



S.A(MD)No.231 of 2004

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.231 of 2004
and
C.M.P(MD) No.1002 of 2004

1.Nachimuthu(died)

2.Alagunathan

3.N.Chellammal

4.S.Kalavathi

...Appellants

(Appellants 3 and 4 are brought on record as LR's of the deceased 1st Appellant vide Court order dated 10.04.2024 made in C.M.P(MD) No.514 of 2024)

-Vs-

Nachimuthu

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 11.06.2004 made in A.S.No.8 of 2004 on the file of the Subordinate Judge, Karur, reversing the judgment and decree dated 27.10.2003 made in O.S.No.628 of 2000 on the file of the Additional District Munsif, Karur.

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For Appellants : Mr.R.Devaraj

For Respondent : Mr.S.Anand Chandrasekar

M/s.Sarvabhauman Associates

JUDGMENT

The defendants in a suit, who suffered a decree for mandatory injunction have filed this second appeal. As per the decree passed by the first appellate Court, the defendants were directed to cut and remove the branches of coconut trees which cause damage to the roof of the plaintiff.

2. When the second appeal is taken up for hearing, the learned counsel for the appellants submitted that the subject matter of the suit, namely, the offending coconut trees are no longer alive and available. Therefore, the decree has become inexecutable.

3. The learned counsel for the respondent has no instructions regarding the existence or otherwise of the coconut trees, which are the subject matter of the suit.



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4. Therefore, recording the above statement made by the learned counsel for the appellants, the Second Appeal is closed, by granting liberty to the appellants to raise the question of inexecutability of the decree, as and when the Execution Petition is filed by the respondent, on the ground that the subject matter of the suit got extinguished after decree. No costs. Consequently, connected miscellaneous petition is closed.

23.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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



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