



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Twenty Seventh day of July Two Thousand Twenty One

PRESENT

THE HON`BLE MR.JUSTICE M.SUNDAR

CMP.No.25421/2019

in SA.No.1164/2019

1 SUBRAMANIAM [PETITIONERS]

2 KAVITHA ALAIS KAVITHA DEVI

Vs

1 KARUPATHAL [RESPONDENTS]

2 VELUSAMY

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay the operation of the Judgment and Decree dated 15-11-2018 passed in A.S.No.11/2018 on the file of the Sub-Court, Palladam reversing the judgement and decree dated 23.06.2015 passed in O.S.No.279/2007 on the file of the District Munsiff Court, Palladam, (in CMP.No.25421/2019) pending disposal of the SA.No.1164/2019.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.S.SRIRAM for MR.K.GОВI GANESAN, Advocate for the petitioner and of MR.H.RADHAKRISHNAN, Advocate for the Respondents the court made the following order:-

Aforementioned second appeal arises out of a suit for declaration, consequential permanent injunction and delivery of possession qua suit property.

2. Mr.S.Sriram, learned counsel on record for petitioners/appellants and Mr.H.Radhakrishnan, learned counsel representing the counsel on record for two respondents are before this virtual Court.

3. Trial Court dismissed the suit on 23.06.2015 after full contest. Plaintiffs carried the matter in appeal, First Appellate Court allowed the appeal and granted the decree sought for vide



judgment and decree dated 15.11.2018. Defendants, who have suffered a decree in the First Appellate Court are in appeal before this Court. Captioned second appeal has been admitted by Hon'ble Predecessor Judge on 28.11.2019 and therefore, this Court is in seizin of the matter. Records from the District Judiciary have been received and captioned Second Appeal is ripe for final hearing. At the time of admission of captioned second appeal on 28.11.2019, Hon'ble Predecessor Judge has granted an order of interim stay and the order reads as follows:

'Proceedings dated 28.11.2019

This Second Appeal is admitted on the following substantial question of law:

Whether the lower appellate Court was right in concluding that the plaintiffs' suit for recovery of possession can be granted despite the same having been filed 12 years after the defendants occupied the suit property, only based on the oral evidence of D.W.1?'

2. Notice.'

4. Elaborating on the aforementioned order, this Court deems it appropriate to say that the decree against the defendants includes a decree for recovery of possession qua suit property. As this Court is now in seizin of captioned Second Appeal and as the second appeal is ripe for final hearing, any execution for recovery of possession should necessarily await outcome of captioned second appeal and recovery of possession if any, can be only subject to the outcome of captioned second appeal. In other words, decree for recovery of possession cannot be allowed to be executed pending aforementioned second appeal when this Court is in seizin of the matter.

5. Therefore, this Court deems it appropriate to dispose of captioned CMP holding that the order of interim stay granted on 28.11.2019 will continue till the disposal of captioned second appeal albeit adding that it is open to respondents to take out a suitable CMP or make a suitable prayer if there is undue delay (attributable to petitioners/appellants) in disposal of captioned second appeal.

6. CMP disposed of in the aforesaid manner. There shall be no order as to costs.

-sd/-

27/07/2021

/ TRUE COPY /

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



TO

1 THE DISTRICT MUNSIF,
PALLADAM

2 THE SUBORDINATE JUDGE,
PALLADAM

WEB COPY

Order

in
CMP.No.25421/2019

in SA.No.1164/2019

Date :27/07/2021

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