



S.A.No.1372 of 2004

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

S.A.No.1372 of 2004

1.Jayapaul

2.Victor

... Appellants/Appellants/
Plaintiffs

Vs.

1.Chellayyan

2.Thankappan

3.Saraswathy @ Sarasam

4.Vijayam

... Respondents/Respondents/
Defendants

*[4th Respondent is not a necessary
party and is given up]*

Prayer: Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 11.12.2002 made in A.S.No.66 of 1996 on the file of the Sub-Court, Camp Padmanabhapuram, confirming the judgment and decree dated 24.01.1996 made in O.S.No.93 of 1987 on the file of the Principal District Munsif Court, Padmanabhapuram.



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For Appellants : Mr.C.Godwin
For RR2 & 3 : No appearance
Respondent-1 : Dismissed
(Vide Court order dated 01.09.2016)
Respondent-4 : Given up (Vide EB)

JUDGMENT

This second appeal is filed by the plaintiff aggrieved by the concurrent findings recorded by the learned trial Court and the learned lower appellate Court.

2. The suit was filed seeking declaration and for permanent injunction against the respondents herein.

3. While filing the second appeal itself, the appellants have given up the appeal as against Respondent No.4. Subsequently, it was on 01.09.2016, the second appeal was dismissed as against Respondent No.1 for non-compliance of certain conditions imposed by this Court. The said order



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of dismissal dated 01.09.2016 has become final. Thus, the decree passed by the learned trial Court, as confirmed by the learned lower appellate Court, dated 11.12.2002, has become final, insofar as Respondent No.1 is concerned. In view of the same, in the considered view of this Court, this second appeal cannot be further continued as against Respondents No.2 and 3 alone, as any interference of this Court by passing any order interfering with the decree under appeal would be contrary to the decree that has already become final as against Respondent No.1. Thus, the decree, that has become final as against Respondent No.1, would operate as *res judicata*. In the circumstances, this Court is of the considered view that this second appeal cannot be entertained as against Respondent Nos.2 and 3 as well.

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

07.02.2024

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

ABR



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MUMMINENI SUDHEER KUMAR, J.

ABR

To

- 1.The Subordinate Judge,
Camp Padmanabhapuram.
- 2.The Principal District Munsif,
Padmanabhapuram.

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