



S.A.(MD)No.1220 of 2006

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

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and

M.P(MD)Nos.1 of 2006 and 2 of 2008

- 1.Thirumalaivadivu @ Pappammal
- 2.Thirumalai Chettiar
- 3.Kallaganadi
- 4.Kaliaj
- 5.Paramasivan
- 6.Kadarkarai (Died)
- 7.Punnaivanthal
- 8.Sankar
- 9.Manikandan
- 10.Devi
- 11.Muppudathi

...Appellants

-Vs-

- 1.Chinthamani Chettiar
- 2.Mariappan
- 3.Pappa
- 4.Ganapathyammal
- 5.Pushkala
- 6.Santhi
- 7.Madasamy
- 8.Kanniammal
- 9.Senthilkumar
- 10.Jayalakshmi
- 11.Muthumari

... Respondents



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(Appellants 7 to 11 were brought on record as legal heirs of the deceased sixth appellant, vide order of this Court, dated 20.09.2018 made in C.M.P(MD)Nos. 4557 to 4559 of 2016)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 11.08.2006 passed by the learned Principal Subordinate Judge, Tenkasi, in A.S.No.78 of 2005 confirming the judgment and decree, dated 11.01.2005 passed by the learned Principal District Munsif, Tenkasi, in O.S.No.117 of 2001.

For Appellants : Mr.I.Velpradeep
R1 :Died
For R2 : Mr.M.S.Sureshkumar
R3 and R7 :Dismissed for default.
For R4 to R6 and
R8 to R11 :No appearance

JUDGMENT

It is seen from the records that this Court was informed as early as on 04.12.2018 about the death of the first respondent and the details of the legal heirs of the first respondent in the form of memo was also filed by the learned Counsel for the respondents vide memo, dated 04.12.2018. The said memo was filed after serving a copy on the learned Counsel for the appellants. Till date, no



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steps have been taken to bring on record the legal heirs of the deceased first respondent, who died on 07.11.2018.

2.The Second Appeal is arising out of a suit for declaration of title and mandatory injunction to remove the construction made by the first defendant in the 4th item of the suit property. The trial Court granted the decree for declaration of title and also granted the decree for mandatory injunction directing the defendants to remove the construction in the 5th item of the suit property. Now, the decree for declaration and the mandatory injunction passed in favour of the first respondent/first plaintiff has become final. Since the decree for declaration and mandatory injunction is inseparable, no purpose will be served by keeping this Second Appeal pending against the other plaintiff, namely, the second respondent. The respondents 3 to 11 are only co-defendants and therefore, they are not contesting parties.

3.It is also brought to the notice of this Court that by order, dated 08.06.2017, this Court directed the appellants to take steps to bring on record the legal heirs of the deceased second appellant, who died in the year 2007. Till date,



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no steps have been taken and as such, the Second Appeal is abated in respect of the second appellant.

4.In view of the same, the appellants are not entitled to proceed with the Second Appeal as against the second respondent/second plaintiff, as the decree for declaration of title and mandatory injunction, which attained finality as against the first respondent/first plaintiff, is inseparable. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

23.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
cmr

To

- 1.The Principal Subordinate Judge, Tenkasi.
- 2.The Principal District Munsif, Tenkasi.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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