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C.M.P.No.11601 of 2022

in

A.S.No.315 of 2022

R.N.MANJULA. J.,

The petitioner is the appellant, who has filed an appeal challenging the supplementary decree dated 29.04.2022 passed in the suit by allowing I.A.No.7 of 2020 on the file of I Additional District Judge, Erode.

2.The learned counsel for the petitioner submitted that in a suit filed for partition in the year 2011, a preliminary decree was passed in the year 2015 and that was being challenged by the parties before the Hon'ble Supreme Court and the preliminary decree has attained finality. Subsequently, when the final decree proceedings were initiated and pending, the plaintiff who is the father of the petitioner died; thereafter, the 2nd defendant filed an interlocutory application in I.A.No.7 of 2020 to pass a supplementary preliminary decree by stating that the father's share was bequeathed to him by virtue of a Will and the same was allowed. Since the very validity of the Will is questioned in the appeal and if the final decree is passed before hearing the appeal, that would affect the interest of all the parties.



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3.However, the learned counsel for the petitioner further submitted that the parties to the suit all are senior citizens and hence, the Court may allow the final decree proceedings to go on.

4.In view of the above discussions, there should be an order of stay to pass the final decree alone and the rest of the proceedings in final decree should be allowed.

5.Hence this Civil Miscellaneous Petition is allowed and an order of stay is granted for passing the final decree alone. The trial Court is at liberty to take up the other proceedings in the final decree petition.

17.08.2022

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