



C.R.P.(PD)No.3650 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.3650 of 2019

and

C.M.P.No.23970 of 2019

Krishnan

.. Petitioner

Vs.

1.Periyasamy

Sivagami (Died)

Pappa (Died)

2.Nirmala

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Order and Decreetal Order dated 16.07.2019 made in I.A.No.487 of 2018 in I.A.No.1093 of 2011 in O.S.No.324 of 1993 on the file of Learned District Munsif, Mettur, Salem District.



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For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.R.Vivek

ORDER

O.S.No.324 of 1993 is a suit for partition. The suit was decreed on 09.09.1998. The appeal and second appeal, which were preferred there from were also dismissed. The matter was taken to the Supreme Court in SLP(CC)No.1720 of 2012. The Supreme Court was not pleased to grant stay of the decree passed by the trial Court. It had only issued notice in the matter.

2.Since stay was not granted by the Supreme Court, final decree proceedings were initiated in I.A.No.1093 of 2011. Pleadings have been completed in I.A.No.1093 of 2011. Thereafter, a petition with a very unique prayer had been moved before the trial Court stating that the final decree proceedings have to be deferred till the disposal of the Special Leave Petition pending before the Supreme Court in SLP(CC) No.1720 of 2012.



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3.Heard Mr.M.R.Jothimanian, learned counsel appearing for the petitioner and Mr.R.Vivek, learned counsel appearing for the respondents.

4.The power to grant stay, pending disposal of the appeal is only exercisable, by that Court in which the appeal is pending. When the Special Leave Petition is pending before the Supreme Court, and an interim order has not been granted, the trial Court is duty bound to proceed further in the issue. Here is the case where the partition decree was passed in the year 1998, (about 25 years ago). Final decree proceedings have been pending for 12 years. The prayer itself was moved before the trial Court six years after notice was issued in the Special Leave Petition. I had adjourned the matter on 22.08.2023 to enable the revision petitioner to obtain stay before the Supreme Court. Mr.M.R.Jothimanian states that a mention was made before the Supreme Court, but he is unable to produce any interim order.

5. I am afraid, I cannot entertain the position of law, which would demand that pending disposal of the Civil Appeal before the Supreme Court, the trial Court grant stay of its proceedings. Under Order 41 Rule



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5 of CPC, mere pendency of an appeal does not operate as a stay of proceedings appealed against. The petitioner having failed to obtain stay, is not entitled to move an application before the learned District Munsif for the purpose of stay of the proceedings.

6.Finding this position putting his case in difficulty, Mr.Jothimanian would turn to Section 10 of CPC and submit that Section 10 will apply in the present case. Even on this, I am not with Mr.Jothimanian for the simple reason that Section 10 contemplates two suits. One suit of which the trial has already been completed and the issue is substantially and directly the same in a latter suit. The appeal before the Supreme Court deals with the preliminary decree whereas the stay has been sought for final decree. Both are in the same suits and therefore, Section 10 also does not apply.

7.Mr.Jothimanian would say that the issue that he has raised has been referred to a Larger Bench and therefore, the learned District Munsif must keep his hands off of the final decree. I have gone through the reference order. Even in the said order, there is no stay granted by the



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Supreme Court of further proceedings. The Supreme Court was conscious not to grant stay of proceedings. I cannot presume that since the matter has been referred to a Larger Bench, the Supreme Court was also inclined to grant stay. Stay is a specific order. Since it has not been granted, I am left with no other option than to dismiss the Civil Revision Petition.

8.All the arguments failing, this civil revision petition is dismissed. The learned District Munsif, Mettur, Salem is requested to take up I.A.No.1093 of 2011 and dispose of the same as expeditiously as possible within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

30.08.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

mkn-II/vs

To

The District Munsif,
Mettur, Salem District.

V.LAKSHMINARAYANAN,J.



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