



S.A.No.471 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2022

CORAM:

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.471 of 2007

1. Muthusamy Udayar
2. Pavunambal

...Appellants

Versus

Karuppusamy

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure to call for the records pertaining to A.S.No.116 of 2005 on the file of the learned Principal Subordinate Judge, Virudhachalam dated 29.03.2006 in reversing the Judgment and Decree made in O.S.No.372 of 1999 on the file of the learned Principal District Munsif, Virudhachalam dated 11.03.2005 and to set aside the same.

For 1st Appellant : No Appearance
2nd Appellant : died

For Respondents : Mrs.R.Meenal



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J U D G M E N T

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The present Second Appeal is filed against the Judgment passed in A.S.No.116 of 2005 on the file of the learned Principal Subordinate Judge, Virudhachalam dated 29.03.2006 in reversing the Judgment and Decree made in O.S.No.372 of 1999 on the file of the learned Principal District Munsif, Virudhachalam dated 11.03.2005 and to set aside the same.

2. On a perusal of the documents placed on record, it is seen that a memo dated 04.08.2015 was filed by the learned counsel for the appellants stating that the 2nd appellant, viz., Pavunambal, passed away on 05.04.2011 and that the appeal may be heard in the absence of her legal heirs, since her husband, viz., 1st appellant is on record. Further, a memo dated 05.02.2016 was also filed on behalf of the respondent stating the above mentioned facts. **In view of the same, the present Appeal is liable to be 'Dismissed as Abated' in respect of the 2nd appellant.**

3. Further, on earlier occasion, viz., 13.08.2021, the learned



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counsel for the appellants reported 'no instructions' therefore, Registry was directed to print the name of the appellants and the case was ordered to be listed on 27.08.2021. On the said date, viz., 27.08.2021, the name of the appellants were printed in the cause list, but none appeared, again, this Court directed the Registry to list the matter under the caption 'for dismissal.'

4. Today, though the name of the appellants were printed in the cause list, none appeared on behalf of the 1st appellant either in-person or through learned counsel. Therefore, this Court is of the view that the 1st appellant is not interested in prosecuting the case and the Second Appeal is dismissed as Non-Prosecution as against the 1st Appellant.

In the result, the **present Appeal is 'Dismissed as Abated' in respect of the 2nd appellant and 'Dismissed as Non-Prosecution' as against the 1st Appellant. No costs**

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Index: Yes/No
Internet: Yes/No
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KRISHNAN RAMASAMY, J.,

To

1. The Principal Subordinate Judge,
Virudhachalam
2. The Principal District Munsif,
Virudhachalam

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