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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Second Appeal No.709 of 2017

Balamurugan

Rep. By his General Power Agent,

M.Ganapathi

... Appellant/Appellant/Plaintiff

Versus

Visalatchi @ Viji

Rep.by her General Power Agent

Mr.Thirunavukkarasu

... Respondent/Respondent/Defendant

The Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 08.06.2016 passed in A.S.No.2 of 2014, by the Principal District Judge, Thiruvarur, confirming the Judgment and Decree, dated 25.01.2012 passed in O.S.No.34 of 2011 by the Subordinate Judge, Mannargudi.

For Appellant : Ms.M.Meenatchi

For Respondent : Mr.S.Arivazhagan

#### JUDGMENT

The second appeal has been filed challenging the Judgment and Decree dated 08.06.2016 passed in A.S.No.2 of 2014, by the Principal District Judge, Thiruvarur, confirming the Judgment and Decree, dated 25.01.2012 passed in O.S.No.34 of 2011 by the Subordinate Judge, Mannargudi.

2.Heard the learned counsel for the Appellant and the learned counsel appearing for the Respondent and perused the materials available on record.

3.The learned counsel for the Respondent submitted that there were two suits filed before the Court below viz., O.S.No.34 of 2011 and O.S.No.35 of 2011 and both the suits were dismissed. Against the order of dismissal dated 08.06.2016 in O.S.No.35 of 2011 in A.S.No.15 of 2012. As against the dismissal of A.S. No. 15 of 2012, Second Appeal No. 771 of 2017



was filed before this Court and the same was also dismissed by this Court on 07.12.2017.

4.This Second Appeal in S.A.No.709 of 2017 was also filed before this Court by the appellant challenging the order of dismissal dated 08.06.2016 passed in O.S.No.34 of 2011 confirmed in A.S.No.2 of 2014. Therefore, the learned counsel stated that the appellant filed two appeals by challenging the concurrent Judgment passed in two suits.

5.Further, he submitted that the Second appeal in S.A.No.771 of 2017 was dismissed on the ground that the Power Agent alone was examined and the Owner of the property was not examined. Therefore, both the Courts below have concurrently dismissed the suits on the above said ground. Based on the concurrent findings, this Court dismissed the appeal in S.A.No.771 of 2017 and the present Second Appeal is also covered by the Judgments of this Court. Hence, it is liable to be dismissed.

6.In both the Second Appeal, the purchaser is the same and the vendors are husband and wife. In the present appeal, upon perusing the judgment in both the suits, it is seen that the Courts below dismissed the suit, on the ground that Power Agent alone was examined and the Owner of the property was not examined. Since this Court has taken a similar view and confirmed the order of dismissal of the suit in S.A.No.771 of 2017 on the same reasons that the Power Agent only had examined and the Original Owner was not examined this Court cannot take a contra view in this appeal. Further, this Court has already taken a such view and dismissed the Second Appeal No.771 of 2017 by assigning the same finding. Therefore, I do not find any merits in the present Second Appeal, hence, it deserves for dismissal.

7.Accordingly, the Second Appeal is dismissed by confirming the Judgment and Decree dated 08.06.2016 passed in A.S.No.2 of 2014, by the Principal District Judge, Thiruvarur, confirming the Judgment and Decree, dated 25.01.2012 passed in O.S.No.34 of 2011 by the Subordinate Judge, Mannargudi. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

klt



To

1.The Principal District Judge,  
Thiruvarur,

2.The Subordinate Judge,  
Mannargudi.

Copy to

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

S.A.No.709 of 2017

GJ (CO)  
PR (07/09/2021)