

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.1928 of 2002  
and  
C.M.P.No.16411 of 2002

M.Ajjan .. Appellant (Plaintiff)

Vs.

1. A.Devarajan
2. Masiammal
3. M.Lakshmi
4. A.Bhojan
5. A.Indrani

(Respondents 2 to 5 are not  
necessary parties and they  
may be given up)

.. Respondents (Defendant 4, 1 to 3 & 5)

Prayer :- Second Appeal has been filed under Section 100 of C.P.C against the judgment and decree dated 03.07.2001 made in A.S.No.17 of 2000 on the file of the District Judge, Uthagamandalam by modifying the judgment and decree dated 23.06.2000 made in O.S.No.50 of 1995 on the file of the District Munsif, Kothagiri.

For the appellant : Mr.S.Kadarkarai  
For the respondents : No appearance

JUDGMENT

This second appeal has been filed by the plaintiff against the judgment and decree passed by the District Judge, Uthagamandalam in A.S.No.17 of 2000 dated 03.07.2001 modifying the judgment and decree passed by the District Munsif, Kotagiri in O.S.No.50 of 1995 dated 23.06.2000.

2. The appellant herein had filed a suit in O.S.No.50 of 1995 on the file of District Munsif, Kothagiri to declare that he is the absolute owner of the suit property and consequently to restrain the respondents hererin from interfering with his possession and enjoyment of the suit properties. The learned

District Munsif, by his judgment dated 23.06.2000 had decreed the suit as prayed for.

3. Feeling aggrieved, the first respondent herein filed an appeal in A.S.No.17 of 2000 on the file of the District Judge, Uthagamandalam. The learned District Judge by his judgment, dated 03.07.2001 has allowed the said appeal and set aside the judgment and decree passed by the Trial Court in O.S.No.50 of 1995 and modified the same to the effect that the plaintiff is at liberty to enjoy the suit properties without making any encumbrance. Feeling aggrieved, the plaintiff has filed the present second appeal.

4. Today learned counsel for the appellant has filed a memo stating that he has sent a letter on 15.06.2018 through RPAD to the appellant, but the said letter has been returned on 21.06.2018 with an endorsement that "addressee deceased". He has also stated that the respondents in the second appeal are the legal heirs of the deceased sole appellant and due to the death of the sole appellant, the second appeal is abated. He has also enclosed the returned postal cover.

5. A perusal of the judgments of the courts below would show that the appellant / plaintiff is the father and the respondents herein are the children. The appellant filed the suit claiming that the suit properties are his self acquired properties and hence he prayed to declare that he is the absolute owner of the suit properties and for consequential relief of injunction to restrain the respondents herein from interfering with his peaceful possession. Though the Trial Court has decreed the suit, the First Appellate Court has dismissed the said suit, however, gave liberty to the appellant herein to enjoy the suit properties till his life time without encumbering the suit properties. Now the appellant / plaintiff died, hence respondents being the children of the appellant, would succeed to the suit properties. Therefore the memo filed by the learned counsel for the appellant / plaintiff is recorded. The Second Appeal is dismissed as abated. Consequently connected miscellaneous petition is closed. No costs.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

adl /gv

To

1. The District Judge, Uthagamandalam.

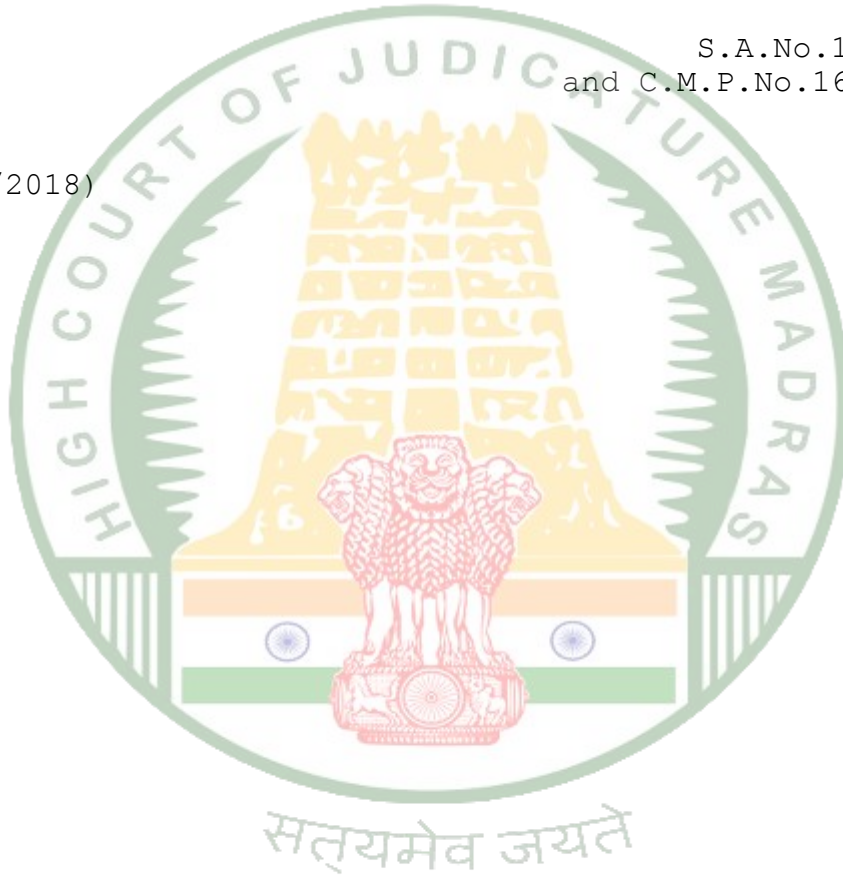
2. The District Munsif, Kothagiri.

Copy to

The Section Officer,  
VR Section, High Court,  
Madras.104

S.A.No.1928 of 2002  
and C.M.P.No.16411 of 2002

SV(CO)  
GSP(31/07/2018)



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