

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD).Nos.4054 and 4055 of 2015

and

M.P.Nos.1 and 1 of 2015

1.Kaliyanna Gounder

2.Mylsamy

..Petitioners in both the CRPs

Vs.

Santhamani

..Respondent in both the CRPs

PRAYER in CRP.No.4054 of 2015: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair order and decree passed in I.A.No.383 of 2015 in I.A.No.360 of 2013 in O.S.No.102 of 2010 on the file of the learned Sub-Ordinate Judge, Gobichettipalayam dated 31.08.2015.

PRAYER in CRP.No.4055 of 2015: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair order and decree passed in I.A.No.385 of 2015 in I.A.No.360 of 2013 in O.S.No.102 of 2010 on the file of the learned Sub-Ordinate Judge, Gobichettipalayam dated 31.08.2015.

For Petitioners : Mr.V.Saranraj
for Mr.S.Ramesh Kumar in both the CRPs
For Respondent : Mr.M.Roshan Atiq in both the CRPs

ORDER

These Civil Revision Petitions are directed as against the fair and decretal orders passed in I.A.Nos.383 and 385 of 2015 in I.A.No.360 of 2013 in O.S.No.102 of 2010 on the file of the learned Sub-Ordinate Judge, Gobichettipalayam dated 31.08.2015, thereby dismissing the petitions filed to reopen I.A.No.360 of 2013 that stands posted for orders, for hearing the respondent side arguments and to stay all further proceedings in the said petition until the disposal of the second appeal in S.A.No.276 of 2013.

2. The petitioners are the defendants in the suit filed by the respondent herein. The petitioners are father and brother of the respondent herein. The suit filed for partition was dismissed by the trial court. Thereafter, aggrieved by the same, the respondent preferred an appeal suit in A.S.No.27 of 2012 and the same was allowed by the appellate court. Aggrieved by the same, the petitioners preferred second appeal before this court in S.A.No.276 of 2013.

3. While pending second appeal, the respondent herein filed a petition in I.A.No.360 of 2013 for passing of final decree. After hearing the arguments of the respondent, the final decree application was posted for orders. At that juncture, the petitioners have filed a petition before the trial court to reopen

and stay all further proceedings till the disposal of the Second Appeal in S.A.No.276 of 2013. Both the petitions were dismissed for the reason that the petitioners failed to obtain any interim order in S.A.No.276 of 2013.

4. The learned counsel for the petitioners would submit that though this court did not grant any interim order in respect of passing of final decree, the Second Appeal is admitted and pending for final hearing. He further submitted that even in both the Civil Revision Petitions stay is granted and the final decree proceeding is pending.

5. The learned counsel for the respondent would submit that the petitioners having been failed to obtain any interim order in S.A.No.276 of 2013 filed petitions before the trial court to reopen and stay all further proceedings of the final decree application. Therefore, the trial court rightly dismissed both the petitions and proceeded with the final decree application. The respondent is none other than own daughter of the 1st petitioner herein and the petitioners are filing petitions unnecessarily to drag on the proceedings.

6. Admittedly the second appeal in S.A.No.276 of 2013 is pending before this court for disposal. In the mean while, the respondent also filed petition for final decree in I.A.No.360 of 2013. Though, the petitioner failed to obtain interim order in second appeal, during the pendency of the second appeal, the final decree application will not be taken for hearing. However, the petitioners approached this court by way of these Civil Revision Petitions and obtained interim order of stay and final decree proceeding is stayed.

7. In view of the above, the fair and decreetal orders made in I.A.Nos.383 and 385 of 2015 in I.A.No.360 of 2013 in O.S.No.102 of 2010 on the file of the learned Sub-Ordinate Judge, Gobichettipalayam dated 31.08.2015 are set aside and the trial court is directed to keep the petition for final decree pending till the disposal of the second appeal in S.A.No.276 of 2013. These Civil Revision Petitions are **allowed**. No costs. Consequently, the connected miscellaneous petitions are closed.

07.01.2021

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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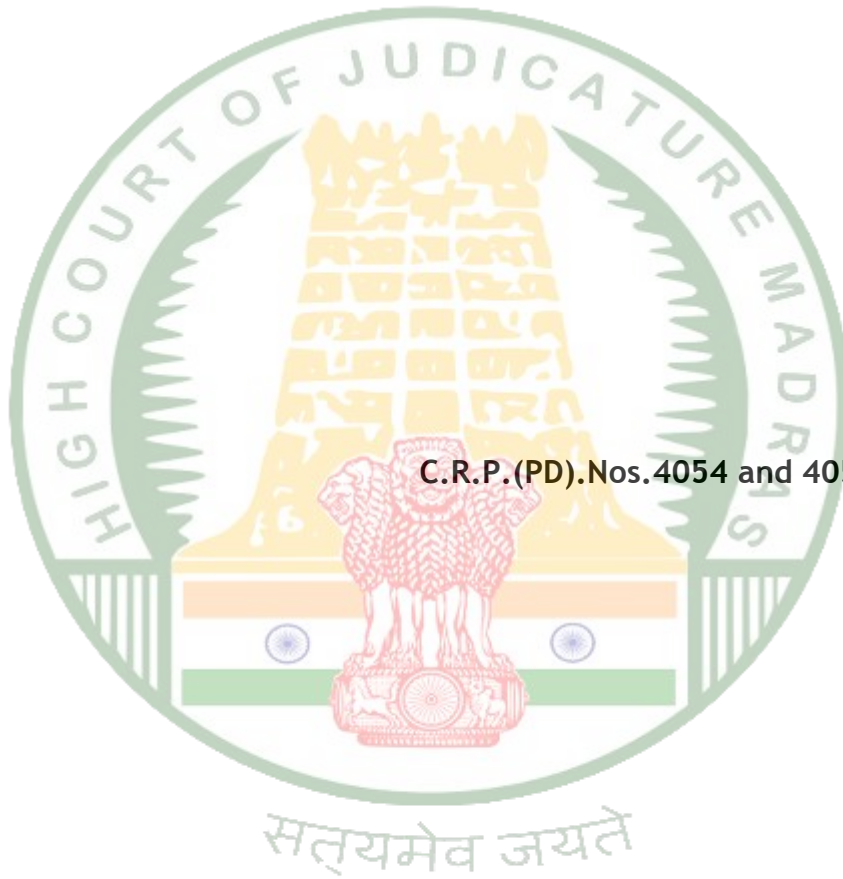
The Sub-Ordinate Judge, Gobichettipalayam.



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G.K.ILANTHIRAIYAN,J.

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