



C.R.P.[NPD].No.3765 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 10.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.3765 of 2024
and C.M.P.No.20527 of 2024

Mohammed Hanifa

... Petitioner

Versus

1.Joharammal

2.Asiya Kani

Jameela (Deceased)

3.Hakkem

4.Mumthaj Begham

5.Abdul Kareem

... Respondents

PRAYER : Petitions filed under Article 227 of Constitution of India to set aside the final decree dated 09.11.2023 in I.A.No.833 of 2011 in O.S.No.44 of 2007 passed by the learned Subordinate Judge of Pollachi violating the order dated 15.09.2015 passed by this Court in M.P.No.1 of 2015 in S.A.No.725 f 2015.

For Petitioner : Mr.A.Suresh Sakthi Murugan

For Respondents : Mr.C.Veraraghavan for R1
No appearance for R2
Mr.S.Patrick for R3 to R5



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ORDER

Challenge has been made to the final decree passed by the Trial Court in I.A.No.833 of 2011 in O.S.No.44 of 2007 dated 09.11.2023

2. The suit in O.S.No.44 of 2007 has been filed for partition, wherein, preliminary decree has been passed. Challenging the same, first appeal is filed in A.S.No.13 of 2012 and the same was dismissed. As against which, second appeal in S.A.No.725 of 2015 is filed, however, in the meanwhile, final decree has been passed. In the final decree proceedings, an affidavit has been filed by the petitioner to the effect that no appeal is pending and based on the report of the advocate commissioner, final decree is passed.

3. The learned counsel for the petitioner submitted that the petitioner is well aware of the second appeal and also interim order passed by this Court in S.A.No.725 of 2015. Whereas, the learned counsel for the respondent submitted that there was an injunction not to pass final decree in



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the second appeal, however, as the final decree is passed, the only remedy to the petitioner is to file an appeal.

4. Heard both sides and perused the materials placed on record.

5. The Court while entertaining the second appeal in S.A.No.725 of 2015 has passed the interim order specifically granting stay in respect of passing of final decree alone. When the second appeal is pending, in the petition filed for passing final decree, it is stated by the petitioner as if there is no appeal pending. Such view of the matter, when the Court has specifically restrained the Trial Court from passing final decree, without following the order and passing final decree, that too, suppressing the pendency of the second appeal cannot be sustained in the eye of law.

6. Accordingly, final decree passed by the Trial Court dated 09.11.2023 stands aside and the Trial Court shall await the outcome of the



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second appeal and proceed further. The parties are also directed to expedite the second appeal and argue the matter on merits.

7. Accordingly, this revision stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet: Yes
Speaking/non speaking order

dhk

To
The Subordinate Judge
Subordinate Court, Pollachi



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N. SATHISH KUMAR, J.

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