



S.A.No.376 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

CORAM

MR.JUSTICE N.SESHASAYEE

S.A.No.376 of 2023

1.Virudhambal
2.Ramalingam
3.Sundararaju
4.Meenakshi
5.Adhikumaran

... Appellants

Vs.

1.S.Manjula
2.V.Pramila
3.Abdul Subhan
4.D.Mohan
5.D.Pandiyan
6.D.Karunakaran

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, seeking to set aside the judgement and decree in A.S.No.35 of 2017 dated 08.01.2019 on the file of the Principal Subordinate Judge, Villupuram reversing the Judgement and decree in O.S.No.532 of 2010 dated 18.01.2017 on the file of the Additional District Munsif Court, Villupuram.



WEB COPY



S.A.No.376 of 2023

For Appellants : Mr.V.Seshachari

JUDGMENT

The defendants 2 to 6 in a suit for partition in O.S.No.532 of 2010 are the appellants herein. The partition is sought *vis-a-vis* two schedules of property, of which these defendants are concerned only with 'A' Schedule property. According to the defendants, this property does not belong to the family of the plaintiffs, that they had earlier instituted O.S.No.1246 of 1993, for declaration of their title and for recovery of possession against the plaintiffs' father and others, that they were successful in that suit, and that they had laid E.P.No.808 of 1996, for delivery of possession. Even as this E.P was pending, the plaintiffs had laid the present suit for partition.

2.To a specific query from the Court as to the present status of the said E.P, the learned counsel submitted that as per his instructions, it was dismissed couple of years ago and to his knowledge, no application for its restoration has been filed.



S.A.No.376 of 2023

3.O.S.No.1246 of 1993 was decreed on 07.11.1995. Now, inasmuch as E.P.No.808 of 1996 was dismissed and since more than 12 years have lapsed since the decree in O.S.No.1246 of 1993 was passed, the appellants might not be in a position even to file a fresh E.P. And unless at least E.P.No.808 of 1996 is restored, the appellants may not even have a cause to agitate in this appeal.

4.At this juncture, the learned counsel for the appellants seek the leave of this Court to withdraw this appeal and to file a fresh appeal as and when the E.P.No.808 of 1996 is restored or some orders are passed. Leave granted. Accordingly, the Second Appeal stands dismissed as withdrawn. No Costs.

15.06.2023

Anu

Index : yes / no

Internet : yes / no

Speaking / Non Speaking order



S.A.No.376 of 2023

N.SESHASAYEE, J.

Anu

To.

1.The Principal Subordinate Judge, Villupuram

2.The Additional District Munsiff Court, Villupuram

S.A.No.376 of 2023

15.06.2023