



S.A.No.1960 of 2003

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2024

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

**S.A.No.1960 of 2003
and
C.M.P.No.17856 of 2003**

Madha Naicker

... Plaintiff/Respondent/
Appellant

.VS.

Bomma Naicker

... Defendant/Appellant/
Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned Subordinate Judge, Kulithalai, dated 27.06.2003 made in A.S.No.20 of 2002 reversing that of the learned District Munsif, Kulithalai, dated 11.07.2001 made in O.S.No. 281 of 1998.



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For Appellant : M/s.V.Sebastinal Preethi

For Respondent : Mr.T.M.Hariharan

J U D G M E N T

Originally the appellant, who is the plaintiff, has filed a suit in O.S.No.281 of 1998 before the District Munsif Court, Kuzhithalai, for permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit schedule property and the same was allowed in favour of the plaintiff. Aggrieved by the same, the defendant has filed an appeal in A.S.No.20/2002 before the Sub Court, Kuzhithalai. The appellate Court had reversed the findings of the trial Court. Aggrieved by the said judgment and decree of the lower appellate Court, the plaintiff has filed the second appeal before this Court.

2. Today, when the matter is taken up for hearing, the learned counsel appearing for the respondent would submit that earlier when the



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matter came up for hearing on 19.07.2023, the learned counsel appearing for the appellant made a submission that the sole appellant died as a bachelor. Taking into consideration and submission made by the learned counsel for the appellant, this Court has dismissed the appeal as infructuous. Thereafter, the appellant has filed a petition to recall the order passed on 19.07.2023 stating that it has been wrongly mentioned before this Court that the sole appellant died instead of sole respondent Mr.Bomma Naicker and that application was allowed by this Court, on 20.01.2024.

3. Today, when the matter is taken up for hearing, the learned counsel appearing for the appellant would submit that pending appeal, the sole respondent Bomma Naicker passed away on 04.02.2022 and the prayer is only against the said Bomma Naicker, who is the defendant, from not to disturb the plaintiff's possession and enjoyment of the suit property as the respondent/defendant died the prayer has become infructuous.



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4. Since the defendant died on 04.02.2022, the prayer in the second appeal has become infructuous and the claim made by the plaintiff cannot be executed against the dead person. Hence, this second appeal is dismissed as infructuous. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

Speaking Order : Yes / No

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To

1.The Sub-Court

Kulithalai.

2.The District Munsif,

Kulithalai.

3. The Section Officer,

VR Section,

Madurai Bench of Madras High Court,

Madurai.



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V.BHAVANI SUBBAROYAN, J.

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