



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

S.A. (MD) No. 71 of 2017
and
C.M.P. (MD) No. 1388 of 2017

1. Sreekumar
2. Prasannakumar
3. Sreedevi Amma ... Appellants/ Appellants/Defendants

-Vs-

1. Leela Devi Amma
Sasidharan Nair (Died)
3. S.P. Dhanya Sri Nair
4. S.P. Pari Sankar Nair ... Respondents / Respondents / Plaintiffs

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 19.12.2012 passed in A.S.No.45 of 2007 by the learned II Additional Subordinate Judge (Camp Court), Kuzhithurai, confirming the judgment and decree passed in I.A.No.332 of 2004 in O.S.No.105 of 1996 dated 29.07.2005 passed by the learned Principal District Munsif, Kuzhithurai.

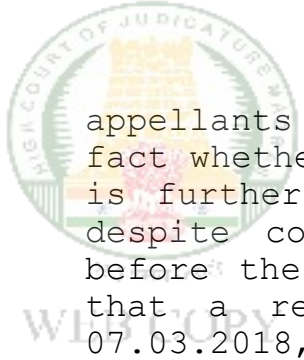
For Appellant : Mr. B. Brijesh Kishore
For R1, R3 and R4 : Mr. Sree Kumaran Nair

JUDGMENT

This appeal has been filed against the judgment and decree dated 19.12.2012 passed in A.S.No.45 of 2007 by the learned II Additional Subordinate Judge (Camp Court), Kuzhithurai, confirming the judgment and decree passed in I.A.No.332 of 2004 in O.S.No.105 of 1996 dated 29.07.2005 passed by the learned Principal District Munsif, Kuzhithurai.

2. Earlier, it is stated by the learned Counsel for the appellants that pursuant to the final decree, possession was taken by executing the final decree. It is further stated that the parties have taken possession and the appellants have sold their respective shares, which were allotted to them. Though the learned Counsel appearing for the appellants earlier sought for time to verify the fact that whether possession was taken through Court and the appellants have sold their shares, the learned Counsel appearing for the appellants submitted that he could not contact his client.

3. Today, the learned Counsel for the appellants has filed a memo, dated 15.03.2018 before this Court, stating that the



appellants did not reply and therefore he could not ascertain the fact whether the delivery has been effected through Court or not. It is further stated by the learned Counsel for the appellants that despite contacting the Counsel, who appeared for the appellants before the lower Court, there was no reply. It is further stated that a registered letter was also sent to the appellants on 07.03.2018, requesting them to contact their Counsel on receipt of the letter. The same was received by the appellants but, there was no reply or response. It is in these circumstances, the Counsel for the appellants requested this Court to record the memo that the Counsel for the appellants has no instructions and issue notice to the appellants.

4. Though in normal circumstances, this Court would have issued notice to the appellants, as Counsel for the appellants report no instruction, in this case, the appeal is yet to be admitted and this Court is able to see the conduct of the appellants that there is every attempt to drag on the proceedings unnecessarily. In such circumstances, this Court has no other option, but to dismiss this appeal. As a result, this second appeal is dismissed for default. However, there is no order as to costs. Consequently the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub-Assistant Registrar

To

1. The II Additional Subordinate Judge (Camp Court),
Kuzhithurai.

2. The Principal District Munsif, Kuzhithurai.

3. The Section Officer, (2 copies)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+One cc to M/s. Sree Kumaran Nair, Advocate, SR.No.55945

cmr

RL/6C/2P/CVC/SAR1/4/4/2018

S.A. (MD) No.71 of 2017

16.03.2018