



S.A.No.1517 of 2002

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

S.A.No.1517 of 2002

1.Velladurai Nadar

2.Manickkam Nadar

... Appellants/Respondents/
Plaintiffs

Vs.

Arulmighu Subramaniaswami Temple,
Tiruchendur,
Through its Executive Officer,
Having its Office at
Tiruchendur Devasthanam,
Tiruchendur Town.

... Respondent/Appellant/
Defendant

Prayer: Appeal filed under Section100 of Civil Procedure Code to set aside the judgment and decree dated 09.03.2001 made in A.S.No.139 of 1999 on the file of the Principal District Court, Tuticorin, by reversing the judgment and decree dated 31.01.1997 made in O.S.No.250 of 1994 on the file of the District Munsif Court, Srivaikundam.



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For Appellant-2 : Mr.S.Palanivelayutham
Appellant-1 : Died
For Respondents : Mr.S.Madhavan

JUDGMENT

This matter earlier came up for consideration on 04.01.2024 and the same was adjourned at the request of the learned counsel for the appellants. On 22.01.2024, there was no representation for the appellants. Hence, the matter was directed to be listed under the caption 'for dismissal'. Today, when the matter is listed under the caption 'for dismissal', learned counsel for the appellants submitted that in spite of efforts made, he could not get instructions from the appellants.

2. From the perusal of the record, it is noticed that Appellant No.1 died long back. However, no steps have been taken to bring on record the legal representatives of the deceased 1st appellant.



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3. Originally the suit was filed by the appellants herein jointly on a joint cause of action. For want of bringing on record the legal representatives of deceased 1st appellant, the appeal has already been abated, insofar as the 1st appellant is concerned and the decree of the lower appellate Court has become final. As the cause of action for both the appellants is one and the same, the judgment and decree under appeal cannot be interfered with by this Court by further continuing the second appeal at the instance of Appellant No.2, as the decree that has become final as against Appellant No.1, would operate as *res judicata*. In these circumstances, this Court is left with no other alternative, except to dismiss the second appeal.

4. Accordingly, this Second Appeal is dismissed. However, there shall be no order as to costs.

30.01.2024

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

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MUMMINENI SUDHEER KUMAR, J.

ABR

To

- 1.The Principal District Judge,
Tuticorin.
- 2.The District Munsif,
Srivaikundam.

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