



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

S.A.(MD) No.261 of 2016

WEB COPY

Aayee Pillai (Died)

Muthirullan (Died)

1.M.Karuppana Pandian

2.Pandiammal

3.Rajammal

4.Sarasu

5.Angammal

.. Appellants / Appellants /Plaintiffs 3 to 7
vs.

Sundararajan (Died)

1.The State of Tamil Nadu represented,

through the District Collector,

Madurai.

...1st Respondent/ 1st Respondent/2nd Defendant

2.Revathi

3.Sudhakaran

4.Hema

5.Shanthi

6.Jayanthi

... Respondents 2 to 6 / Respondents 2 to 6
/ Defendants 4 to 8

PRAYER: This Second Appeal filed under Section 100 of Civil Procedure Code, against the decree and judgment of the Principal Subordinate Judge, Madurai in A.S.No.113 of 2008, dated 29.01.2009 partly confirming the decree and judgment in O.S.No.328 of 1996 dated 26.02.2008 on the file of the Additional District Munsif, Madurai Town.

For Appellants : Mr.K.Muraleedharan

For R1 : Mr.J.Gunaseelan Muthiah, AGP

For R2 to R6 : Dismissed for default on 27.09.2011

J U D G M E N T

This appeal arises out of the suit in O.S.No.328 of 1996, which was filed by the predecessor in interest of the plaintiff seeking declaration of title, recovery of possession as against eight defendants.

2. The suit was dismissed by the trial and the said dismissal was confirmed by the lower appellate Court with regard to the relief of declaration. However, the lower appellate Court reserved liberty to the plaintiff to take appropriate proceedings for damages, if they are so advised.



3. Pending suit the first and third defendants died. Their legal heirs were brought on record as defendants 4 to 8 in the suit.

4. This appeal was originally filed against six respondents. The respondents 2 to 6 are the legal heirs of the first defendant. Since steps were not taken for service of notice, appeal itself was dismissed on 27.09.2011 as against the respondents 2 to 6 for default. The attempt made by the appellants to have the appeal restored also failed since the application to condone the delay of 2472 days in seeking restoration of the appeal filed in C.M.P.(MD) No.8478 of 2018 was also dismissed by this Court vide order dated 03.01.2019. The operative portion of the said order reads as follows:

"11. In the above circumstances, the reasons stated in the petition are not satisfactory. This petition is dismissed and consequently, S.A.(MD)No.261 of 2016 is also dismissed as against the respondents 2 to 6. No costs."

5. From the above facts, it is seen that the appeal has been dismissed as against the contesting respondents. The judgment of the lower appellate Court has become final as against the contesting respondents. Hence, this appeal cannot be prosecuted independently as against the first respondent alone. Therefore, this second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The Principal Subordinate Judge, Madurai.
- 2.The Additional District Munsif, Madurai Town.

Copy to:

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

+1 CC to M/s.SPL.GP (SR-3743[F] dated 29/01/2020)

+1 CC to M/s.K.MURALEEDHARAN, Advocate (SR-3747[F] dated 29/01/2020

S.A. (MD) No.261 of 2016

27.01.2020

SMA/14/02/2020/2P/7C

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