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C.R.P.No.2012 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2022

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(NPD) No.2012 of 2017

D.Mallikadharmaraj

... Petitioner
/Plaintiff

Vs.

1. N.Balamani
2. R.MalayappaGounder

... Respondents
/defendants

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated 03.01.2017 made in I.A.No.574 of 2014 in O.S.No.738 of 2012 on the file of the District Munsif Court at Avinashi.

For Petitioner : M/s.D.Chitra Maragatham

For Respondents : No appearance



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ORDER

Today, this Civil Revision Petition has been posted under the caption “for clarification”. Earlier on 5.08.2022, when this petition came up for hearing, this Court has dismissed the same. Later at the time of signing the order, this Court ascertained certain other material facts and wanted to clarify the same with the learned counsels and therefore, listed the same under the caption 'for clarification'.

2. This Civil Revision Petition has been filed against the order made in I.A.No.574 of 2014 in O.S.No.738 of 2012, dated 03.01.2017 on the file of the District Munsif Court at Avinashi.

3. Originally, the Suit in O.S.No.738 of 2012 was filed by the petitioner/plaintiff for partition and to appoint a Court Commissioner for the said purpose. The said suit was decreed in favour of the plaintiff holding that he is entitled to 1/4th share in the suit property.



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4. In view of the above decretal of the suit, the plaintiff filed I.A.No.574 of 2014 praying to divide the petition mentioned properties into 4 equal shares and allot one such share by appointing court commissioner.

5. The learned Judge, held that Appeal Suit in A.S.No. 20 of 2014 is pending before the Sub Court, Avinashi, hence, the petition is not maintainable and the IA is closed. Aggrieved by the same, the present Civil Revision Petition is filed.

6. It is the case of the Revision Petitioner that the learned Judge failed to see that unless there is stay in Preliminary Decree proceedings, mere pendency of Appeal will not stay the Final Decree proceedings under Order XLI Rule 5 of Civil Procedure Code and therefore, prayed for allowing the present revision.



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7. There is no representation on behalf of the respondents. Heard the learned counsel for the petitioner and perused the entire materials available on record.

8. It is a well settled principle that on the mere fact that there is an appeal from a preliminary decree does not oust the jurisdiction of the trial Court to prepare a final decree even while the appeal is pending unless there is a stay order. The said principle has been relied upon by the Hon'ble Supreme Court in the case of ***Sital Parshad vs. Kishorilal*** reported in **1967 SCR (3) 101**.

9. In view of the above settled proposition of law, the contention made by the learned counsel for the petitioner finds much force and this Court is of the considered opinion that the trial ought not to have closed the I.A.No.574 of 2014 in O.S.No.738 of 2012 for the reason that Appeal Suit is pending.

10. In the light of the above reasoning, the order passed in I.A.574 of 2014 warrants interference of this Court. Accordingly, I.A.No.574 of 2014



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stands ordered. The Civil Revision petition is allowed. No costs. Consequently,
connected miscellaneous petition is closed.

23.08.2022

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To

1. The District Munsif Court, Avinashi.
2. The V.R.Section,
High Court of Madras, Madras



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J.NISHA BANU, J.,

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