

**In Re: Kovummal Ammal**

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**SooperKanoon Citation :** [sooperkanoon.com/794085](http://sooperkanoon.com/794085)

**Court :** Chennai

**Decided On :** Nov-28-1933

**Reported in :** AIR1934Mad199

**Appellant :** In Re: Kovummal Ammal

**Judgement :**

**Jackson, J.**

1. The appellant is the plaintiff. When his suit was called in the Munsif's Court his vakil pleaded no instructions, and the Munsif dismissed the suit for default acting under Order 17, Rule 2 and Order 9, Rule 8, Civil P.C. The learned District Judge has held that no appeal lies from that order and hence the present appeal. It is argued that the Munsif should have acted under Order 17, Rule 3. But although the plaintiff was physically present it is quite well settled by now that where counsel is employed that is no legal presence. Rules 2 and 3, Order 17, are mutually exclusive, and where the vakil pleads no instructions and the iparfcy is not prepared to go on Rule 2 applies : Authimoolam Pillai v. Secy. of State (1928) 108 IC 897.

2. The appellant relies upon Sukkhu Koeri v. Bam Lotan Koeri AIR 1919 All 252, where it is held that when the plaintiff produces no vakil and declines to proceed with the case himself, Order 17, Rule 3 applies. It can only be said that this is nob the Madras rule. Finally it is argued that even though under Order 17, Rule 2 the

lower Court may apply Order 9, or make such order as it thinks fit, if the case has got beyond the first hearing, the Court is bound to proceed on the merits. There is nothing to this effect in the Code. This second appeal is summarily dismissed.

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