

IN THE COURT OF THE ADDITIONAL SUB JUDGE, PALANI

**Present : Thiru. J. Jeya Suthahar, M. Sc., L.L.M.,
Additional Sub Judge, Palani.**

Dated this the 23rd day of November 2022, Wednesday

I.A.No.13/2022

in

A.S. No.4/2022

Vetriselvi
through her power agent
S.K.Rajendran

--- Petitioner/Appellant/9th Defendant

/Vs/

Santhanammal

--- Respondent/Respondent/Plaintiff

This petition came before me for final hearing today in the presence of Thiru. S. Etteeswaran and Thiru. B. Madhavapushpavanam, Learned Counsels for the Petitioner/Appellant/9th Defendant and Thiru. A.R.Rajendran, Learned Counsel for the Respondent/Respondent/Plaintiff and upon hearing the arguments on both side and upon perusal of records and having stood over for consideration till this date, this court doth delivers the following:

ORDER

This petition is filed by the petitioner/Appellant under Order XLI Rule 5(1) of CPC to stay the final decree proceedings in I.A.No.6/2002 on the file of the Learned District Munsif, Palani.

2. The averments in the petitioner's affidavit filed in support of the petition in brief as follows:

The petitioner is the husband and power agent of the appellant. By way of execution of the decree of the trial court the respondent has filed I.A.No.6/2022 before the District Munsiff court, Palani for passing of final decree and is pending. The petitioner has a fair chance of success in the appeal. Hence the proceedings the above I.A.No.6/2022 on the file of the District Munsiff court, Palani has to be stayed till the disposal of the appeal. Hence this petition is filed.

3. The averments in the counter statement of the respondent in brief as follows:

The respondent has filed the above suit for partition and after full trial the suit was decreed on 07.12.2021 and now the respondent has filed a petition for passing of final decree in I.A.No.6/2022 and the same is pending. Now the above petition is filed by the petitioner only to drag on the proceedings and to give hardship to the respondent economically with an intention to deny the respondent to enjoy the fruits of the decree. The petition is not maintainable in law and on facts. It is liable to be dismissed. There is no valid reason to stay the proceedings of this case. Hence the petition is liable to be dismissed.

4. Both side no oral and documentary evidence is adduced in this petition.

5. The point for decision in this petition is whether this petition deserves to be allowed or not?

6. Admittedly the above appeal was filed by the petitioner herein against the judgment and decree of the Learned District Munsif, Palani passed in O.S.No.124/2017 dated 07.12.2021. Further admittedly the above suit was filed by the respondent herein against the petitioner herein and others for partition and other reliefs and the suit was decreed in her favour. Now admittedly the respondent herein has filed final decree application before the trial court and the same is pending in I.A.No.6/2022. So if final decree is passed pending disposal of the above appeal, definitely the appeal would become infructuous and the very purpose of filing of the appeal would be defeated. But at the same time the petitioner will not be affected due to the continuation of the final decree proceedings. An Advocate/Commissioner has to be appointed and he has to visit the properties, measure them with the aid of surveyor and file report suggesting the mode of partition. The above proceedings will take considerable time.

7. Hence considering the above facts and circumstances of this case and in the interest of justice this court is of the view that the final decree proceedings in

IA.No.6/2022 on the file of the District Munsiff Court, Palani need not be stayed and stay can be granted only for passing of the final decree in the suit.

8. In the result this petition is allowed to the extent that stay is granted only for passing of the final decree in IA.No.6/2022 on the file of the District Mundiff Court, Palani till the disposal of this appeal and there is no stay for the above final decree proceedings.

Dictated to the the steno-typist directly and computerized and printed by him and pronounced by me in the open court on this the 23rd day of November 2022.

**Additional Sub Judge,
Palani.**

Petitioner side witnesses and documents: NIL

Respondent side witnesses and documents: NIL

**Additional Sub Judge,
Palani.**