



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Thursday, the Second day of January Two Thousand Twenty

PRESENT

THE HON`BLE MR JUSTICE M.M.SUNDRESH

and

THE HON`BLE MR JUSTICE KRISHNAN RAMASAMY

CMP No.17755 of 2019

in AS.No.571 of 2019

SHANMUGAVEL

[PETITIONER]

Vs

1 JAYALAKSHMI

[RESPONDENTS]

2 LAKSHMI

3 SHAGUNTALA

4 DEIVAMANI

5 BALAMURUGAN

6 SENTHILVEL

7 SHANTHI

8 SANKARALINGAM

9 AADHILINGAM

10 BOOMILINGAM

11 JAMBULINGAM

12 SUNDARAM

13 NARAYANAN

14 GANESAN

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay the operation and further proceedings of the Judgement and Decree in O.S.No.30/2014 dated 05.04.2019, in so far as them i of the Suit Schedule Property is concerned and to pass such further and other orders as this Honble Court may deem fit and proper in the facts and circumstances of the case, (in CMP.No.17755/2019) pending disposal of the above AS.No.571/2019.



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Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.VENKATESH MAHADEVAN, Advocate for the petitioner and of M/S.D.RAVICHANDER, Advocate on behalf of the respondents the court made the following order:-

(Order of the Court was made by **M.M.SUNDRESH, J.**)

Petitioner is the seventh plaintiff in the suit. The suit has been laid for partition and separate possession. The suit has been decreed except the item, which is the subject matter of the appeal before us. It appears that another suit has been filed by the contesting respondent before us in O.S.No.102 of 1994 seeking the relief of specific performance against one Mahalingam, who was the agreement holder. He died on 27.06.1997. Thereafter, some of the parties have been impleaded and on contest, the decree has been obtained. This decree has been confirmed upto the Apex Court. An application filed by a similar person seeking to invoke Order 21 Rule 97 CPC obstructing the execution of the proceedings was also dismissed. Pursuant to the same, possession has been recorded by the Court in the execution petition filed.

2.Learned counsel appearing for the petitioner submitted that the finding rendered by the Trial Court will have to be stayed. It is further submitted that the decree has been obtained against a dead person.

3.Learned counsel appearing for the respondents submitted that all the pleadings taken both on fact and law were rejected, as confirmed by the Apex Court. Pursuant to the order passed by the jurisdictional Court, possession has been taken as recorded. Delivery has also been ordered. Thus, the petition will have to be dismissed.

4.The present appeal is only against the rejection of the relief sought for against one item of the property. The contention raised on the earlier occasion by other persons in the suit filed by the original respondent/agreement holder, who is also incidentally the decree holder, that the property was a joint family property was rejected. Further more, the petitioner wants to stay further proceedings of his own suit for partition. Thus, in law, there is no stay of the decree obtained by the contesting respondent. Further more, there is no need for any stay since the execution petition filed has already been ordered. Thus, looking from any perspective, the relief sought for in this petition cannot be granted. However, on a query learned counsel for the 13th respondent fairly submitted that the property, which is in possession of the 13th respondent will not be alienated or encumbered without the leave of this Court. The said submission stands recorded.



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5. Recording the submission made by the learned counsel for the 13th respondent, this petition stands dismissed.

Post the main appeal for hearing on 21.01.2020.

-sd/-

02/01/2020

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE ADDITIONAL DISTRICT JUDGE
(FAST TRACK COURT), VILLUPURAM.

C.C. to M/S.VENKATESH MAHADEVAN, Advocate on payment of necessary charges

C.C. to M/S.D.RAVICHANDER, Advocate on payment of necessary charges

Order

in

CMP.17755/2019

in AS.No.571 of 2019

Date :02/01/2020

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