



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Thirtieth day of November Two Thousand Twenty One

PRESENT

THE HON`BLE MR JUSTICE S.S. SUNDAR

CMP NO.18420 OF 2021

in AS.No.436/2021

A.GOPALAKRISHNAN

[PETITIONER]

Vs

1 A.SRINIVASARAGHAVAN

[RESPONDENTS]

2 A.PRABAKAR

3 G.BHUVANESWARI

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Stay all further proceedings in O.S.No. 154 of 2015 on the file of the Ld.First Additional District and Sessions Court, Salem (CMP NO.18420 OF 2021) pending disposal of this AS.No.436/2021.

Order:This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of N.MANOCHARAN, Advocate for the petitioner the court made the following order:-

This application is filed to stay all further proceedings in OS.No.154/2015 on the file of the Court of I Additional District and Sessions Judge, Salem.

(1)The petitioner is the appellant in the above appeal which was preferred by him as against the judgment and decree in OS.No.154/2015. The petitioner as plaintiff, filed the said suit for partition claiming 1/4th share in the suit properties. The suit was ultimately dismissed for partial partition even though the plaintiff/petitioner/appellant was held to be entitled to 1/4th share.

(2)The 1st defendant in the suit filed a written statement contending that his mother had executed a Will dated 18.12.2010 in his favour. Therefore, the petitioner/appellant is also



aggrieved by the finding in the said suit about the validity of the Will dated 18.12.2010.

- (3) Be that as it may, this Court is unable to understand as to why the petitioner/appellant should file a petition for stay of further proceedings in OS.No.154/2015. It is admitted that defendants 2 and 3 are set exparte and the suit, ultimately was dismissed on the ground that the suit is bad for partial partition.
- (4) In such circumstances, the grievance of the petitioner/appellant that on the basis of the judgment in OS.No.154/2015, the defendants may file a fresh suit, cannot be appreciated.
- (5) In the affidavit filed in support of this miscellaneous petition, the petitioner/appellant has stated that the 1st respondent and his wife have filed a fresh suit. That must be a mistake because it is stated that the suit is OS.No.154/2015. But still, this Court is unable to agree that the petitioner/appellant will suffer a legal injury or that he can have grievance against somebody if a suit is filed based on the judgment and decree in OS.No.154/2015.
- (6) It is still open to the petitioner/appellant to file another suit even if the decree of the Trial Court is confirmed. Similarly, others who are co-sharers are entitled to file suit for partition.
- (7) In such circumstances, this Court is unable to see any logic behind the submission of petitioner's counsel.
- (8) In the result, the present Civil Miscellaneous Petition is unwarranted and is filed to waste the time of Court or with ill-motive with ulterior object. Accordingly, the same is dismissed.

-sd/-

30/11/2021

/ TRUE COPY /

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



TO

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1 THE I ADDITIONAL DISTRICT,
JUDGE, SALEM

Order

in

CMP NO.18420 OF 2021

in AS.No.436/2021

Date :30/11/2021

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