



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Third day of November Two Thousand and Twenty

PRESENT

The Hon'ble Mr. Justice M. GOVINDARAJ

CMP(MD). No.3415 of 2020

in

AS(MD). No.101 of 2020

P. BALAKRISHNAN

...Petitioner/Appellant

Vs

- 1 P. BASKARAN
- 2 P. SRINIVASAN
- 3 SURESH
- 4 JEGANLAL
- 5 MANOJI

(RESPONDENTS NO.3 TO 5 ARE TENANTS VACATED FROM THE SUIT
PROPERTY AND SET EXPARTE BEFORE THE TRIAL COURT HENCE NO
NOTICE IS NECESSARY)

...Respondents/Respondents

Prayer in CMP(MD). No.3415 of 2020:-

Civil Miscellaneous Petition filed under Order 41 Rule 5 of Civil Procedure Code, praying this Court to INTERIM STAY of all further proceedings of the judgment and final Decree passed in I.A.No. 601 of 2008 in O.S.No. 218 of 2004 on the file of the VI Additional District and Sessions Court, Madurai Dated 01.01.2019.

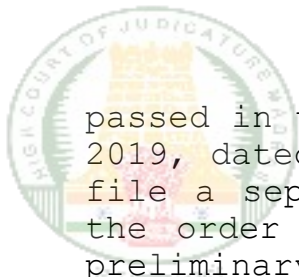
Prayer in AS(MD).No.101 of 2020:-

Appeal Suit filed under Section 96 of the Code of Civil Procedure, praying this Court to set aside the judgment and final decree dated 01.11.2019 passed in I.A.No.601 of 2008 in O.S.No.218 of 2004 on the file of the VI Additional District and Sessions Court, Madurai.

ORDER:-

Civil Miscellaneous Petition is coming upon for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.A.Saravanan, Advocate for the petitioner and of Mr.T.C.S.Thillai Nayagam, Advocate for the 1st Respondent and of Mr.B.Thangamani, Advocate for the 2nd Respondent, this Court made the following order:

The present petition for interim stay of further proceedings pursuant to the final decree passed in I.A.No.601 of 2008 in O.S.No.218 of 2004 on the file of the VI Additional District and Sessions Court, Madurai, dated 01.11.2019, in view of the order



passed in the Review Application in Review Application (MD) No.72 of 2019, dated 15.11.2019, granting liberty to the petitioner herein to file a separate suit is concerned, this Court is of the view that the order passed in the Review Application has not set aside the preliminary decree passed by the Trial Court in O.S.No.218 of 2004. The matter was taken upto the Supreme Court and the Supreme Court also refused to interfere with the order passed by this Court in A.S.(MD)No.96 of 2009. In the meantime, the first respondent herein filed an application in I.A.No.601 of 2008 for passing final decree.

2. The learned counsel for the first respondent would submit that the final decree has already been passed on 01.11.2019 and the respective parties are continuing in possession of their respective shares allotted in the final decree. At this stage, by filing a fresh suit, the co-owner cannot interfere with the enforceability of the decree.

3. As stated above, since the respective shares were allotted to all the co-sharers as per the final decree and they are in possession, nothing survives for granting stay. In view of the same, the stay petition is dismissed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

The IV Additional District and Sessions Judge, Madurai.

ORDER DATED : 03/11/2020

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ORDER

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CMP(MD). No.3415 of 2020

Giving direction and etc.
as stated within.

NS (CO)

TR(20.11.2020) 2P 2C