



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Friday, the Thirtieth day of July Two Thousand Twenty One

PRESENT

THE HON'BLE MR JUSTICE M. SUNDAR

CMP No.26795 of 2019

in SA.NO.1238/2019

1 NALLAMMAL

[PETITIONERS]

2 MUNIAPPAN

Vs

MARAYEE @ MARAYAMMAL

[RESPONDENT]

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 30.08.2019 made in AS.No.50/2016 on the file of the Sub Court, Bhavani, Erode District, reversing the judgment and decree dated 04.04.2016 made in O.S.No.389/2011 on the file of the Principal District Munsif Court, Bhavani Erode District. (CMP.26795/2019) pending disposal of the above SA.1238/2019

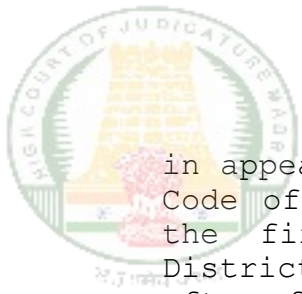
Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.K.RAMESH KUMAR, Advocate for the petitioner and of MR.I.C.VASUDEVAN, Advocate for the Respondent the court made the following order:-

At the time of admission, an interim order has been granted in the captioned CMP by Hon'ble predecessor Judge and the same reads as follows:

'There shall be an order of interim stay of passing of final decree alone and the other proceedings shall go on. Notice.'

2. This Court deems it appropriate to embark upon a little elaboration on above and the same is done infra.

3. Main second appeal arises out of a typical partition suit. After full contest, the trial Court non-suited the lone plaintiff i.e., dismissed the suit. Non-suited plaintiff carried the matter



in appeal by way of a regular first appeal under Section 96 of 'The Code of Civil Procedure, 1908' ('CPC' for the sake of brevity) to the first Appellate Court (Sub-judge's Court, Bhavani, Erode District) vide A.S.No.50 of 2016 and the first Appellate Court, after full contest, interfered, reversed and allowed the appeal. The sequitur is, there is a preliminary decree for partition as sought for by the plaintiff. The defendants have preferred the captioned second appeal and the same has been admitted by Hon'ble predecessor Judge on 16.12.2019. This Court is informed that records of the District judiciary have since been received. This means that main second appeal is ripe for final hearing. Both sides submit that the main second appeal can be argued in the next listing.

4. In the light of the narrative thus far, this Court deems it appropriate to dispose of the captioned CMP saying final decree proceedings, if any, can go on, but there will be a stay of passing of final decree alone as this second appeal court is in seizin of main matter assailing preliminary partition decree and final decree, if any and if that be so should necessarily await outcome of main second appeal. There shall be no order as to costs.

-sd/-
30/07/2021
/ TRUE COPY /

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

TO

1 THE PRINCIPAL DISTRICT MUNSIF,
BHAVANI, ERODE DISTRICT.

2 THE SUBORDINATE JUDGE,
BHAVANI, ERODE DISTRICT.

Order
in
CMP.26795/2019

in SA.NO.1238/2019

Date :30/07/2021

From 26.2.2001 the Registry is issuing certified
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