

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 17.02.2026

Judgment pronounced on : 10.04.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S. No.357 of 2023
and CMP. No.12527 of 2023

Perumal

..Appellant

Vs.

Arul Nirmala

..Respondent

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree in O.S. No.104 of 2021 on the file of III Additional District Sessions Judge, Cuddalore at Vridachalam dated 23.12.2022.

For Appellants : Mr.G.Suryanarayanan

For Respondents : Mrs.V.Srimathi

JUDGMENT

The Unsuccessful defendant in a suit for recovery of money in O.S. No.104 of 2021 on the file of the III Additional District Sessions Judge, Cuddalore at Vridhachalam, is the appellant.



II. PLEADINGS:

2 (1). Plaintiff in brief:

On 04.04.2016, the defendant borrowed a sum of Rs.16,73,000/- from Amuldass, the maternal grandfather of the plaintiff by executing a promissory note in his favour, agreeing to repay the borrowed amount together with interest at 12% per annum. The defendant made part payment of Rs.1,000/- on 02.06.2016, which was duly endorsed on the subject promissory note itself. Amuldass, had executed a Will on 24.08.2016, in favour of his daughter, Indra Antony Mary bequeathing his rights over the suit promissory note. Amuldass, died on 04.10.2016. In turn, the daughter, Indra Antony Mary executed a Will on 05.12.2018 in favour of the plaintiff bequeathing the right to recover the amount due under the suit promissory note. The said Indra Antony Mary died on 06.02.2019. Despite lawyer's notice dated 15.03.2019, the defendant did not come forward to pay the amount. Hence, the suit.

2(2). Written Statement in brief:

The defendant denies any liability to pay the amount under the alleged promissory note. The defendant contends that he owned one and half acres land next to a land of the plaintiff, which the plaintiff wanted the defendant to sell. As the defendant refused to sell his property, the plaintiff has fabricated the pro-note and filed the suit. The defendant has neither borrowed any money nor executed any promissory notice as alleged in the plaint. The defendant disputes



both the Wills of Amuldass as well as Indra Antony Mary. The defendant also contends that in the pre-suit notice dated 15.03.2019, there is no mention about the Will executed by Indra Antony Mary.

2(3) Issues:

Based on the pleadings, the Trial Court proceeded to frame the following issues:-

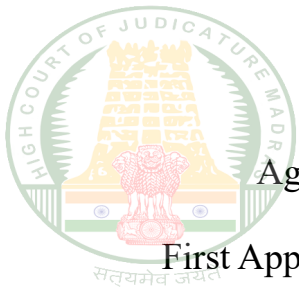
- (i) கடந்த 04.04.2016ல் அமல்தாசிடம் இந்த பிரதிவாதி ரூ.16,73,000/- கடனாக பெற்றுக்கொண்டு தாவா பிராமிசிரி நோட்டை எழுதிக்கொடுத்ததாக கூறுவது உண்மையா?
- (ii) 02.06.2016 தேதியில் வரவு மேற்குறிப்பு உண்மையானதா?
- (iii) வாதிக்கு தாவா தொகை கிடைக்கக்கூடியதா?
- (iv) வாதிக்கு கிடைக்கக்கூடிய இதர பரிகாரங்கள் என்ன?

2(4). Trial:

On the side of the plaintiff, three witnesses were examined and Ex.A1 to Ex.A11 were marked. On the side of the defendant, the defendant examined himself as D.W.1 and marked one document as Ex.D1.

2(5). Decision of the Trial Court:-

The Trial Court finding that the defendant was liable to meet the suit claim, decreed the suit.



Aggrieved by the said money decree against the defendant, the present

First Appeal has been filed.

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3. The present APPEAL:-

I have heard Mr.G.Surya Narayanan, learned counsel for the appellant.

Mrs.V.Srimathi, learned counsel for the respondent.

4. Arguments of the learned counsel for the appellant:-

The learned counsel for the appellant would firstly contend that the burden of proof was heavily on the plaintiff to establish due execution and attestation of the suit promissory note and also passing of consideration. He would state that mere reliance on the Wills executed by the grandfather and mother of the plaintiff would not be sufficient to entitle the plaintiff to a decree that the defendant was liable to meet the suit claim. The learned counsel would further state that P.W.1, in the course of the cross examination admitted that the defendant had replied vide Ex.D1, to the pre-suit notice, which factum was suppressed in the plaint. He would also point out to the query posed by the Registry at the time of institution of the suit while returning the plaint and endorsement made by the learned counsel for the plaintiff that the Will dated 03.12.2017, however no such Will was produced and in fact P.W.1, admits in evidence that there was no such Will in the first place. Insofar as the other Will also, Mr.Suriyanarayanan, learned counsel would contend that even the

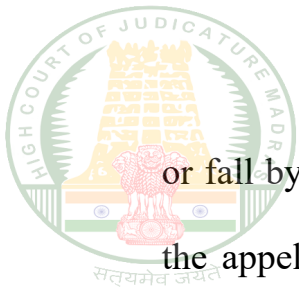


signature of the attesting witnesses varies from the ones found in the Will and the lawyer's notice spoke only about the Will dated 24.08.2016 executed by Amuldass.

5. Mr.G.Suriyanarayanan, learned counsel for the appellant would also point out to the contents of the Will and state that the Testator has mentioned that she was suffering from severe heart condition for more than two years. He therefore states that if such an averment was true then her father would not have executed a Will in her favour entitling her to recover the alleged suit claim. Besides all these, it is the primordial contention of the learned counsel for the appellant Mr.G.Suriyanarayanan, that the Trial Court has erroneously proceeded to decide the suit based on the two Wills, relied on by the plaintiff in forgetting for a moment that the debt had to be proved as also due execution of promissory note, especially when the defendant has denied the execution of the promissory note and also receipt of any amount from the plaintiff's grandfather, Amuldass.

6. Pointing out to the plaint as well, Mr.Surya Narayanan, learned counsel would state that the plaint is totally silent about when the loan was given to the defendant and as to when the defendant executed the promissory note. He would therefore state that the plaint averments are vague and the decree cannot be granted on the basis of such empty and vague pleadings. It is also the submission of the learned counsel for the appellant that the plaintiff has to stand

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or fall by his case and he cannot rely on the weakness of the defence set up by the appellant or the evidence adduced by the appellant during the trial of the suit. It is also the submission of the learned counsel for the appellant that P.W.2, has not spoken anything about the loan, the passing of consideration or even execution of the promissory note.

7. With regard to non-production of Bank statements or Income Tax proof, Mr.Suryanarayanan, learned counsel for the appellant would state that the Court has to draw adverse inference against the plaintiff and in any event, when the defendant had denied due execution of the promissory note, the plaintiff ought to have atleast taken steps to procure a report of the Forensic Expert to prove that the pro-note was signed only by the defendant. The learned counsel for the appellant also relied on the decision of the Hon'ble Supreme Court, in the case of *Union of India vs. Ibrahim Uddin and Ors*, reported in (2012) 8 SCC 148, where the Hon'ble Supreme Court held that failure to prove defence will neither amount to an admission, nor will it reverse or discharge the burden of proof on the plaintiff and that any admission made by a party is not conclusive, but yet would be a decisive factor in a case and it may operate as an estoppel. Law therefore requires that an opportunity should be given to the person who has made such admission in cross examination to tender his explanation and clarify the point on the question of admission. Mr.Suryanarayanan therefore prays for the appeal being allowed.



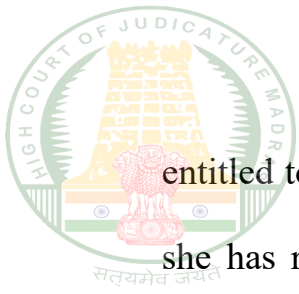
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8. Arguments of the learned counsel for the respondents:-

Per contra, learned counsel appearing for the respondent Mrs.V.Srimathi, would state that the plaintiff, by examination of P.W.1 to P.W.3 had proved due execution and passing of consideration. The Ex.A1, promissory note as well as Ex.A2, endorsement regarding part payment has been duly proved and therefore, initial burden on the plaintiff has been discharged and thereupon, it was for the defendant to establish that the pro-note was either not executed by him or that there was failure of consideration. Mrs.Srimathi, learned counsel for the respondent would further invite my attention to the admission of the appellant as D.W.1 in cross examination, where he has admitted his signature in suit promissory note Ex.A1, while confirming that signature in Ex.A1 and Ex.A7 are one and the same. She would therefore state that it is not open to the appellant to thereafter contend that he has not executed the promissory note and presumption under Section 118 of the Negotiable Instruments Act, 1881 would apply and it was thereafter apply for the defendant to disprove the execution of the promissory note and presumption of passing of consideration under the said promissory note.

9. Mrs.V.Srimathi, learned counsel for the respondent would further state the defendant is a third party to the Will and not being a legatee, he is not

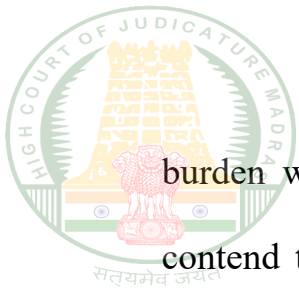
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entitled to challenge the truth and genuineness of the said Will. In this regard, she has relied on the decision of this Court in ***Uma Vs. Salem Sowdambiga***

Finance, represented by the Managing Partner, S.Natarajan, reported in ***(2008) 6 CTC 543***, where this Court held that truth and validity of the Will, can be challenged only by those persons who are legal heirs of the Testators and who would have succeeded to the properties of the Testator, but for the Will.

10. Mrs. Srimathi, learned counsel would also refer to the deposition of D.W.1, regarding partition having been effected on 27.09.2019, though in the written statement, the defendant has denied the said partition. She would therefore state that the defendant has set up a false defence and his testimony is unreliable, especially since it has been stated by the defendant that only because of the enmity, it is between the plaintiff and the defendant, the plaintiff has fabricated the suit promissory note. Even with regard to the enmity, pointing out to the inconsistencies between the pleadings and evidence, the learned counsel would point out to the fact that D.W.1 has admitted that he has no enmity with P.W.2 and P.W.3. The learned counsel would further state that the plaintiff has proved the execution of the promissory note by examining the attesting witness, besides also marking the original promissory note. The Trial Court also exercising power under Section 73 of the Evidence Act, 1872 comparing the signatures of the defendant, found no significant variation. The learned counsel would state that once due execution has been proved, the

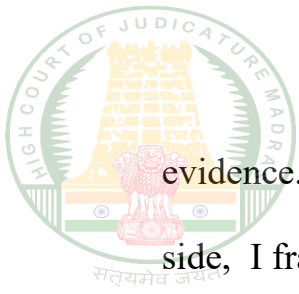


burden was only upon the defendant and it is not open to the defendant to contend that the plaintiff ought to have taken steps to get the opinion of the Forensic Expert. She would further state that the plaintiff has also established her entitlement, by testamentary succession, to claim the amount borrowed by the defendant from her maternal grandfather, Amuldass. The learned counsel would further state that non-production of the bank statement or income tax returns cannot be fatal to the plaintiff's case, when the plaintiff, by independent evidence, has established the borrowing.

11. As regards, non-mentioning of the second Will, or regarding custody and delivery of the original Will, she states that it is not for the defendant to raise any suspicion as he is not interested in the bequest under the Wills and on the contrary, under the said Wills, when admittedly rights have been conferred on the respective legatees to recover the monies borrowed by the defendant, she would contend that it is most natural that the defendant would deny the truth and genuineness of the Wills. She would therefore pray for the dismissal of the appeal.

12. Points for consideration:-

I have carefully considered the submissions advanced by the learned counsel on either side and also gone through the oral and documentary



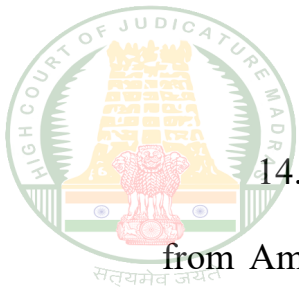
evidence. Based on the arguments advanced by the learned counsel on either side, I frame the following points for consideration:-

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- (i) Whether the plaintiff has successfully discharged the initial burden of proof regarding due execution of the promissory note?
- (ii) Whether the Trial Court was right in drawing presumption under Section 118 of the Negotiable Instruments Act, based on the pleadings as well as evidence on record?

13. Points (i) & (ii):-

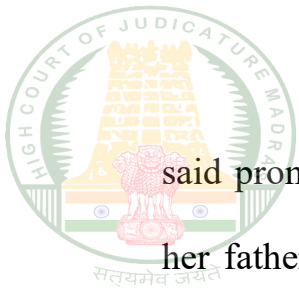
The plaintiff admittedly has not lent any money to the defendant. It is his case that his maternal grandfather, one Amuldass, had lent a sum of Rs.16,73,000/- to the defendant and that the defendant has executed a promissory note in favour of the said Amuldass. Amuldass, executed his last Will and Testament on 24.08.2016, giving the right to recover the borrowed money lent to his daughter, Indra Antony Mary. Amuldass, subsequently died on 04.10.2016 and the Will came into effect. The beneficiary under the said Will of Amuldass, his daughter Indra Antony Mary executed a Will in favour of the plaintiff on 05.12.2018. The said Indra Antony Mary died on 06.02.2019. Based on the said Will, the plaintiff issued a lawyer's notice and claim recovery of monies due and payable by the defendant.



14. The case of the defendant is that he has neither borrowed any money from Amuldass, nor executed a promissory note. In such circumstances, the initial burden was certainly on the plaintiff's shoulders. In this regard, I have gone through the evidence adduced on the side of the plaintiff, P.W.1, who is the plaintiff. In her cross examination, no doubt, she admits that there is no mention about her mother's Will dated 05.12.2018 in the pre-suit notice. When questioned with regard to why there was no mention about the Will executed by her mother, she has stated that at the time of filing of the suit, she was not aware of the Will having been executed by the mother and later on, she came to know from her grandmother that her mother had executed a Will. She would however admit that these facts have not been set out in the plaint or in the proof affidavit.

15. On going through the pre-suit notice, I find that the claim has been made based on the Will executed by Amuldass alone and the notice itself was issued on behalf of the plaintiff, Arul Nirmala and her minor brother, Arokia Aruldass and minor Arul Anbarasi. P.W.2, is an attesting witness to the Will of Amuldass. P.W.2, has spoken about the manner in which Amuldass executed a Will in his presence and in the presence of another attesting witness. She has also spoken about the contents of the Will. P.W.2, is another daughter of Amuldass, one Alphonsammal. She has only spoken about the due execution and attestation of the Will of Amuldass. P.W.2, however does not speak about the execution of the suit promissory note or passing of consideration under the

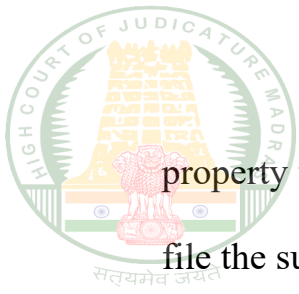
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said promissory note. Her evidence is limited to the execution of the Will by her father, Amuldass. Similarly, P.W.3, is an attesting witness, to the Will of Indra Antony Mary, daughter of Amuldass, who has executed her last Will and Testimony. P.W.3, admits that the Will does not specify exactly as to who is liable to pay what amounts. When a specific question has been put to both P.W.2 and P.W.3, as to whether there is any specific mention about the liability of Perumal, both P.W.2 and P.W.3 have only stated that the Testator, Amuldass, has only mentioned in general, about all amounts lent by him and consequently, repayable to him. Similarly, P.W.3 has also not spoken about any personal first-hand information about execution of the suit promissory note by the appellant, in favour of Amuldass. Therefore, excepting for proving the Will, the Wills executed by Amuldass and Indra Antony Mary, I do not find any shred of evidence in support of proof of execution of the suit promissory note, Ex.A1 or endorsement, Ex.A2. The burden was heavily on the plaintiff to establish due execution of the promissory note, when the defendant had specifically denied his signature by contending the written statement that he has not signed the suit promissory note and that he has also not borrowed any money.

16. On the side of the defendant, he examined himself as D.W.1, in his cross examination, he denies that the plaintiff did not ask the defendant to sell his property. This is contrary to the pleading in the written statement where the defendant sets up a defence that only because the defendant refused to sell his

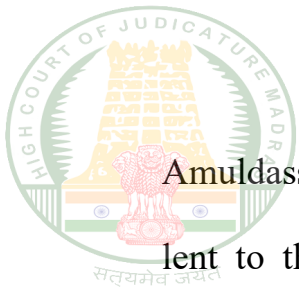


property to the plaintiff, the plaintiff has fabricated the suit promissory note and file the suit. The defendant has admitted his signature in Ex.A7. He also admits

to the fact that after the notice issued by the plaintiff, the defendant has settled a property at Koonakurichi Village in and by document, dated 26.12.2020, which has been marked as Ex.A11, though the defendant's case is that he replied to the lawyer's notice and the plaintiff also admits that the defendant issued a reply, neither the plaintiff nor the defendant had chosen to exhibit the said reply notice. In fact, D.W.1 even state that he does not even remember the contents or the stand taken by the defendant in the said reply notice. Though he has specifically denied his signature in Ex.A1, promissory note and Ex.A2, endorsement, he admits his signature in Ex.A7, and also in I.A. No.287 of 2021. He further states that there was no necessity for the deceased, Amuldass or Indra Antony Mary, to be acquainted with his signature. He also states that he is not in enemical terms with P.W.2 and P.W.3, the attesting witnesses. In such circumstances, the defendant has certainly not only set up a false plea and defence, but has admitted in cross examination that the defence set up in the written statement, is not factually true. In such circumstances, the evidence of the defendant has to be viewed with sum amount of suspicion.

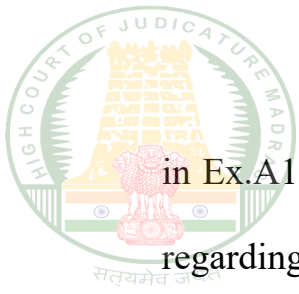
17. On the contrary, the case of the plaintiff is that the money was borrowed from Amuldass, her maternal grandfather, who admittedly is no more. The promissory note is not attested by any independent witnesses.

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Amuldass, during his lifetime, had bequeathed the right to recover the money lent to the appellant, to his daughter Indra Antony Mary, who in turn, has bequeathed the said right to the plaintiff. The two Wills under which the right to claim the money lent from the appellant have been proved by examination of P.W.2 and P.W.3. Though it is contended by Mr.G.Surya Narayanan, learned counsel for the appellant, that the signature of the attesting witnesses is doubtful and I am unable to see how the defendant in a suit for recovery of money can question the execution of the Wills, especially when the attestors themselves have come to the witness box and spoken about the due execution and attestation by Amuldass and daughter, Indra Antony Mary. The issue now boils down to whether the plaintiff by examining P.W.1 to P.W.3 has discharged the initial burden upon the plaintiff to prove due execution of the promissory note.

18. Mere proof of the Wills in my considered opinion will not entitle the plaintiff to a decree in the suit. Admittedly, it is for the plaintiff to first establish that the defendant had borrowed money from Amuldass and that the defendant has executed a promissory note, which was also supported by consideration. There is absolutely no evidence on the side of the plaintiff with regard to the execution of the promissory note by the defendant. Though it is contended by Mrs.V.Srimathi, learned counsel for the respondent/plaintiff that D.W.1 has admitted his signature, on going through the evidence of D.W.1, I am unable to see any such admission with regard to the promissory note or the endorsement



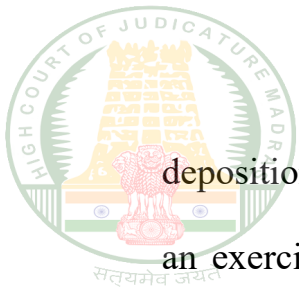
in Ex.A1 and Ex.A2. On the contrary, to every question/suggestion put to him regarding Ex.A1 and Ex.A2, he has categorically denied the same.

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19. The plaintiff has only extracted an admission with regard to the defendant's signature on Ex.A7. The plaintiff ought to have taken steps to compare the signatures with the admitted document Ex.A7, with the disputed suit promissory note and endorsement Ex.A1 and Ex.A2. No such steps have been taken by the plaintiff. The Trial Court has unfortunately shifted the burden upon the defendant, by being carried away by evidence of P.W.2 and P.W.3, which can at best support proof of due execution of the Wills of Amuldass and Indra Antony Mary. Merely because the Wills contained a bequest of an alleged amounts lent by Amuldass, to the defendant, the proof of these Wills behind the back of the defendant cannot straightaway impart liability on the defendant. The suit is one simplicitor for recovery of money, based on a promissory note.

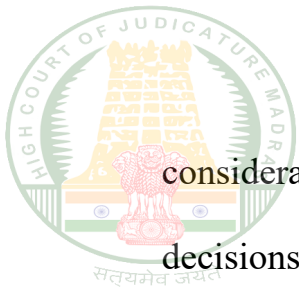
20. In such circumstances, in the absence of any credible evidence on the side of the plaintiff to establish due execution and passing of consideration , I am afraid the plaintiff's case could not have been accepted by the Trial Court. The Trial Court has in fact taken the onus on itself to compare the signatures in Ex.A1 and Ex.A2 by invoking power under Section 73 of the Indian Evidence Act, by comparing the signature of the defendant in the written statement and

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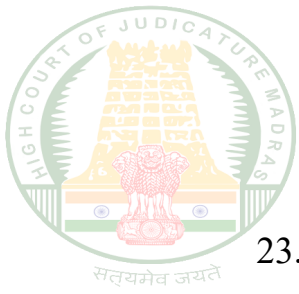
deposition. This Court has deprecated such practice of the Courts undertaking an exercise of comparison of disputed signature with signatures in pleadings, especially when the signatures in the pleadings are post the dispute, I can understand if atleast the Trial Court had compared the signature available in Ex.A7 with the Ex.A1 and Ex.A2, subject to the signatures being contemporaneous in nature. That exercise has not been in the instant case. Therefore, the Trial Court clearly erred in falling back on Section 73 of the Evidence Act to undertake comparison by itself and come to the conclusion that the signature in the disputed promissory note and endorsement are that of the defendant only.

21. Even though the decisions which has been relied on by the learned counsel for the respondent on the point that the third party is not entitled to question to bequest under Will and that such right is only open to the legatees, the facts of the present case is quite peculiar in nature. The Wills have been executed primarily for recovery of alleged monies lent by the Testator /Testatrix. There is not even specific mention about the amounts that were borrowed by the defendant in both the Wills. The argument of Mr.Surya Narayanan, learned counsel for the appellant, that the daughter Indra Antony Mary was seriously ill for two years and it was very unlikely that the father would have given the right to recover the loan and alleged amounts lent to the said daughter and further, the pre-suit notice does not even mention about the Will dated 05.12.2018, merit



consideration. Therefore, I do not see in the facts of the present case, how these decisions can be pressed into service, especially when based on the said Wills alone, liability is sought to be fastened on the appellant.

22. The Trial Court ought not to have ventured to compare the signatures. In a suit for recovery of money, being purely a civil dispute, the parties have to establish their respective cases. Despite the plaintiff having procured an admission from D.W.1, that his signature in Ex.A7, is true, the plaintiff has not taken steps, to establish that the signature in Ex.A1, Ex.A2 was that of the defendant. Therefore, when the plaintiff has not been able to discharge the initial burden, I am unable to countenance the argument of the learned counsel for the respondent that the burden has shifted and it was for the defendant to take out an application for comparison of signature. The findings of the Trial Court are therefore clearly erroneous and perverse. In the absence of the plaintiff, even prima facie establishing due execution of the promissory note and endorsement in Ex.A1 and Ex.A2, respectively, ought not to have erroneously shifted the burden on the defendant; contrary to settled legal principles of law in suits of this nature.



23. In fine, the Appeal Suit is allowed with costs. Consequently,
connected Miscellaneous Petition is closed.

10.04.2026

Neutral Citation Case: Yes
Speaking order
Index: Yes
rkp

To

1. The III Additional District Sessions Judge,
Cuddalore at Vridhachalam.
2. The Section Officer,
V.R. Section, High Court of Madras.



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P.B.BALAJI.J.

rkp

Pre-delivery judgment made in
A.S. No.357 of 2023
and CMP. No.12527 of 2023

10.04.2026