

A.S.NO.675 OF 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2025

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CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.675 OF 2020

M.Srinivasan

... Appellant /
1st Defendant

Vs.

1.M.Thirunavukarasu
2.M.Kalavathi
3.P.Yesotha
4.T.Karpakam
5.G.Poongodi
6.M.Govindammal

... Respondents 1 to 6 /
Plaintiffs 1 to 6

7.Senthil

... 7th Respondent /
2nd Defendant

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated November 13, 2019 passed in O.S.No.56 of 2016 by the learned District Judge, Additional District Court (FTC), Kanchipuram and thereby dismiss the Suit as regards the 3rd Suit Schedule Property.



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A.S.NO.675 OF 2020

For Appellant : Mr.Jyothish Chander
For Respondents 1 to 6 : Mr.V.Manoharan
For Respondent 7 : Served – No appearance

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated November 13, 2019 passed in O.S.No.56 of 2016 by the 'Additional District Court (FTC), Kanchipuram' ['Trial Court' for brevity], the first defendant therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short] praying for dismissal of the Suit *qua* Suit Item No.3.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFFS' CASE

3. The sixth plaintiff is the mother of the plaintiffs 1 to 5 and the first defendant. The Suit Properties are undivided joint family properties of the plaintiffs and the first defendant. Originally, the Suit Properties were owned by one Tmt.Janakiammal wife of Vedhachala Mudaliar. The said Tmt. Janakiammal passed away intestate leaving her only son R.V.S.Mani as her legal heir to succeed all her assets and liabilities. The



said R.V.S.Mani passed away intestate on March 2, 2006 leaving behind the plaintiffs and the first defendant as his legal heirs. According to the plaintiffs, the plaintiffs and the first defendant are each entitled 1/7 share in the Suit Properties. After the demise of R.V.S.Mani, the plaintiffs and the first defendant are in joint possession and enjoyment of the Suit Properties.

3.1. While so, in 2015, the first defendant attempted to create an encumbrance over the agricultural lands of the undivided joint family properties in favour of the second defendant without the knowledge and consent of the plaintiffs. Hence, the mother of the plaintiffs and sixth plaintiff filed a Suit in O.S.No.74 of 2015 on the file of the District Munsif Cum Judicial Magistrate Court, Uthiramerur, for permanent injunction to restrain the first defendant from creating any encumbrance over the Suit Properties in favour of the second defendant or in favour of any other persons. In the said Suit, an order of '*status quo*' was passed in favour of the sixth plaintiff and against the defendants. In the said Suit, plaintiffs 1 to 5 herein are not parties.

3.2. The plaintiffs reiterate that all the plaintiffs and the first



defendant are each entitled to 1/7 share in the Suit Properties.

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Accordingly, the plaintiffs 1 to 6 have issued a legal notice dated February 6, 2016 to the first defendant to effect division of Suit Properties amicably. Though the first defendant received the said notice, he did not choose to give any reply or come forward to effect division of Suit Properties amicably.

3.3. In the meantime, in the second week of July 2016, first defendant tried to create some sham and nominal document in favour of the second defendant in the form of Lease Deed and the second defendant is trying to get Service Connection in his favour from the TNEB for the Suit Properties under the guise of lessee, inspite of the 'order of *status quo*' was existing against the defendants.

3.4. Since it is not possible for the plaintiffs to remain in joint possession and enjoyment of the Suit Properties along with the second defendant, the plaintiffs filed the present Suit for partition of Suit Properties.

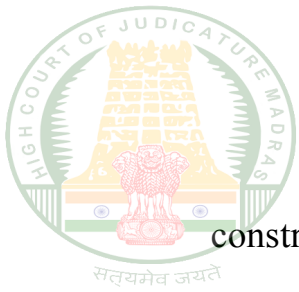


FIRST DEFENDANT'S CASE

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4. The first defendant filed written statement which was adopted by the second defendant wherein the defendants denied the allegations made in the plaint. The relationship between the parties is admitted. The first defendant averred that there was no necessity to file the Suit in O.S.No.74 of 2015 by the sixth plaintiff, as he never intended to alienate any of the Suit Properties to any person, much less the second defendant.

4.1. It is averred that Suit Item No.3 is a RCC building constructed by the first defendant in which the first defendant is residing ever since 2003. Tmt.Janakiammal owned big house and site properties which includes the Suit Item No.3. After the demise of Tmt.Janakiammal, her son R.V.S. Mani orally divided the same and delivered possession of the northern portion, a vacant site, to first defendant which is described as Suit Item No.3. The southern portion of the same was allotted to the first plaintiff. Since then, the second defendant and the first plaintiff are in separate possession and enjoyment of their respective portions having constructed their own building using their own funds. Thus, Suit Item No.3 absolutely belongs to the first defendant and he alone has



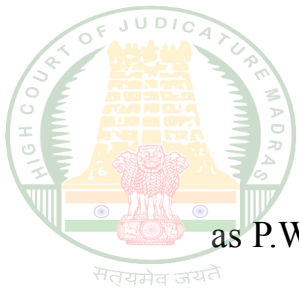
constructed the RCC building by spending a huge money. The property tax for the same is being assessed in his name. Electricity Service Connection also stands in his name. The first defendant is in exclusive possession and enjoyment of Suit Item No.3 without any hindrance from any of the plaintiffs for more than the statutory period and he has thereby also perfected title by adverse possession. Further, the first plaintiff has very cleverly omitted to mention the house property allotted to him on the southern side of Suit Item No.3. The second defendant is only a lessee cultivating the Suit landed properties. Stating so, the first defendant sought to dismiss the Suit.

TRIAL COURT

5. Based on the above pleadings, the Trial Court framed the following issues:

- '(i) *Whether the plaintiffs are entitled to 6/7 share in the Suit Properties?*
- (ii) *Whether the plaintiffs are entitled to mesne profits with respect to the Suit Properties?*
- (iii) *Whether the plaintiffs are entitled to a decree as prayed for in the plaint?*
- (iv) *To what other reliefs, the plaintiffs are entitled?'*

6. At trial, on the side of the plaintiffs, first plaintiff was examined



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as P.W.1 and one Sundaram was examined as P.W.2 and Ex-A.1 to Ex-A.7 were marked. On the side of the defendants, first defendant was examined as D.W.1 and Ex-B.1 was marked.

7. After full-fledged trial, the Trial Court held that the plaintiffs are entitled for 6/7 share in the Suit Properties. Further held that the plaintiffs are entitled *mesne* profits.

8. Feeling aggrieved, the first defendant has preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC praying to dismiss the Suit *qua* Item No.3 of the Suit Properties.

ARGUMENTS

9. Mr.Jyothish Chander, learned Counsel for the appellant / first defendant would argue that, in the year 2004, R.V.S.Mani orally divided a large house property into northern and southern portion, allotted the northern portion to first defendant and the southern portion to the first plaintiff and also put them in separate possession of their respective portions. The said northern portion constitutes the Suit Item No.3. The plaintiffs purposely omitted the southern portion allotted to first plaintiff,



with an ulterior motive to defeat the legitimate rights of the first defendant. Hence, the Suit is bad for partial partition. Despite clear pleadings in the written statement, the Trial Court failed to frame issue in this regard of partial partition. The first defendant has spent huge sum in constructing a house in the Suit Item No.3 and has been in absolute enjoyment of Suit Item No.3 without any hindrance from anyone since the allotment and separate possession in 2004 *i.e.*, for more than the statutory period. Hence, the first defendant perfected title by adverse possession as well. The Judgment and Decree of the Trial Court is erroneous and deserves to be interfered with. Accordingly, he would pray to allow the Appeal Suit and to set aside the Judgment and Decree of the Trial Court *qua* Suit Item No.3.

10. On the other hand, Mr.V.Manoharan, learned Counsel for the respondents 1 to 6 / plaintiffs would argue that the Suit Properties were originally owned by Janakiammal who passed away in 1981 leaving behind her sole son - R.V.S.Mani to succeed her estate which includes Suit Item No.3 as well as the portion of property situate adjacent to its southern side. Further, he would invite the attention of this Court to the



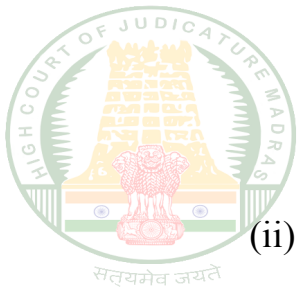
evidence of P.W.1 and P.W.2, and argue that R.V.S.Mani out of love and affection executed a Gift Settlement Deed (not marked) in favour of first plaintiff in respect of the portion of house property adjacent to the southern side of Suit Item No.3. Thus, the said portion is the absolute property of first plaintiff in which neither the other plaintiffs nor the first defendant have any right and the same is not available for partition. The Trial Court after considering the entire evidence available on record, rightly decreed the Suit. There is no warrant to interfere with the Judgment and Decree of the Trial Court. Accordingly, he would pray to dismiss the Appeal Suit and confirm the Judgment and Decree of the Trial Court.

DISCUSSION

11. Heard on either side. Perused the evidence available on record.

The following points arise for consideration in this Appeal Suit:

- (i) Whether the Suit Properties were joint family properties or separate properties, in the hands of R.V.S.Mani, father of the plaintiffs and first defendant ?



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(ii) Whether the alleged oral division and allotment of Suit Item No.3 to first defendant is true and valid ?

(iii) Whether the Suit is bad for partial partition ?

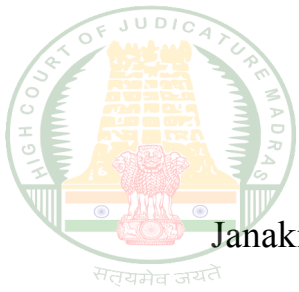
(iv) Whether the first defendant has perfected title by way of adverse possession ?

(v) Whether the Judgment and Decree of the Trial Court is to be interfered with ?

12. There is no dispute with the relationship between the parties as stated in the plaint.

Point No.(i)

13. The Suit Properties and the southern side portion on Suit Item No.3 were originally owned by Janakiammal, who is the grandmother of plaintiffs and first defendant. Suit Item Nos.1 and 2 are agricultural lands purchased by Janakiammal vide Ex-A.1 to Ex-A.3 – Sale Deeds and Mortgage Deed. It is an admitted fact that the Suit Item No. 3 and the portion of property lying adjacent to its southern side belongs to



A.S.NO.675 OF 2020

WEB COPY

Janakiammal. Janakiammal passed away on December 28, 1981 as a Hindu, leaving behind her only son – R.V.S.Mani as her legal heir. Her death certificate has been marked as Ex-A.5 and the legal heir certificate has been marked Ex-A.4 and moreover, there is no dispute with the same. Hence, the Hindu Succession Act, 1956 ['H.S.Act' for short] is the applicable law. As per Section 15 (1) (a) of the H.S.Act, R.V.S.Mani being the sole legal heir succeeded the entire estate of Janakiammal. A property that devolves upon legal heirs under Section 15 (1) (a) of the H.S.Act, is of the nature of separate property in the hands of legal heirs. That is to say, the properties that devolved upon R.V.S.Mani under Section 15 (1) (a) of the H.S.Act upon the demise of his mother – Janakiammal, are all his separate properties. Hence, the Suit Properties and other properties are all separate properties in the hands of R.V.S.Mani. He has absolute power to dispose of, alienate, encumber *etc.* as per his desire. Thus, the Suit Properties are not joint family properties in the hands of R.V.S.Mani. On the other hand, the Suit Properties are separate properties of him. **Point No.(i) is answered accordingly.**



Point Nos.(ii) and (iii)

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14. R.V.S.Mani passed away on March 2, 2006 intestate leaving behind the plaintiffs and the first defendant as his legal heirs under Section 8 of the H.S.Act. Hence, the plaintiffs and the first defendant are entitled to 1/7 share left by the R.V.S.Mani.

15. The first defendant has preferred this appeal only *qua* Suit Item No.3. The contentions of the parties in this appeal is limited to Suit Item No.3. There is no dispute among the parties about Suit Item Nos.1 and 2.

16. As stated above, Suit Item No.3 and the portion down south of it, devolved upon R.V.S.Mani under Section 15 (1) (a) of the H.S.Act and are his separate properties. First plaintiff has not added the said portion down south of Suit Item No.3 in the Suit schedule of properties. P.W.1 / first plaintiff has deposed in his evidence that Survey No.1606 / 14 A consists of 12 Cents and only the northern side 6 Cents of Survey No.1606 / 14 A has been described as Suit Item No.3 in the plaint. He further deposed that the portion lying down south of Suit Item No.3, is being enjoyed by him and he has also constructed a house in it. He further deposed that, initially the first defendant stayed in the house in Suit Item



A.S.NO.675 OF 2020

No.3 along with his mother and thereafter, the mother left and the first defendant is alone in possession and enjoyment of the Suit Item No.3.

When the first defendant put question to P.W.1 / first plaintiff that the father – R.V.S.Mani executed a Gift Settlement Deed dated September 3, 2004 in respect of portion situate down south of Suit Item No.3, the first plaintiff replied that he does not remember. P.W.2, an independent witness, has deposed that R.V.S.Mani executed a Gift Settlement Deed in respect of the portion situate down south of Suit Item No.3 in favour of first plaintiff. Relevant extract from the cross-examination of P.W.2 reads thus:

' . . . 1ம் பிரதிவாதி சீனிவாசனுக்கு அவர் அப்பா தாவா சொத்தில் உள்ள 3வது ஐயிட்ட சொத்தை வாய்மூலமாக பிரித்து கொடுத்த விவரம் தெரியுமா என்றால் தெரியும். 1ம் பிரதிவாதி சீனிவாசன் தாவா சொத்தின் 3ம் ஐயிட்ட சொத்தை சிமிண்ட் சீட் போட்டு அனுபவித்து வருகிறார் என்றால் சரிதான். 1ம் வாதி திருநாவுக்கரசுக்கு அவர் தகப்பனார் தாவா சொத்தின் 3ம் ஐயிட்ட சொத்திற்கு பக்கத்தில் ஒரு மனை தானமாக வழங்கியுள்ள விவரம் குறித்து எனக்கு தெரியுமா என்றால் தெரியும். மேற்கண்ட 1ம் வாதிக்கு அவர் தகப்பனார் தானமாக எழுதிக்



கொடுத்த சொத்தும் 1ம் வாதியின் பாட்டியின் சொத்து என்று சொன்னால் சரிதான். 1ம் வாதி தகப்பனார் உயிருடன் இருக்கும் காலத்தில் தாவா ஐயிட்ட 3வது சொத்தை 1ம் பிரதிவாதிக்கு வாய் மூலமாக பிரித்து கொடுத்தது தெரிந்தும் தற்போது பொய் சாட்சியம் அளிக்கிறேன் என்று சொன்னால் சரியல்ல. . . .

17. D.W.1 / first defendant in his evidence has deposed along the lines of his written statement. He however deposed that in the written statement, the oral division has been wrongly mentioned as held in 2003, while it is actually in 2004. Relevant extract of chief examination as well as cross examination reads thus:

CHIEF EXAMINATION OF D.W.1

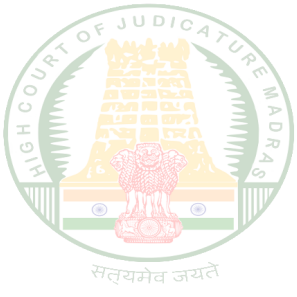
' . . . மேற்கண்ட ஜானகி அம்மாள் மறைவிற்கு பிறகு அவருடைய மகனும் என்னுடைய தந்தையுமான மணி அவர்கள் ஆண்டு அனுபவித்து வந்து கடந்த 2003 ஆண்டு வாய்மொழியாக தாவா அயிட்டம் 3 இன சொத்தினை 1ம் பிரதிவாதியாகிய எனக்கு அளித்தார். அது முதல் நான் வீடு கட்டி அனுபவித்து வருகிறேன். அதே போல் 1ம் வாதியாகிய என்னுடைய அண்ணன்



திருநாவுக்கரசுவிற்கு தாவா அயிட்டம் 3வது இன சொத்திற்கு தெற்கு பகுதியில் உள்ள இடத்தினை ஒதுக்கி பிறகு 2004-ம் ஆண்டு எனது தந்தையாரின் ஒரு பதிவு செய்யப்பட்ட தான செட்டில்மெண்ட் பத்திரம் முன்னிலைக்கு சுவாதீனம் பெற்று அதில் 1ம் வாதி வீடு கட்டி ஆண்டு அனுபவித்து வருகின்றார். எனவே தாவா அயிட்டம் 3ம் வது இன சொத்து எனக்கு ஒதுக்கப்பட்டு அது முதல் நான் ஆண்டு அனுபவித்து வருகிறேன். ஆகவே மேற்கண்ட வீட்டு மனையில் வாதிகளுக்கு எந்த உரிமையோ பாத்தியமோ இல்லை. . . . '

CROSS EXAMINATION OF D.W.1

' . . 3வது ஐயிட்ட சொத்திற்கு பக்கத்தில் உள்ள தெற்கு பக்கம் உள்ள மனையை மட்டும் என் அப்பா திருநாவுக்கரசுக்கு செட்டில்மெண்டு எழுதி வைத்தார், ஆனால் நான் குடியிருக்கும் வீட்டை என் அப்பா எனக்கு செட்டில்மெண்டு எழுதி வைக்கவில்லை என்றால் சரிதான். இதற்கு தனிப்பட்ட சாட்சி யாரும் இல்லை என்றால் சரிதான். என் தந்தையிடம் நான் அண்ணனுக்கு எழுதி கொடுத்தது போல் எனக்கும் எழுதி கொடுங்கள் என்றும், என் பெயருக்கு உயில் எதாவது எழுதிக்கொடுங்கள் என்றும் கேட்டேன் என்றால் சரிதான் கேட்டேன், தாயார் இருக்கும்



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A.S.NO.675 OF 2020

போது எனக்கு எழுத்து மூலம் செட்டில்மெண்டு
பத்திரமும், உயிலும் தேவையில்லை என்று
கூறினார். . . . '

18. As stated *supra*, the Suit Properties and the property located south of Suit Item No.3 are separate properties of R.V.S.Mani and hence, during his lifetime, the plaintiffs and the first defendant as majors are not entitled any share in the same. In other words, they [except sixth plaintiff who being the wife of R.V.S.Mani has right to maintenance which is a pre-existing right] have no pre-existing rights over the said properties. In the absence of any pre-existing right, the plea of oral division by the first defendant is legally not valid. It is apposite to mention here that had R.V.S.Mani divided and delivered possession of Suit Item No.3 to first defendant, in any case, it can only be construed as an oral gift which is also not valid in the eyes of law in view of Sections 122 and 123 of the Transfer of Property Act, 1882. **Point No.(ii) is answered accordingly in favour of plaintiffs and against the first defendant.**

19. Further, the first defendant has admitted that on September 3, 2004, R.V.S.Mani executed a Gift Settlement Deed in favour of first plaintiff in respect of the portion situate down south of Suit Item No.3.



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Though the said Gift Settlement Deed is not marked, in view of the admissions made by the first defendant and also in view of the abundant evidence available on record (discussed *supra*) in support of the Gift Settlement Deed in favour of first plaintiff, the portion down south of Suit Item No.3 is the absolute property of first plaintiff and it is not available for partition. In the absence of challenge to the said Gift Settlement Deed, the first defendant and other plaintiffs are not entitled to any share in the portion down south of Suit Item No.3. Hence, the Suit is not bad for partial partition. **Point No.(iii) is answered accordingly in favour of plaintiffs and against the first defendant.**

Point No.(iv)

20. The first defendant pleaded in his written statement that he has built a house in Suit Item No.3 in 2004 and has been in continuous, uninterrupted and absolute possession of Suit Item No.3 since 2004. As stated *supra*, though pleaded in written statement, during trial, he did not press into service the plea of adverse possession. He did not adduce any documents in support of his plea of adverse possession. In these circumstances, this Court is of the view that the first defendant failed to



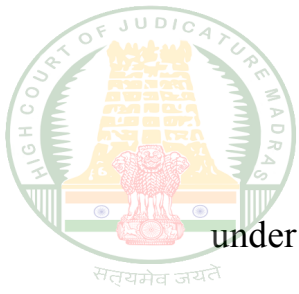
prove his plea of adverse possession. **Point No.(iv) is answered accordingly in favour of plaintiffs and against the first defendant.**

Point No.(v)

21. This Court in ***R.Rani -vs- R.Hemavathi***, having the neutral citation ***2025:MHC:1581***, reported in ***MANU/TN/2700/2025*** held as follows:

*“35. It is settled law that in a Suit for partition, Order XX Rule 12 of CPC cannot be applied. In a Partition Suit covered under Order XX Rule 18 of CPC, the further relief shall only be rendition of accounts and not mesne profits. Without appreciating the said aspect in the right perspective, the Trial Court granted mesne profits, which is not the right approach. The defendants are liable to render accounts in respect of the income from the Suit Item No.1 from the date of Suit up to complete partition and delivery of possession [See Judgment of this Court in ***Babburu Basavayya -vs- Babburu Guravayya***, reported in ***AIR 1951 Mad 938 (FB)***, and in ***Subba Reddiar -vs- Hazra Bibi***, reported in ***AIR 1973 Mad 237***]...”*

22. In this case, the Trial Court has granted 'mesne profits' under Order XX Rule 12 of CPC, which is not justifiable. In view of the above legal position, the plaintiffs are entitled to only rendition of accounts



A.S.NO.675 OF 2020

under Order XX Rule 18 of CPC. The Judgment and Decree of the Trial

Court shall be modified to that extent alone. No interference is warranted

in the other aspects of Judgment and Decree of the Trial Court. **Point**

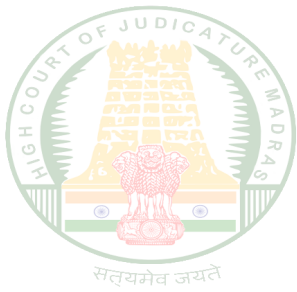
No.(v) is answered accordingly partly in favour of plaintiffs and

partly against the first defendant.

CONCLUSION

23. Resultantly, the Appeal Suit stands partly allowed. The Judgment and Decree of the Trial Court is modified in the following terms:

- (i) A Preliminary Decree is passed in favour of the plaintiffs, declaring that the plaintiffs are each entitled to 1/7 share in the Suit Properties;
- (ii) The plaintiffs are entitled to receive accounts from the first defendant for any income derived from the Suit Properties from the date of Suit till the complete partition & delivery of possession.



A.S.NO.675 OF 2020

WEB COPY

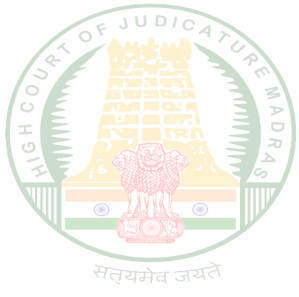
23.1. Considering the relationship between the parties, there shall be no order as to costs throughout.

07.08.2025

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
TK

To

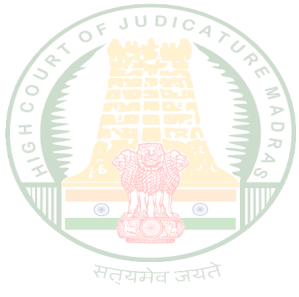
The District Judge
Additional District Court (FTC)
Kanchipuram.



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A.S.NO.675 OF 2020

R. SAKTHIVEL, J.

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APPEAL SUIT NO.675 OF 2020

07.08.2025

Page No.22 of 22