



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

S.A(MD)No.603 of 2014

and M.P(MD)Nos.1 and 2 of 2014

and M.P.(MD) No.1 of 2015

1.A.Ananthakrishnan
2.A.Subramonian
3.S.Saraswathi
4.V.Sankaralingam

... Appellants/Appellants/Defendants

Vs.

1.Vadasery Chinnarasingan Street
Chaliar Samuthdhaya Oor Vagai,
Chinnarasingan Street,
Vadasery,
Vadasery Village,
Agasteeswaram Taluk,
Kanyakumari District,
Represented by its President,
Secretary and Treasurer

2.President V.Chellappan
S/o.Valiyanantham
D.No.Chinnarasingan Street,
Vadasery, Vadasry Village,
Agasteeswaram Taluk,
Kanyakumari District.
3.Secretary C.Pazhani
S/o.A.Chockalingam
Chinnarasingan Street,
Vadasery,Vadasery Village,
Agasteeswaram Taluk,
Kanyakumari District

4.Treasurer L.Mohandhas
S/o.Chockalingam,
D.No.14, Chinnarasingan Street,
Vadasery, Vadasry Village,
Agasteeswaram Taluk,
Kanyakumari District.

...Respondents/Respondents/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure Code against the decree and judgment passed in A.S.NO.54 of 2013 dated 22.03.2014 on the file of the II Additional Subordinate Judge, Nagercoil and confirming the decree and judgment passed in O.S.No.392 of 2009 dated 30.04.2013 on the file of the II Additional District Munsif, Nagercoil.

For Appellants : Mr.K.Sreekumaran Nair
For Respondents : Mr.R.Murugan

**J U D G M E N T**

The Second Appeal arises out of the decree of the II Additional Subordinate Judge, Nagercoil, dated 22.03.2014 made in A.S.No.54 of 2013 confirming the decree of the II Additional District Munsif, Nagercoil, dated 30.04.2013 in O.S.No.392 of 2009 granting the relief of permanent injunction in favour of the respondents herein, who were the plaintiffs in the said suit.

2. In the Second Appeal, the appellants have taken a plea that the suit being one filed in the name of an unregistered body, whose members are innumerable in number, ought to have been filed in a representative capacity under Order 1 Rule 8 of C.P.C and that since it was not done so, the suit itself was not maintainable.

3. Though a petition was filed under Order 1 Rule 8 C.P.C before the trial court and publication was effected, the suit as well as the petition came to be filed showing an unregistered body as one of the plaintiffs, the same was projected by the appellants as a defect in filing of the suit.

4. Contending that the suit plea amounts to a plea of technical defect in the suit, the respondents/plaintiffs have come forward with M.P.(MD) No.1 of 2015 under Order 23 Rule 1(3) C.P.C seeking permission to withdraw the Original Suit with permission to file a fresh suit curing the technical defect in respect of the same subject matter. The respondents in the said Miscellaneous Petition, who are the appellants in the Second Appeal, do not have any objection for granting such a permission in favour of the petitioners in Miscellaneous Petition/respondents in the Second Appeal. This Court is also satisfied that there is such formal/technical defect, which will result in the failure of the suit. Hence, this Court comes to the conclusion that the prayer made in M.P.(MD) No. 1 of 2015 should be granted. Accordingly, M.P.(MD) No.1 of 2015 is allowed. The petitioners therein, who are the respondents in the Second Appeal(Plaintiffs in the Original Suit), are permitted to withdraw the Original Suit with permission to bring a fresh suit on the very same subject matter ofcourse, subject to the law relating to limitation. Accordingly, the Second Appeal stands disposed of on the following term:

i) the decree of the trial court confirmed by the lower Appellate Court is set aside.

ii) The Original Suit shall stand dismissed as withdrawn with permission to file a fresh suit on the very same cause of action.

iii)No costs.

Consequently, the connected M.P.(MD) Nos. 1 and 2 of 2014 are closed.

sd/-

Assistant Registrar(Crl.Side)

/True copy/



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To,

1.The Court of the II Additional Sub-ordinate Judge, Nagercoil.

2.The Court of the II Additional District Munsif, Nagercoil.

+1 Cc to Mr.K.Sreekumarannair, Advocate, Sr.No.34145

+1 CC to Mr. R.Murugan, Advocate, Sr.No.34231

Copy to : The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

JUDGMENT MADE IN
S.A(MD)No.603 of 2014
and M.P(MD)Nos.1 and 2 of 2014
and M.P.(MD) No. 1 of 2015
26.06.2015

TR/PRV : 01.08.2015 : 3p/6c