



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

S. A. No. 24 of 2012

and

M.P. No.1 of 2012

1. S. Kannan
2. K. Suchithra .. Appellants/plaintiffs

Vs.

1. A. Rajamanickam
2. D. Murugasan .. Respondents/defendants

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgement and decree dated 28.10.2011 made in A.S.No.93 of 2010 on the file of the II Additional Subordinate Judge, Salem, reversing the judgment and decree in O.S.No.964 of 2007 dated 22.10.2009 on the file of the I Additional District Munsif Court, Salem.

For appellants : Mr. J. Nandagopal

For Respondents : Mr. Vadivelmurugan for R1
NA for R2

J U D G M E N T

This Second Appeal is filed against the judgement and decree dated 28.10.2011 made in A.S.No.93 of 2010 on the file of the II Additional Subordinate Judge, Salem, reversing the judgment and decree in O.S.No.964 of 2007 dated 22.10.2009 on the file of the I Additional District Munsif Court, Salem.

2. The learned counsel for the appellants submitted that the 1st appellant filed O.S. No. 166 of 1990 before the Subordinate Judge, Salem for declaration and injunctiion. The suit was set ex-parte on 17.11.1997. Again the appellants filed a suit in O.S. No. 964 of 2007 before the District Munsif Court, Salem. The same was decreed in favour of the appellants. Against the said order, the respondents filed an appeal in A.S. No. 93 of 2010 and the same was allowed.



3. The learned counsel for the appellants would submit that in the earlier suit filed in O.S. No. 166 of 1990, the respondents have filed an application to set aside the ex-parte decree. The said Application was allowed and the same was re-numbered as O.S. No. 303 of 2011 and was taken up on the file of learned Principal District Munsif, Salem. Subsequently, the said suit was dismissed on 31.03.2016. Challenging the said judgement and decree, an appeal suit has been filed and the same is pending. Therefore, the present Second Appeal becomes infructuous. The learned counsel for the respondents also agree with the statement made by the learned counsel for the appellant.

4. In view of the submissions made by the learned counsel for both the parties, the Second Appeal is dismissed as infructuous. However, this order will not stand on the way to prosecute the appeal suit filed by the appellants. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

avr

To

1. The I Additional District Munsif Court,
Salem.

2. The II Additional Subordinate Judge,
Salem.

+1 CC to Mr.S.Vadivelmurugan, Advocate, SR.87269

+1 CC to Mr.J.Nandagopal, Advocate, SR.87537

S. A. No. 24 of 2012
and
M.P. No.1 of 2012

NMI (CO)
kas (03/02/2018)