

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

S.A.No.1620 of 2003
and
C.M.P.(MD) No.3100 of 2006

1.Shanmugam Ammal

2.Jeyaraj

3.Mariappan

4.Murugan

... Appellants/Respondent/
Plaintiffs

Vs.

1.Paulraj

2.Amaravathi

3.Balasubramaniam

... Respondents/Appellants 2 to 4/
Defendants

Prayer: Appeal filed under Section100 of Civil Procedure Code to set aside the judgment and decree dated 24.10.2000 made in A.S.No.82 of 1996 on the file of the Principal District Court, Tuticorin, setting aside the judgment and decree dated 19.02.1996 made in O.S.No.582 of 1994 on the file of the Principal District Munsif Court, Tuticorin.

For Appellants	:	No appearance
For RR1 & 3	:	Mr.K.Govindarajan for Mr.J.Pothiraj
For R2	:	Died

JUDGMENT

This matter earlier came up for consideration on 24.01.2024. As there was no representation for the appellants, the matter was directed to be listed under the caption 'for dismissal'.

2. Today, when the matter is listed under the caption 'for dismissal', there is no representation for the appellants. Further, Respondent No.2 is not served with notice and it is noticed that Respondent No.2 is no more. In spite of the same, the appellants failed to take any steps to bring on record the legal representatives of deceased Respondent No.2.

3. Further, perusal of the material on record, *prima facie* it appears that the cause of action against all the three respondents is one and the same

and the appeal is already abated as against Respondent No.2, consequent upon the death of Respondent No.2. Thus, the judgment and decree passed by the learned lower appellate Court has become final as against Respondent No.2. In view of the same, the judgment and decree of the lower appellate Court cannot be interfered with by this Court by entertaining this appeal against Respondents No.1 and 3, as the decree, that has become final as against Respondent No.2, would operate as *res judicata*. In the circumstances, this Court is left with no other option except to dismiss the second appeal.

4. Accordingly, this Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

31.01.2024

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

ABR

MUMMINENI SUDHEER KUMAR, J.

ABR

To

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

S.A.No.1620 of 2003

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