



WEB COPY

C.M.P.No.



C.M.P.No. 11769 of 2022

in

A.No. 318 of 2022

P.T. ASHA, J.,

The 3rd defendant in the suit O.S.No.85 of 2017 is the appellant in the above Second Appeal. The suit O.S.No.85 of 2017 was filed for a partition of the plaintiff's 1/3rd share in the suit schedule property and to declare the preliminary decree passed in O.S.No.108 of 2000 as null and void and for an injunction restraining the 3rd defendant from creating encumbrance over the suit property and interfering with the plaintiff's peaceful possession and enjoyment of the property.

2. The Trial Court dismissed the suit with respect to the relief of partition and for permanent injunction but had gone to hold that items 1 to 3 of the A Schedule property belonged to the 1st defendant, Balaji and the other defendants had no share in the same and had also declared that the legal heirs of Sarojammal, Baiammal and Chinnathayammal entitled to equal share in the B schedule property. The suit was decreed with reference to the relief seeking to declare the suit in O.S.No.108 of 2000 as null and void.



WEB COPY

3. The 3rd defendant alone has challenged this decree and has taken out this application. The stay petition is filed on the premise that if the decree is enforced it would create complication. The decree that has now been passed is as follows:

“10. (1). In the result, the suit is dismissed regarding the relief of Partition, Separate Possession and for Permanent Injunction.

(ii). But this Court holds that, the 1 to 3 item of "A" schedule property belongs to Ist defendant namely Balaji. The other defendants and plaintiff have no share in the "A" schedule 1 to 3 item of properties.

(iii). And regarding "B" schedule property, the legal heirs of Sarojammal, Baiammal and Chinnathayammal are entitled to get equal share.

(iv). The decree passed by Principal Sub-Judge, Krishnagiri in O.S.No.108/2000 is declared as null and void.



WEB COPY

C.M.P.No.



(v). *Considering the relationship between the parties to the suit, no cost.*”

4. There is nothing to be enforced in the above decree. Further, the affidavit filed in support of the stay petition is totally bereft of reasons as to why the appellant / 3rd defendant seeks a stay. Therefore, the stay petition is dismissed.

30.10.2023

kan



WEB COPY

C.M.P.No.



P.T. ASHA, J.,

kan

C.M.P.No. 11769 of 2022