



SA.No.794 of 2002

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 24.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

SA.No.794 of 2002

Malarkodi(died)

N.Selvam

(Appellant impleaded vide

MP.No.1 of 2006, dated 07.08.2006)

Appellant

-VS-

1.Appavu(died)

2.Bhuvaneswari

3.Poonkodi

4.Sasikala

5.Vetrivel

(R2 to R5 are brought on record as LR's of the

deceased 1st respondent vide order, dated 11.06.2012 made

in MP(MD).No.2 of 2012 in SA.No.794 of 2002)

.. Respondents

PRAYER: The Second Appeal is filed under Section 100 C.P.C against the Judgment and decree of the I Additional District Judge – cum – Judicial Magistrate, Tiruchirapalli in A.S.No.13 of 2001 , dated 20.12.2001 in confirming the Judgment and Decree of the Principal District Munsif, Thiruchirappalli in O.S.No.1021 of 1999, dated 17.10.2000.



SA.No.794 of 2002

WEB COPY

For Appellants : Mr.M.P.Senthil

For 2nd respondent : Mr.Susikumar

JUDGMENT

The first appellant in the Second Appeal is the plaintiff in O.S.No.1021 of 1991 on the file of the Principal District Munsif, Thiruchirappalli. The said suit was filed by the first appellant against her husband seeking permanent injunction restraining the sole defendant from interfering with the possession and enjoyment of the plaintiff over the suit schedule property. The said suit was dismissed by the trial Court on 17.11.2000. Aggrieved by the same, the appellant / plaintiff filed first appeal in A.S.No.13 of 2001 on the file of the I Additional District Judge – cum – Chief Judicial Magistrate, Tiruchirapalli and the same was also dismissed by Judgment and decree, dated 20.12.2001. Aggrieved by the same, the first appellant filed this Second Appeal. During the pendency of the Second Appeal, the first appellant as well as the sole defendant / respondent also died. The second appellant herein claiming to be the brother of the first appellant came on record by placing a reliance upon the Will said to have been executed by the first appellant in the year 1990. As



SA.No.794 of 2002

the suit itself is filed for bare injunction by the first appellant against her husband i.e., the first respondent / defendant and both of them are no more, this Court is of the considered view that the cause of action in the said suit does not survive. Further, both the Courts below have concurrently held against the first appellant herein.

2. Considering the fact that the original parties to the suit who are wife and husband are no more, this Court is not inclined to entertain this Second Appeal. Accordingly, the Second Appeal is dismissed. In case, if the second appellant has got any inherited right over the suit schedule property by virtue of Will said to have been executed by the first appellant, it is open for him to work out his remedy in accordance with law. No costs.

24.01.2024

Internet : Yes / No
Index : Yes / No
trp

To



SA.No.794 of 2002

WEB COPY

1. I Additional District Judge – cum – Judicial Magistrate, Tiruchirapalli
2. The Principal District Munsif, Thiruchirappalli



WEB COPY



SA.No.794 of 2002

MUMMINENI SUDHEER KUMAR. J.

trp

SA.No.794 of 2002

24.01.2024