



CMP(MD). No.875 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Civil Appellate Jurisdiction

Tuesday, the Thirteenth day of February Two Thousand and Twenty Four
PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CMP(MD). No.875 of 2024

in

SA (MD)193 OF 2012

V.Muniasamy

... Petitioner/ Appellant

Vs

Karuppaye Devi

... Respondent/ Respondent

Prayer in CMP(MD). No.875 of 2024 :-

This Civil Miscellaneous Petition is filed under section 151 of C.P.C., to Re-open the Second Appeal in SA(MD) No. 193 of 2012 with the Direction to the Execution Court to restrain from Conducting any further proceedings in E.P.No. 14 of 2021 in O.S.No. 394 of 2004 till the erros / mistakes in the Fair and decreetal Order in E.A.No. 1 of 2020 dated 19.03.2020 is corrected.

Prayer in SA(MD) No.193 of 2012:-

This Second Appeal is filed under section 100 of C.P.C., against the judgment and decree of the Subordinate Judge, Aruppukottai, made in AS No.6 of 2011 dated 12.09.2011 allowing the judgment and decree passed by the District Munsif Court, Aruppukkottai, made in OS No.394 of 2004 dated 02.12.2010.



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ORDER:-

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This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.M.M.Iqbal, Advocate for the Petitioner and of Mr.K.Muthumalai, Advocate for the respondent, this Court made the following order:

Heard the learned counsel for the petitioner.

2.The learned counsel who appeared for the respondent in the second appeal informs the Court that bundle has been taken back by the client long time back and he is not touch with the respondent. The petitioner had sent notice through RPAD on 19.12.2023. The prayer in C.M.P.(MD)No.875 of 2024 is for re-opening of S.A. (MD)No.193 of 2012.

3.It is seen that the second appeal was closed based on the submission of the learned counsel for the appellant that the suit itself was dismissed as not pressed at the E.P. stage. Copy of the order dated 19.03.2020 made in E.A.No.1 of 2020 in E.P.No.41 of 2019 in O.S.No.394 of 2004 on the file of the Principal District Munsif Court, Aruppukottai indicating that the suit was not dismissed as not pressed has been enclosed in the typed set of papers. It is now claimed that E.A.No.1 of 2020 was dismissed as not pressed and the suit itself has not been dismissed. It is further stated that a fresh execution petition has been filed and it has been numbered as



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E.P.No.14 of 2021. In these circumstances, the petitioner herein wants this Court to re-open the second appeal itself.

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4.The petitioner cannot be left high and dry. He filed S.A.(MD)No.193 of 2012 assailing the judgment and decree made in A.S.No.6 of 2011 against the judgment and decree made in O.S.No.394 of 2004. The closure of the second appeal was on account of the impression that the suit itself was dismissed as not pressed. Now that a fresh execution petition has been filed and it was also numbered, the petitioner's interests are at stake. I, therefore, set aside and recall the order dated 17.04.2021 closing S.A.(MD)No.193 of 2012 and it is restored to file.

5.The Registry to list S.A.(MD)No.193 of 2012 before the Hon'ble Judge holding the roster and heard on merits.

6.This civil miscellaneous petition is allowed accordingly.

Sd/-

Assistant Registrar ()

// True Copy //

/02/2024

Sub Assistant Registrar
(CS - I / II / III/ IV)



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TO

1.The Subordinate Judge,
Aruppukottai,

2.The District Munsif ,
Aruppukkottai,

Copy to:

1. The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court,
Madurai.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. 2 copies

+1 CC to M/S.M.M.IQBAL,Advocate (SR-1802)



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ORDER DATED : 13/02/2024

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ORDER
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CMP(MD). No.875 of 2024
in
SA(MD) No.193 of 2012

Giving direction and etc.
as stated within.

DL/(20.02.2024)/ 5P/ 7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.