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*C.M.P. No.28055 of 2023
in A.S. No.797 of 2023*

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**M.SUNDAR,J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

(Order of the Court was made by M.SUNDAR, J.)

Captioned 'Civil Miscellaneous Petition' (hereinafter 'CMP' for the sake of brevity) has been filed seeking interim stay of all further proceedings pursuant to judgment and decree dated 06.04.2023 in O.S.No.2593 of 2022 on the file of XXIII Additional Judge's Court, City Civil Court, Chennai. This '06.04.2023 decree' is a preliminary decree in a partition suit and the same shall be referred to as 'impugned judgment and decree' for the sake of convenience and clarity. The 'XXIII Additional Judge's Court, City Civil Court, Chennai' which made this 06.04.2023 preliminary decree in a partition suit shall be referred to as 'said Trial Court' for the sake of convenience and clarity.

2. One Sekaran purchased a property from erstwhile Tamil Nadu Slum Clearance Board (now Tamil Nadu Urban Habitat Development Board) vide registered sale deed dated 21.08.2022



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(Sale Deed No.1842 of 2002 on the file of jurisdictional registration office) and put up further superstructure. This property in its entirety shall be referred to as suit property and the same is Plot No.221, Door No.3/18, Model Hutment Road Extension, C.I.T. Nagar, Chennai – 600 035 (T.S.No.59 Block No.48 of Mambalam Village).

3. Sekaran died intestate on 03.12.2018 leaving behind his wife Ragini, son Bharath and daughter Bharathi.

4. Daughter Bharathi filed aforementioned partition suit i.e., O.S. No.2593 of 2022 on the file of said Trial Court claiming 1/3rd share in suit property and for partition/division by metes and bounds i.e. three equal shares. In the suit, Bharathi arrayed her brother Bharath and mother Ragini as defendants 1 and 2 respectively. After full contest, said Trial Court in and by impugned judgment and decree, decreed the suit (on 06.04.2023 as alluded to supra).

5. Post decree, Bharath died on 09.05.2023. After demise of Bharath, legal heirs of Bharath (wife Nalini and two minor children Theshna and B.Elan along with Sekaran's wife Ragini) preferred



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captioned main first appeal i.e., A.S.No.797 of 2023 which is a regular first appeal under Section 96 of 'The Code of Civil Procedure, 1908' (hereinafter 'CPC' for the sake of brevity). Cause title was accepted in and by an order dated 03.10.2023 made by Hon'ble Predecessor Division Bench vide C.M.P. No.21658 of 2023 in A.S.SR. No.106848 of 2023.

6. The appeal is now before us and captioned CMP taken out in the appeal falls for consideration.

7. Mr.S.Mannarsamy, learned counsel on record for petitioners/appellants is before this Court. Mr.M.V.Seshachari, learned counsel who is before this Court accepts notice for the lone respondent / A.Bharathi (sole plaintiff before said Trial Court).

8. Learned counsel for respondent submits that post trial, he has filed four applications before said Trial Court and they are I.A. Nos.2, 3, 4 and 5 all of the year 2023 with prayers for final decree, mesne profits, bringing legal heirs on record and for appointment of guardian. Learned counsel also submits that these four applications are scheduled to be listed day after tomorrow i.e., 12.01.2024 in said Trial Court. Mr.S.Mannarsamy, learned counsel



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for petitioners/appellants submits that he will accept notice and appear before said Trial Court on behalf of the respondents on 12.01.2024.

9. As the main suit is one for partition and separate possession (1/3rd share) as between two children and wife of the deceased who died intestate, we deem it appropriate to pass an order of limited interim stay saying that final decree proceedings and other three applications in said Trial Court can proceed on its own merits and in accordance with law but there will be a limited interim stay as regards passing of final decree. As regards mesne profits application, there will only be determination of mesne profits but there will be interim stay of any direction to pay the same.

10. As regards interim stay qua final decree, the same has to await decision in the main first appeal. As regards interim stay qua mesne profits, after mesne profits is ascertained/crystallised, it will be open to the respondent in the main appeal to take out suitable application in this Court as already alluded to supra. To be noted, as regards mesne profits interim stay, said Trial Court has been restrained from passing any order 'directing' payment of



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mesne profits making it clear that proceedings ascertaining the same can go on.

11. In the light of the narrative thus far, as we have heard both sides, captioned CMP is disposed of in the aforesaid manner by granting limited interim stay in the manner and to the extent indicated above albeit with preservation of rights also in aforementioned manner.

12. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
10.01.2024

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10.01.2024