Vs.

1. Palaniammal
2. Sivasankaran

.... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.1180 of 2017 in O.S.No.573 of 2005 by the District Munsif Court, Udumalpet dated 18.12.2019.

For Petitioners : Ms.T.Madhumitha
For Mr.S.Gunalan

O R D E R

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed in I.A.No.1180 of 2017 in O.S.No.573 of 2005 by the District Munsif Court, Udumalpet dated 18.12.2019.

2. The petitioner herein is the first defendant in O.S.No.573 of 2005. The above said suit was filed by the first respondent herein/plaintiff for partition and the same was decreed on 25.06.2013. Against the preliminary decree and judgment passed in the suit, the petitioner herein filed an appeal suit in A.S.No.8 of 2013 on the file of the Subordinate Judge, Udumalpet. The above said appeal was dismissed by the first appellate court on 11.07.2014 by upholding the decree and judgment passed by the Trial court. Thereafter, the petitioner herein filed second appeal in S.A.No.735 of 2017 before this court and the same is pending.

3. In the meanwhile, the first respondent herein/plaintiff has filed a petition in I.A.No.1180 of 2017 in O.S.No.573 of 2005 to pass final decree, by appointing an advocate commissioner to partition the suit property by metes and bounds, as per the preliminary decree passed in the suit.

In the above said application, the Trial Court vide its order dated 18.12.2019, appointed an Advocate Commissioner to partition the suit property. Challenging the above said order, this civil revision petition has been filed.

4. The learned counsel appearing for the petitioner submitted that since an appeal is pending before this court against the decree and judgment passed in O.S.No.573 of 2005 as well as A.S.No.8 of 2013, the appointment of Advocate Commissioner to proceed the final decree is not sustainable and hence, the orders passed by the Trial court is liable to be set aside.

5. The above said contention of the learned counsel appearing for the petitioner cannot be accepted. Though the second appeal is pending against the decree and judgment passed by the Trial Court well as the first appellate Court, no interim order has been passed by this court to stay the operation of the final decree. Therefore, the petitioner cannot stall the proceedings of the final decree in the above said suit and it is for the petitioner to work out his remedy before the second appeal. Hence, the orders passed by the Trial court is perfectly in order and it does not warrant any interference by this court.

6. Accordingly, this civil revision petition is dismissed and the orders passed by the Trial court is upheld. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst

To

The District Munsif,
Udumalpet.

+1cc to Mr.S.Gunalan, Advocate, S.R.No.21626

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GMR (CO)
RN (28/05/2020)