



S.A.No.760 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 16.08.2023

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.760 of 2004
and
C.M.P.No.5951 of 2004

- 1.S.M.Abdul Majeed (died)
- 2.Hazeena
- 4.Basheera
- 6.Siyaudeen

(Appellants 2 to 7 are brought on record as LR's of the deceased sole appellant vide order dated 21.07.2011 made in MP(MD)No.2 of 2009)

... Appellants

-VS-

- 1.Daruslam Middle School
Kadayanallur, thro' its Manager,
S.A. Mohammed Mohideen,
S/o S.M.Abdul Karim,
New Street, Kadayanallur.
- 2.Daruslam Elementary School and Daruslam
Higher Secondary School, Thro' its present Manager,
S.A. Abdul Wahab, S/o Abdul Rahman Sahib,
New Street, Kadayanallur.

- 3.S.A.Fasluddin
- 4.S.A.Sharfuddin



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5.S.A.Mohaideen

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(Appellants 2, 4, 6 and Respondents 3 to 5 are brought on record as LR's of the deceased sole appellant)

(Respondents 3 to 5 are transposed from the appellants 3, 5, and 7 vide court order dated 20.06.2023 made in M.P(MD)No.1 of 2009)

... Respondents

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure against the Judgment and Decree dated 11.02.2003 made in A.S.No.186 of 2001 on the file of the Principal District Judge, Tirunelveli confirming the Judgment and Decree dated 30.04.2001 made in O.S.No.51 of 1982 on the file of the Principal Subordinate Judge, Tenkasi.

For Appellants	... Mr.A.Arumugam (for A2 & A4) Mr.T.M.Hariharan (for A6)
For Respondents	... Mr.M.P.Senthil (for R1) Mr.D.Nallathambi (for R2) Mr.T.M.Hariharan (for R3) Mr.S.Palani Velayutham - (for R4 & R5)

JUDGMENT

The deceased first appellant, as plaintiff filed the suit in O.S.No.51 of 1982 on the file of the Principal Subordinate Judge, Tenkasi, seeking the relief of declaration and recovery of possession. After full-fledged trial, the trial Court dismissed the suit. Challenging the said Judgment



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and Decree, the deceased first appellant/plaintiff filed the appeal in A.S.No.186 of 2001 on the file of the Principal District Judge, Tirunelveli. After hearing, the first appellate Court, dismissed the appeal and confirmed the Judgment and Decree passed by the trial Court. Aggrieved over the same, the deceased first appellant/plaintiff has filed the present second appeal before this Court.

2. At the time of admission, this Court has framed the following substantial questions of law:-

"1. Whether the Judgment and Decree in the earlier suit will not operate as *res judicata* in the present suit?

2. When both parties have applied for stay of the trial in the present suit invoking the provisions of Section 10 C.P.C are not the respondent estopped from contending to the contrary after the earlier suit has ended against them?"

3. When the matter is taken up for hearing today, the learned counsel appearing for the parties would submit that though the suit for declaration and recovery of possession was rejected, now the respondents/defendants have already vacated the premises. They would



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further submit that already an Arbitration Proceedings is going on with regard to the subject matter of the property. Hence, they would submit that the second appeal may be closed.

4. In view of the above submission, this Court is of the view that there is no necessity to answer the substantial questions of law framed in this second appeal.

5.Hence, the Second Appeal is closed, leaving it open to the legal heirs of the deceased first appellant to agitate their rights before the appropriate forum/arbitration proceedings, in the manner known to law. No costs. Consequently, connected miscellaneous petition is also closed.

16.08.2023

NCC : Yes/No

Index : Yes/No

Internet: Yes

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To:

1.The Principal District Judge, Tirunelveli.

2.The Principal Subordinate Judge, Tenkasi.

3.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.



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KRISHNAN RAMASAMY, J.

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