



S.A.(MD)No.354 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.04.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**S.A.(MD)No.354 of 2011
and
M.P.(MD)No.1 of 2011
and
C.M.P.(MD)No.7135 of 2025**

Vijayan

... Appellant

Vs.

Arulmigu Dandayuthapani Swami Temple,
Palani, Rep. by its Joint Commissioner,
Palani, Dindigul District.

... Respondent

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 27.01.2011 made in A.S.No.23 of 2009 on the file of the Sub Court, Palani reversing the judgment and decree dated 25.02.2009 made in O.S.No.381 of 2001 on the file of the District Munsif Court, Palani.



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For Appellant : Mr.K.V.Subramanian, Senior Counsel,
For Mr.G.Sridharan

For Respondent : Mr.R.Bharanidharan,
For Mr.R.Murali.

JUDGMENT

Arulmigu Dandayuthapani Swami Temple, Palani filed O.S.No.381 of 2001 on the file of the District Munsif Court, Palani seeking the relief of permanent injunction and mandatory injunction against one Vijayan. The suit was dismissed vide judgment and decree dated 25.02.2009. Aggrieved by the same, the temple filed A.S.No.23 of 2009 before the Sub Court, Palani. The first appellate Court reversed the decision of the trial Court and decreed the suit vide judgment and decree dated 27.01.2011. Challenging the same, the defendant / Vijayan filed this second appeal.

2.During the pendency of this second appeal, the appellant / defendant had the benefit of interim order. It appears that the appellant had also given an undertaking that he would not run any shop. This second appeal is now posted for final disposal. At this stage, the learned



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counsel for the plaintiff / respondent herein filed C.M.P.(MD)No.7135 of 2025 for withdrawing the suit itself.

3.It is well settled that even at the second appeal stage, the suit can be permitted to be withdrawn. The learned senior counsel for the appellant submitted that no liberty should be reserved in favour of the plaintiff. We sustain the said objection.

4.The respondent / plaintiff is allowed to withdraw the suit. As a result, O.S.No.381 of 2001 filed by the plaintiff / respondent herein before the District Munsif Court, Palani is dismissed as withdrawn. It is needless to say that the judgment and decree granted by the first appellate Court as well as the undertaking given by the appellant in this second appeal stand effaced. In the affidavit filed in support of C.M.P.(MD)No.7135 of 2025, it is pointed out that the appellant had already filed a comprehensive suits in O.S.Nos.245 and 246 of 2024 on the file of the Additional District Court, Palani seeking the reliefs of declaration and permanent injunction.



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5.This second appeal is disposed of accordingly.

C.M.P.(MD)No.7135 of 2025 is allowed. No costs. Consequently,
connected M.P.(MD)No.1 of 2011 is closed.

**(G.R.S. J.) & (M.J.R. J.)
25.04.2025**

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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Issue order copy on 25.04.2025.

To:

- 1.The Sub Court,
Palani.
- 2.The District Munsif Court,
Palani.

Copy to:

The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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