



S.A.(MD)No.286 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.06.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.286 of 2023

and

C.M.P.(MD)No.6340 of 2023

N.Sangili

... Appellant

/Vs./

1.A.Venkatachalam Chettiar (Died)

2.M.Dhanapal

3.Usha

... Respondents

(R-3 is brought on record as the legal heir of the deceased R1 vide Court order dated 17.04.2023 made in C.M.P.(MD)Nos.12970 to 12972 of 2022 in S.A.(MD)No.49357 of 2021.)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and decree of the Sub Court, Lalgudi, dated 28.02.2019 in A.S.No.70 of 2018, reversing the judgment and decree passed by the Additional District Munsif Court, Lalgudi, dated 16.12.2014 in O.S.No.414 of 2010 by allowing this second appeal with cost.



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For Appellant : Mr.R.S.Sivaram

For Respondents : Mrs.J.Maria Roseline (R2)

JUDGMENT

The learned Counsel for the appellant has fairly submitted before this Court that aggrieved by the order of remand passed by the lower appellate Court, the appellant ought to have filed a Civil Miscellaneous Appeal and not a Second Appeal under Section 100 of C.P.C. Therefore, he seeks liberty of this Court for the appellant to file a Civil Miscellaneous Appeal aggrieved by the judgment and decree of the lower appellate Court dated 28.02.2019 in A.S.No.70 of 2018. He has also made an endorsement to that effect in the Court bundle.

2. Accordingly, this Second Appeal is dismissed as withdrawn. However, liberty is granted to the appellant to file a Civil Miscellaneous Appeal before this Court. Registry is directed to return the certified copy of the impugned judgments and decrees of the Courts below to the learned counsel appearing for the appellant to enable him to prefer a Civil Miscellaneous Appeal.



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3. It is made clear that since the delay has already been condoned by this Court in CMP(MD)No.10235 of 2021 in SA(MD)No.SR49357 of 2021, the Registry need not insist upon filing the delay condonation application separately for numbering the Civil Miscellaneous Appeal. It is also made clear that when the Civil Miscellaneous Appeal is numbered by the Registry, the Registry is directed to print the name of Ms.Maria Roseline, learned counsel as counsel for the second respondent. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

05.06.2023

Index : Yes / No
NCC : Yes / No
Sm

Note: Issue Order Copy on 05.06.2023.

TO:

- 1.The Sub Court, Lalgudi.
- 2.The Additional District Munsif Court, Lalgudi.
- 3.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

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Judgment made in
S.A.(MD)No.286 of 2023

Dated:
05.06.2023