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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No. 582 of 2020
and
C.M.P(MD)No.6262 of 2020

1. M.Subbiah (Died)
2. S. Banumathi
3. Santhanamari
4. Anu Jeya Subathra
5. Arul Mahesh Santhya
6. Mariammal

... Appellants

Vs.

1. C.Babu
2. P. Rajalakshmi @ Viji
3. G. Murugan
4. P. Ramasubramaiah
5. Sasikala
6. M. Suvetha
7. M. Sankar Venkatesh

...Respondents

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, against judgment and decree passed in A.S. No. 31 of 2015 on the file of the Principal Sub Court, Tirunelveli dated 04.01.2020 confirming the Judgment and



decree passed in O.S. No. 564 of 2011 on the file of the II Additional District Munsif Court, Tirunelveli dated 05.01.2015.

For Appellants : Mr.T. Selvan
For R-1 to R-4 : Mr.Y.Prakash
For R-5 to R-7 : Mr.R.Rajamohan

JUDGEMENT

This Second appeal is filed against judgment and decree passed in A.S. No. 31 of 2015 on the file of the Principal Sub Court, Tirunelveli dated 04.01.2020 confirming the Judgment and decree passed in O.S. No.564 of 2011 on the file of the II Additional District Munsif Court, Tirunelveli, dated 05.01.2015.

2. For the sake of convenience, the contesting parties shall be referred to as Plaintiffs and Defendants. The defendants 2 to 7 are the Appellants and the plaintiffs are the Respondents herein.

3. The plaintiffs have filed a suit in O.S.No.564 of 2011 for declaration and mandatory injunction with regard to the 2nd schedule property, which is a pathway leading to the 1st schedule of property. The said suit was decreed. Against which the defendants 2 to 7 have preferred an appeal and the



same was also dismissed. Aggrieved over the same, the present Second Appeal is filed.

4. Pending this Second appeal, the plaintiffs had intended to sell the property. Therefore, they instructed his Counsel to withdraw the suit and has filed a memo to this effect.

5. Accordingly, this Second Appeal is dismissed for non-prosecution. However, this order will not be hit the principles of *resjudicata* for the person, who had purchased the property. Hence, the issue is left open. No Costs. Consequently, connected miscellaneous petition is closed.

19.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
KSA

To

1. The Principal Sub Court, Tirunelveli.
2. The II Additional District Munsif Court, Tirunelvelli.
3. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

Order made in
S.A(MD)No. 582 of 2020

19.03.2024