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S.A.(MD).No.148 of 2024

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.148 of 2024

and

C.M.P.(MD)No.3477 of 2024

M.Francis

... Appellant

/Vs./

- 1.M.Manuel @ Durai (Died)
- 2.V.Yesurathinam
- 3.V.Joseph
- 4.S.Francis Devadoss
- 5.Mary Gracy
- 6.M.Mary Merculin Shanthi
- 7.Selvin Sugantha
- 8.Selvin Subha
- 9.Frankil Selvam
- 10.Vimal Singh

...Respondents

(R5 to R10 are brought on record as LR's of the deceased 1st respondent, vide Court order, dated 07.03.2024, made in MP(MD)Nos.1 to 3 of 2013 in SA(MD)SR.No.17286 of 2012)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree, dated 28.10.2011, passed in A.S.No.32 of 2011 by the 1st Additional Sub Court, Nagercoil, as confirmed by the judgment and decree, dated 24.03.2011, passed in O.S.No.224 of 1992 by the 1st Additional District Munsif Court, Nagercoil.

For Appellant : Mr.H.Arumugam
for Mr.C.Prabakaran



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For R5 to R10 : M/s.N.Krishnaveni
Senior Counsel
for Mr.P.Thiyagarajan

JUDGMENT

The second appeal is preferred against the concurrent judgments of Court below.

2. This is second round of litigation. In the first round of litigation, in Second Appeal the High Court had set aside the judgment and decree and granted liberty to the appellant herein to modify the prayer for declaration and injunction. But the appellant herein failed to amend the pleadings, failed to seek modified prayer of declaration and injunction. The appellant again contested the suit for bare injunction without declaration. The Courts below have dismissed the suit since the suit without declaration is bad and the Courts below are absolutely right in dismissing the suit.

3. The Learned Counsel appearing for the appellant sought one more opportunity to contest the suit with declaration prayer. But the Learned Senior Counsel appearing for the respondents vehemently opposed to grant such opportunity. This Court is of the considered opinion once an opportunity was



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granted and the appellant had failed to modify the prayer and hence again the same opportunity cannot be granted. Therefore, this Court is not inclined to entertain this second appeal. Hence, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.03.2024

Index : Yes / No

NCC : Yes / No

Tmg

TO:

1. 1st Additional Sub Court, Nagercoil
2. 1st Additional District Munsif Court, Nagercoil.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.148 of 2024

Dated:
12.03.2024