



A.S.No.485 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 04.11.2025
PRONOUNCED ON : 15.06.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

A.S. No.485 of 2019

1.Mrs.B.Kousalya,
W/o.G.Boopalan,
D/o.Late Thiruveedhi
No.18 (old no.47)S.S.V.Koil 2nd street,
Melpattadai, perambur,
chennai – 11.

2.Mrs.Gowri,
W/o.Rajkumar & D/o.Late Thiruveedhi,
No.15 Bajanaikoil street,
Royapuram, Chennai 13.

..Appellants/Plaintiffs

Vs.

1.T.Jayabalan
S/o.Late Thiruveedhi
NO.3/9, Rohini Street,
Palani Street, rajaji nagar
villivakkam, Chennai – 49.

2.T.Muthuraman,
S/o.Late Thiruveedhi
No.25/5, New street,
Thathankuppam,
Villivakkam, Chennai – 49.

3.T.Muruganandham
S/o.Late Thiruveedhi



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No.16/36, 1st cross street,
Savadi Salai, Korattur,
Chennai 80.

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..Respondents/defendants

PRAYER: Appeal suit filed praying to set aside the Judgment and decree dated 12.01.2018 made in O.S.No.854 of 2014 on the file of the XVIII Additional Judge, City Civil Court, Chennai by allowing this first appeal before this Court and thus render justice.

For Appellant(s): Mr.N.Ramesh

For Respondent(s): Mr.C.Sankar for R1.
Mr.J.Franklin for R2 & R3.

J U D G M E N T

This appeal is filed by the plaintiffs against the judgment and decree dated 12.01.2018 passed by the learned XVIII Additional Judge, City Civil Court, Chennai, in O.S.No.854 of 2014, whereby the suit filed by the plaintiffs for partition and permanent injunction was dismissed.

2. For convenience, the parties are referred to as they were arrayed before the trial Court.

3. The plaintiffs states that they and the defendants are children of late M.Thiruveedhi. Thiruveedhi had two wives, namely T.Kamalammal and



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Annammal, who were sisters. The first defendant Jayabalan, and also N.Lalitha, Baby Kumari and Rajendran, were born through the first wife Kamalammal. The plaintiffs and defendants 2 and 3 were born through the second wife Annammal. Both the families were living together.

4. According to the plaintiffs, Annammal, mother of the plaintiffs and defendants 2 and 3, was assigned by the Government a vacant land at New Street, Thathankuppam, Villivakkam, Chennai, in S.No.92, measuring 0.01.31.5 hectares. The suit was filed in respect of this property, treating it as Annammal's property.

5. The plaintiffs further pleaded that Thiruveedhi owned another property measuring about 1200 sq.ft. in S.No.91, adjacent to the present suit property. According to them, after Thiruveedhi died intestate on 04.03.2000, the first defendant, being the eldest male member, took control of the property in S.No.91, and as he refused partition, the plaintiffs filed O.S.No.7887 of 2012 in respect of that property.

6. The plaintiffs pleaded that Annammal died on 03.09.1995, leaving behind the plaintiffs and defendants 2 and 3 as her legal heirs. Therefore, after Annammal's death, the plaintiffs and defendants 2 and 3 allegedly inherited the suit property and continued in joint possession and enjoyment.



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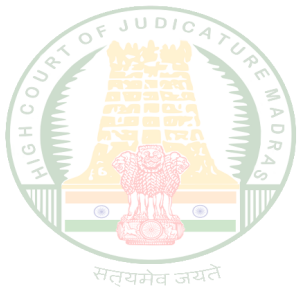
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7. Since the suit property was adjacent to the family property, the plaintiffs pleaded that they and defendants 2 and 3 had permitted the first defendant to use it only as a matter of family relationship. According to them, such oral permission stood revoked when dispute arose.

8. The plaintiffs further alleged that because they had filed the partition suit in respect of their father's property, the first defendant developed enmity, attempted to interfere with their possession, and tried to grab the suit property. The 1st defendant has no right or title in the suit property and he is no way concerned with the suit property. He is neither a co- owner nor share holder in the suit property.

9. On these pleadings, the plaintiffs sought partition into four shares, allotment of 1/4th share each to both plaintiffs, appointment of Commissioner, and permanent injunction against the first defendant.

10. The first defendant, in his written statement, denied the plaintiffs' claim that Annammal was the owner of the suit property comprised in S.No.92, measuring 0.01.31.5 hectares, and put the plaintiffs to strict proof of the same.



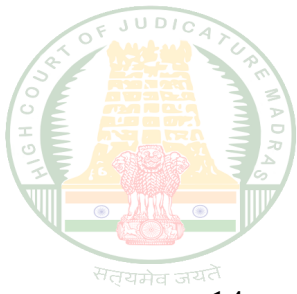
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11. He further contended that the suit property had not been properly described by metes and bounds and that the description furnished in the plaint was vague and uncertain. Though he admitted that he is the stepson of Annammal, he pleaded that he cannot be treated as her lineal descendant for the purpose of claiming or resisting partition in respect of her property.

12. The principal defence of the first defendant is that he is the absolute owner of the property bearing Plot No.7-B, measuring about 0.03 cents or 1308 sq.ft., and Plot No.7-C, measuring about 0.1½ cents or 654 sq.ft., together with a small A.C.C. roof building situated at New Street, Thathankuppam, Villivakkam, comprised in Survey No.249, Konnur Village. According to him, except the name of the street, the plaint schedule property does not tally with his property, either with reference to the survey number, extent, or block number.

13. The first defendant also raised a plea of non-joinder of necessary party by contending that the present owner of the property had not been impleaded in the suit. According to him, the property presently belongs to his wife, Smt. Ramani Jayabalan, and the plaintiffs, by suppressing the said material fact, have instituted the suit with an improper description of the property and on payment of insufficient court fee.



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14. He further pleaded that the suit is barred by limitation, since the plaintiffs were aware of the settlement deed executed in the year 2009, but had failed to institute the suit within the prescribed period. He also denied that the suit property is joint family property and asserted that he had been in absolute possession and enjoyment of the property from the year 1968. According to him, he initially put up a thatched house, subsequently made further constructions, and the property has been assessed in his name from the year 1993 onwards.

15. It is his further case that he settled the property in favour of his wife under a registered settlement deed dated 21.07.2006, registered as Document No.3606 of 2006, and that from the date of such settlement, his wife has been in possession and enjoyment of the property as its absolute owner. He also relied upon the assignment patta dated 20.05.1976, said to have been issued in respect of Plot Nos.7-B and 7-C in his favour.

16. On the above pleadings, the first defendant contended that the suit for partition is not maintainable either in law or on facts and prayed for dismissal of the suit.



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17. Defendants 2 and 3, in their written statement, supported the case of the plaintiffs. They admitted the relationship pleaded in the plaint and stated that the plaintiffs and defendants 2 and 3 were born to Thiruveedhi through Annammal, whereas the first defendant was born to Thiruveedhi through Kamalammal.

18. They further admitted that their mother Annammal was the owner of the suit schedule property bearing Door No.26/5, New Street, Thathankuppam, Villivakkam, Chennai, comprised in S.No.92 and measuring 0.01.31.5 hectares of vacant land. According to them, after the death of Annammal on 03.09.1995, the plaintiffs and defendants 2 and 3 have been in joint possession and enjoyment of the suit property.

19. Defendants 2 and 3 therefore pleaded that each of them is entitled to a 1/4th share in the suit property along with the plaintiffs, and stated that they have no objection for partition of the suit property into four equal shares.

20. On the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiffs and defendants 2 and 3 are in joint possession of the suit property?
2. Whether each plaintiffs are entitled for 1/4th share?
3. Whether the plaintiffs are entitled to permanent injunction as prayed



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for?

4. Whether the plaintiffs properly described the suit property in the plaint schedule?

5. Whether the suit is bad for non-joinder of necessary parties?

6. Whether the suit is barred by limitation? Whether the plaintiffs are entitled for preliminary decree as prayed in the suit ?

7. To what relief is the plaintiff entitled for ?

21. Before the trial court, on the plaintiffs' side, P.W.1 to P.W.3 were examined. Exs.A1 to A6 were marked. Ex.A1, true copy of settlement register for municipal towns dated 18.03.2013; Ex.A2, F.M.B. sketch; Ex.A3, death certificate of Annammal; Ex.A4, Form-I given by Tahsildar; Ex.A5, encumbrance certificate; and Ex.A6, plaint copy in O.S.No.7887 of 2012. On the defendants' side, D.W.1 was examined. Exs.B1 to B8 were marked. Ex.B1 to Ex.B3, assignment pattas dated 20.05.1976 in the name of Jayabalan issued by Special Tahsildar; Ex.B4 and Ex.B5, settlement deeds; Ex.B6, property tax assessment card; Ex.B7, Chennai Metro Water and Sewerage Board receipt; and Ex.B8, Electricity Board receipt. Exs.C1 to C3 were also marked. Ex.C1 was town survey register extract, Ex.C2 was Form-I by Tahsildar, and Ex.C3 was letter of Tahsildar, Ayanavaram Taluk.



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22. The Trial Court, on appreciation of the oral and documentary evidence, held that the plaintiffs had failed to prove that the suit property belonged to Annammal or that it was allotted to her under any valid assignment. The Trial Court found that Ex.A1 contained corrections and overwriting and was not properly authenticated. It also relied upon Exs.B1 to B8 produced by the first defendant to hold that possession and enjoyment were with the first defendant.

23. The Trial Court further held that the plaintiffs themselves had pleaded that the first defendant was permitted to use the property, and therefore the plea of joint possession by the plaintiffs and defendants 2 and 3 was not established. Consequently, the Trial Court rejected the claim of the plaintiffs that they and defendants 2 and 3 were entitled to 1/4th share each in the suit property.

24. The Trial Court also found that the plaint schedule property was not properly described by metes and bounds and that there was uncertainty regarding the identity of the property, particularly in view of the discrepancy in survey number, block number and boundaries. It further took note of the first defendant's plea that the property had been settled in favour of his wife, Ramani Jayabalan, who was not impleaded as a party, and that no relief had been sought against the settlement deed. On the above findings, the Trial Court dismissed the suit without costs.



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25. Aggrieved by the judgment and decree of the trial court the plaintiffs preferred this appeal and contends that the trial Court erred in dismissing the suit for partition. They contend that the first defendant has no connection with the suit property because it belonged to Annammal, who was the mother of the plaintiffs and defendants 2 and 3. They further contend that the plaintiffs and defendants 2 and 3 alone are Annammal's heirs and that each is entitled to equal share. They further contend that the property of Thiruveedhi in S.No.91 is adjacent to the suit property and that, because of family relationship, the first defendant was only permitted to use the suit property. According to them, such permission was later revoked. They also contend that the trial Court failed to appreciate the plaintiffs' evidence, failed to consider the evidence regarding partition, and wrongly concluded that the plaintiffs were not entitled to partition.

26. The learned counsel for the appellants/plaintiffs would submit that the Trial Court erred in dismissing the suit, notwithstanding the revenue records produced on the side of the plaintiffs to show that the suit property was assigned in favour of late Annammal. According to the learned counsel, Ex.A1 Settlement Register and Exs.C1 to C3 revenue records, produced through the Tahsildar, establish that the property comprised in S.No.92 was assigned to Annammal and that, on her death, the plaintiffs and defendants 2 and 3, being her legal heirs, became entitled to 1/4th share each.

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27. The learned counsel would further submit that the Trial Court ought not to have rejected the plaintiffs' documents merely on the ground of corrections, overwriting or discrepancy in the block number. It is contended that official revenue records maintained in the ordinary course carry a presumption of correctness and that minor clerical discrepancies would not destroy their evidentiary value. In support of this submission, reliance was placed on *Balwant Singh v. Daulat Singh*, (1997) 7 SCC 137, *Union of India v. Pramod Gupta*, (1997) 9 SCC 78, and *State of A.P. v. Star Bone Mill & Fertilizer Co.*, (2013) 9 SCC 319.

28. The learned counsel would also submit that the Trial Court wrongly relied upon Exs.B1 to B3 produced by the first defendant, though the said documents related to Plot Nos.7-B and 7-C in S.F.No.249 and not to the suit property in S.No.92. It is further submitted that the genuineness of those documents was not established and that the revenue official was unable to verify the same from the official records. Therefore, the first defendant had failed to rebut the plaintiffs' case based on official revenue records.

29. It is further submitted that defendants 2 and 3 had categorically admitted that the suit property belonged to Annammal, that the plaintiffs and defendants 2 and 3 are her legal heirs, and that each of them is entitled to 1/4th share. The learned counsel would submit that such admissions ought to have been given



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due weight by the Trial Court. In this regard, reliance was also placed on *Nagindas Ramdas v. Dalpatram Iccharam*, AIR 1974 SC 471, to contend that admissions made in pleadings stand on a higher footing.

30. The learned counsel would further contend that the suit for partition with a consequential prayer for injunction is maintainable and that the plaintiffs were not required to file a separate suit for declaration or recovery of possession. Reliance was placed on *Sukh Ram v. Harbheji*, AIR 1969 SC 1114, in support of the contention that in a partition suit, consequential relief can be sought against a person interfering with the enjoyment of the property.

31. On the issue of description of property, the learned counsel relied upon *Karam Chand v. Board of Revenue, Rajasthan*, AIR 2005 Raj 284, and *Abdul Hamid v. Nur Mohd.*, AIR 1976 Del 328, to submit that minor errors in survey number, block number or description are not fatal when the property is otherwise identifiable from the pleadings and evidence.

32. The learned counsel also referred to *Lachman Singh v. Kirpa Singh*, (1987) 2 SCC 547, *E. Parashuraman v. V. Doraiswamy*, (2006) 1 SCC 658, *Bhagwan Dass v. Girdhari Lal*, (2007) 11 SCC 218, *Prem Singh v. Birbal*, (2006) 5 SCC 353, and *Guru Amarjit Singh v. Rattan Chand*, (1993) 4 SCC 349, in support of the appellants' case. On the above submissions, the learned

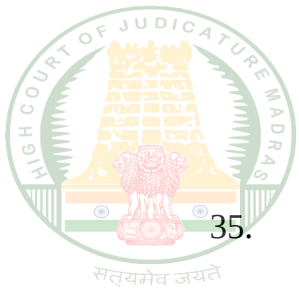


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counsel prayed that the judgment and decree of the Trial Court be set aside and that a preliminary decree be passed declaring 1/4th share each in favour of the plaintiffs and defendants 2 and 3, together with consequential injunction.

33. The learned counsel for the respondent/ defendant would submit that the suit for partition itself is not maintainable. According to him, the first defendant is only the stepson of Annammal and, therefore, the plaintiffs cannot seek partition as against him without first establishing their title to the suit property. It is submitted that, if at all the plaintiffs claim title over the property, their proper remedy was to file a suit for declaration of title and recovery of possession, and not a bare suit for partition and injunction.

34. The learned counsel would further submit that the plaintiffs have not proved that the suit property belonged to Annammal. Except Ex.A1 Settlement Register, no independent document has been produced to show that Annammal had title over the property. Even Ex.A1 contains corrections and overwriting, and no initials or authentication are found against such corrections. It is also submitted that Ex.A1 was obtained only under the Right to Information Act and the competent authority who issued or maintained the relevant assignment records was not examined. Though the plaintiffs examined the Tahsildar, the patta was said to have been issued by the Special Tahsildar, who was not examined.

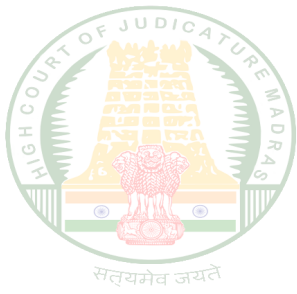


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35. It is further contended that the suit property is Government land and that, on the basis of possession, patta was issued in favour of the first defendant. The first defendant has produced Exs.B1 to B3 pattas and other documents to show his possession and enjoyment of the property from the year 1976. According to the learned counsel, such possession remained undisputed for several years, and the plaintiffs did not challenge the same either during the lifetime of Annammal or immediately after her death.

36. The learned counsel would also submit that the plaintiffs have not pleaded that Exs.B1 to B3 were obtained by fraud. In the absence of specific pleadings containing the particulars of fraud, as required under Order VI Rule 4 of the Code of Civil Procedure, the plaintiffs cannot be permitted to contend that the pattas produced by the first defendant are fraudulent or fabricated. It is submitted that vague allegations are not sufficient to dislodge official documents produced by the first defendant.

37. The learned counsel would further contend that the plaintiffs did not challenge the pattas issued in favour of the first defendant and filed the suit only after the settlement deed was executed. Even the said settlement deed has not been challenged in the suit. Therefore, without seeking declaration of title and without challenging the documents relied upon by the first defendant, the plaintiffs are not entitled to seek partition.



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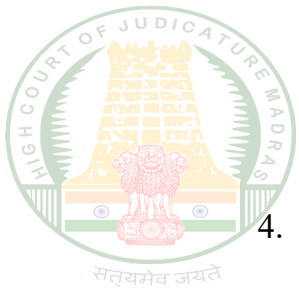
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38. It is also submitted that the plaintiffs have failed to establish either title or joint possession. They have not proved that the property was the separate property of Annammal or that it was available for partition among the plaintiffs and defendants 2 and 3. On the other hand, the documents produced by the first defendant establish that he has been in possession and enjoyment of the property in his own right.

39. In support of his submissions, the learned counsel relied upon *Lachman Singh v. Kirpa Singh and others*, AIR 1987 SC 1616, *Rangammal v. Kuppuswami and another*, (2011) 12 SCC 220, *State of Andhra Pradesh and others v. Star Bone Mill and Fertilizer Company*, (2013) 9 SCC 319, and *Jagdish Prasad Patel (Dead) through LRs. v. Shivnath and others*, (2019) 6 SCC 82. Relying upon the above decisions, the learned counsel prayed that the findings of the Trial Court be confirmed and the appeal be dismissed.

40. The following points arise for consideration in this appeal:

1. Whether the suit for partition and bare injunction arraying the non-sharer first defendant is maintainable?
2. Whether the relief of bare injunction sought against the first defendant is maintainable?
3. Whether the suit is bad for non-joinder of necessary parties?



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4. Whether the judgment and decree of the Trial Court is liable to be set aside?

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Point Nos. 1 to 3:

41. The relationship between the parties is not in serious dispute. The plaintiffs and defendants 2 and 3 are the children born to late M. Thiruveedhi through Annammal whereas the first defendant is the son born to late M. Thiruveedhi through his first wife, Kamalammal.

42. The plaintiffs instituted the suit claiming partition of the suit property on the footing that it originally belonged to late Annammal and that, upon her demise, the plaintiffs and defendants 2 and 3 succeeded to the same. Defendants 2 and 3, in their written statement, have admitted the claim of the plaintiffs and have expressed their willingness for division of the property by metes and bounds.

43. Thus, there is no real lis or contest between the plaintiffs and defendants 2 and 3 with regard to the partition of the suit property.

44. However, the first defendant resisted the suit by specifically disputing Annammal's title to the suit property. His categorical defence is that the suit property never owned by Annammal, but was assigned in his favour by the competent authority, and that he has been in continuous possession and



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enjoyment of the property for several decades in his own independent right.

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45. In support of his claim, the first defendant relied upon the assignment records, the settlement deeds executed in favour of his wife, and the municipal, Metro Water and electricity records to substantiate both his title and possession.

46. On the side of the plaintiffs, reliance is mainly placed upon Ex.A1, the SLR extract, and the allied documents, to contend that the suit property belonged to Annammal. However, as rightly noticed by the Trial Court, there are material discrepancies with regard to the block number and the identity of the property. While the plaintiffs have described the suit property as being situated in one block number, the documents relied upon by them do not fully correlate with the plaint schedule property.

47. Further, the plaintiffs have not placed any convincing material to establish their actual physical possession over the suit property, particularly after the alleged revocation of the permissive occupation said to have been granted in favour of the first defendant.

48. On the contrary, the first defendant has consistently asserted independent title and possession over the suit property. He has also pleaded that he had settled the property in favour of his wife under Exs.B4 and B5, thereby contending that the present interest in the property vests with the settlee.



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49. Though this specific plea was raised, the alleged present holder of interest in the property has not been impleaded as a party to the suit. In such circumstances, the objection regarding non-joinder of a necessary party cannot be brushed aside.

50. In such circumstances, where serious disputes arise with regard to title, identity, and actual possession of the suit property, and where the contesting defendant sets up an independent title adverse to the plaintiffs and defendants 2 and 3, a prayer for partition and for bare injunction against such defendant cannot be maintained without seeking a declaration of title.

51. Further, when the first defendant has pleaded that the property has been settled in favour of his wife, the person in whose favour the settlement is said to have been made ought to have been impleaded as a party. Without impleading the alleged present holder of interest in the property, the suit suffers from non-joinder of a necessary party.

52. As held by the Hon'ble Supreme Court in *Anathula Sudhakar v. P. Buchi Reddy reported in 2008 (4) SCC 594* , where title itself is in serious dispute, a suit for mere injunction is not the appropriate remedy.

53. The Trial Court, on proper appreciation of the oral and documentary evidence, has taken note of these infirmities and dismissed the suit. This Court finds no perversity, illegality, or material infirmity in the said findings warranting interference in appeal. Points 1 to 3 are answered accordingly.

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Point No. 4:

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54. In view of the findings rendered on Point Nos. 1 to 3, this Court finds no valid ground to interfere with the judgment and decree passed by the Trial Court. The judgment and decree under appeal do not suffer from any illegality, perversity, or material infirmity warranting interference by this Court and are liable to be confirmed.

55. In the result, the appeal is dismissed and the judgment and decree of the Trial Court are confirmed. Having regard to the close relationship between the parties, there shall be no order as to costs. Consequently, connected miscellaneous petition(s), if any, shall stand closed.

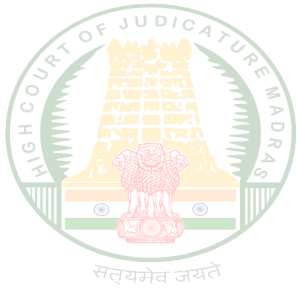
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Speaking Order /Non-speaking order

Neutral citation:Yes/No



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DR. A.D. MARIA CLETE, J

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To

1.The XVIII Additional Judge, City Civil Court, Chennai

2. The Section Officer,
V.R.Records,
Madras High Court.

PRE DELIVERY JUDGMENT
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