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A.S.No.933 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.11.2025
PRONOUNCED ON : 09.06.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

A.S. No. 933 of 2018

Loganathan, M/48 years,
Son of Palani Naicker,
D.No.1/139, Perumal Kovil Street,
Kanjapalli Village,
Annur Taluk,
Coimbatore.

..Appellant/Defendant

Vs.

1.Perumalammal,
Wife of late Palani Naicker,
D.No.1/139, Perumal Kovil Street,
Kanjapalli Village,
Annur Taluk,
Coimbatore.

2.Eawaran,
Son of late Palani Naicker,
D.No.1/139, Perumal Kovil Street,
Kanjapalli Village,
Annur Taluk,
Coimbatore.

3.Umamaheswari,
Daughter of Eswaran,
D.No.1/139, Perumal Kovil Street,
Kanjapalli Village,
Annur Taluk,
Coimbatore.

..Respondents/Plaintiffs



A.S.No.933 of 2018

PRAYER: Appeal suit filed against the Judgment and Decree dated 09.07.2018 made in O.S.No.592 of 2015 on the file of the III Additional District and Sessions Court, Coimbatore.

For Appellant(s): Mr.R.Ramaraj.

For Respondent(s): Mr.K.Myilsamy.
Mr.R.Dillikumar.

J U D G M E N T

This Appeal Suit is filed against the judgment and preliminary decree dated 09.07.2018 passed in O.S.No.592 of 2015 on the file of the III Additional District and Sessions Court, Coimbatore whereby the partition suit was decreed.

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

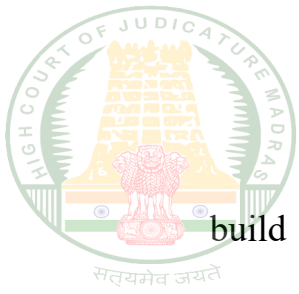
3. The case of the plaintiffs is that the 1st plaintiff Perumalammal is the wife of late Palani Naicker; the 2nd plaintiff Easwaran and the sole defendant Loganathan are the two sons of Palani Naicker through 1st plaintiff ; and the 3rd plaintiff Umamaheswari is the daughter of 2nd plaintiff . According to the plaintiffs, suit properties were the separate and self-acquired properties of late Palani Naicker.



A.S.No.933 of 2018

4. According to the plaintiffs, the 'A' Schedule properties originally an extent of 5.82 acres in S.F.Nos.434/2 and 435 of Kanjapalli Village was jointly purchased by Palani Naicker and Karuppa Naicker. By a registered partition deed dated 22.03.1971, the said properties were divided, and an extent of 2.91 acres was allotted to Palani Naicker. The plaintiffs further stated that the 'B' Schedule properties was jointly purchased by Palani Naicker and Chinna Naicker about 3 acres out of 3.47 acres in S.F.No.277/1 of Kanjapalli Village under the registered sale deed dated 14.07.1978. Subsequently, by oral partition between Palani Naicker and Chinna Naicker, the southern portion measuring 1.50 acres was allotted to Palani Naicker.

5. The said Palani Naicker purchased an extent of 0.75 acres in S.F.No. 434 of Kanjapalli village under registered sale deed dated 17.10.1969 from one Kalimuppan. The Palani Naicker purchased the said 0.75 acres as undivided portion and orally divided with other co owners. The Palani Naicker's land of an extent of 0.75 acres was subdivided as S.F.No.434/1A. The said Palani Naicker purchased an extent of 1 1/2 cent natham land under registered sale deed dated 03.04.1978 and he occupied adjacent natham land an extent of 1 cent in the Kanjapalli village and

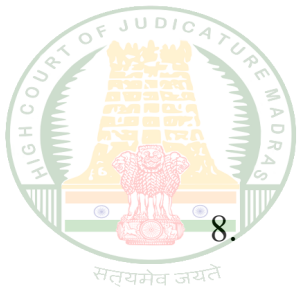


A.S.No.933 of 2018

build a titled house and resided with the plaintiffs and defendant. The government issued Natham Patta to the Palani Naicker's house in his name and the same was subdivided as Natham S.F.No. 750/10, which is the C schedule properties.

6. Thus, according to the plaintiffs, the suit properties comprised 5.16 acres of agricultural land along with the house property. Palani Naicker died intestate on 06.12.2004, leaving behind 1st plaintiff, 2nd plaintiff and Defendant as his legal heirs. Therefore, each of them became entitled to 1/3 share in the suit properties.

7. The plaintiffs further pleaded that 1st plaintiff executed a registered settlement deed dated 11.03.2011 in favour of 2nd plaintiff, settling her 1/3 share in the A-Schedule property. Consequently, 2nd plaintiff claimed 2/3 share in the A-Schedule property. They also pleaded that 1st plaintiff and 2nd plaintiff executed another registered settlement deed dated 11.03.2011 in favour of 3rd plaintiff, settling their combined 2/3 share in the B-Schedule property, described as 0.74 acres in S.F.No.277/1E.



A.S.No.933 of 2018

8. The plaintiffs claimed that after the settlement deeds, 2nd plaintiff was entitled to 2/3 share in the A-Schedule property, 3rd plaintiff was entitled to 2/3 share in the B-Schedule property, and 1st plaintiff, 2nd plaintiff and Defendant continued to have 1/3 share each in the C-Schedule property. They further stated that no partition had taken place in respect of suit schedule property and that they were in joint possession and enjoyment. They alleged that the defendant refused partition and created a false Panchayat Muchalika by using signatures obtained under pressure.

9. The plaintiffs also referred to the earlier suit filed by Defendant in O.S.No.194 of 2011, later renumbered as O.S.No.2485 of 2013, based on the alleged Muchalika. According to them, the said suit was dismissed for default on 07.07.2015. The plaintiffs pleaded that the alleged panchayat muchalika was not true, valid or binding and that it could not defeat their legal shares.

10. Case of the Defendant: The defendant admitted the relationship between the parties and did not seriously dispute Palani Naicker's original title. His principal defence was that a Panchayat Muchalika dated 5/22



A.S.No.933 of 2018

24.04.2011 had been entered into among the parties. According to him, under the said arrangement, 2nd plaintiff and Defendant were each to deposit Rs.50,000, making a total of Rs.1,00,000, in the name of 1st plaintiff, and she was to maintain herself from the interest. The defendant further claimed that the properties were thereafter to be divided between 2nd plaintiff and Defendant, and that 1st plaintiff was not entitled to claim a separate share. The defendant denied the allegation that the Muchalika was false, fraudulent or obtained by coercion. He contended that the plaintiffs have signed the Muchalika in front of the witness and that they could not later resile from the family arrangement. He therefore contended that the suit for partition was not maintainable in the form in which it had been filed. He prayed for dismissal of the suit.

11. The trial court framed the following issue “Whether the reliefs sought for in the plaint is to be granted?”

12. On the side of the plaintiffs, the 2nd plaintiff Easwaran examined himself as P.W.1 and Ex.A1 to Ex.A15 were marked. Ex.A1 is the certified copy of the partition deed dated 22.03.1971; Ex.A2 is the certified copy of the sale deed dated 14.07.1978; Ex.A3 is the certified

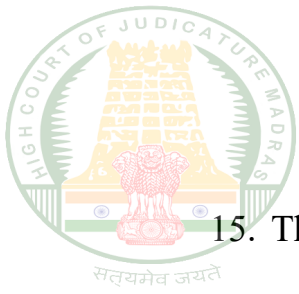


A.S.No.933 of 2018

copy of the sale deed dated 17.10.1969; Ex.A4 is the certified copy of the sale deed dated 03.04.1978; Ex.A5 is the notarized copy of Natham Patta; Ex.A6 is the death certificate of Palani Naicker; Ex.A7 is the legal heir certificate; Exs.A8 and A9 are the certified copies of the settlement deeds dated 11.03.2011; Ex.A10 is the computerized patta; Ex.A11 series are tax receipts; Ex.A12 series are water receipts; Ex.A13 series are electricity receipts; and Exs.A14 and A15 are the certified copies of the decree and judgment in O.S. No.2485 of 2013 on the file of the Principal District Munsif Court, Coimbatore.

13. On the side of the defendant, no oral evidence was let in. The defendant did not examine himself. The only document on the defendant's side was Ex.B1, a Xerox copy of an unregistered sale agreement dated 20.11.2010.

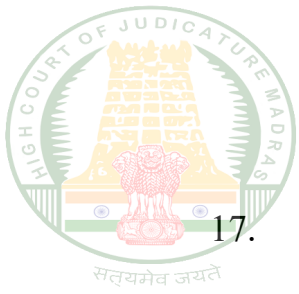
14. The trial court, on considering the pleadings and evidence, held that the suit properties originally belonged to Palani Naicker. It relied upon Ex.A1 to Ex.A5 to accept the plaintiffs' case regarding the acquisition of the properties by Palani Naicker. It further held that, after Palani Naicker's intestate death on 06.12.2004, his widow 1st plaintiff and his two sons 2nd plaintiff and Defendant each became entitled to 1/3 share.



A.S.No.933 of 2018

15. The trial court then considered the two registered settlement deeds dated 11.03.2011. Under Ex.A8, 1st plaintiff had settled her 1/3 share in the A-Schedule property in favour of 2nd plaintiff. Therefore, 2nd plaintiff became entitled to 2/3 share in the A-Schedule property. Under Ex.A9 the settlement deed dated 11.03.2011, 1st plaintiff and 2nd plaintiff had settled their combined 2/3 share in the B-Schedule property in favour of 3rd plaintiff. Therefore, 3rd plaintiff became entitled to 2/3 share in the B-Schedule property.

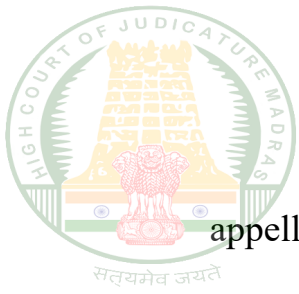
16. The trial court rejected the defendant's defence based on the alleged Panchayat Muchalika. It held that the Muchalika was unregistered and could not transfer or extinguish rights in immovable property. It also found that the Muchalika had not been proved to have been acted upon, since the defendant had not shown that the alleged amount of Rs.50,000 was deposited in favour of 1st plaintiff or that any partition was effected pursuant to it. The trial court also noticed that the earlier suit filed by the defendant, namely O.S.No.2485 of 2013, had been dismissed for default on 07.07.2015.



A.S.No.933 of 2018

17. The trial court further observed that the revenue and house-related documents, including patta, house tax receipts, water receipts and electricity receipts, did not establish any prior partition. On the contrary, they supported the plaintiffs' case that the properties continued to remain undivided. The trial court invoked Order XII Rule 6 CPC, observing that the quantum of shares was not seriously in dispute and that the suit could be disposed of on admitted shares. It passed a preliminary decree declaring that the second plaintiff is entitled to 2/3 share in the A schedule property, the third plaintiff is entitled to 2/3 share in the B schedule property, and plaintiffs 1 and 2 are each entitled to 1/3 share in the C schedule properties, with no order as to costs, with liberty to the plaintiffs to initiate final decree proceedings if the defendant failed to divide and allot their shares within two months.

18. Aggrieved by the Judgment and decree, the defendant preferred this appeal and contends in the ground of appeal that the trial Court failed to properly consider the panchayat muchalika. According to the appellant/defendant, the muchalika was executed before panchayatdars and witnesses, the plaintiffs did not deny their signatures, and therefore the burden ought to have shifted to the plaintiffs to prove coercion. The



A.S.No.933 of 2018

appellant/defendant further contends that the plaintiffs did not adduce any independent evidence to prove that the muchalika was obtained by police pressure or coercion. It is argued that no prudent person would remain silent after signing such a document if it had really been obtained by force. It is also argued that the plaintiffs did not lodge any complaint before higher police officials. The appellant/defendant also contends that the trial Court wrongly relied on the dismissal for default of O.S.No.2485 of 2013. According to the appellant/defendant, the dismissal of the earlier suit had no bearing on the merits of the present suit, and efforts may have been taken to restore that suit. Another ground is that the trial Court wrongly invoked Order XII Rule 6 CPC. The appellant/defendant submits that even if the quantum of shares was not disputed, the title and binding effect of the alleged settlement deeds and the muchalika were in dispute. Therefore, according to him, the preliminary decree was premature. The appellant/defendant further alleges that the registered settlement deeds were executed behind his back and that, had he known about them, he would have challenged them. He also contends that the trial Court ought to have placed the burden on the plaintiffs to prove that the settlement deeds were acted upon. The appellant/defendant also challenges the trial court's reliance on the dismissal for default of his earlier suit, referred to as O.S.No.194 of 2011.

10/22



A.S.No.933 of 2018

19. The learned counsel for the appellant/defendant submitted that the suit properties originally belonged to Palani Naicker and, after his death intestate, devolved upon his legal heirs. According to the appellant, there was a Panchayat Muchalika between the plaintiffs and the defendant, pursuant to which the parties divided and enjoyed the properties. Based on the said Muchalika, the defendant was in possession of his share. The defendant relied upon Ex.B1, sale agreement dated 20.11.2010, executed by the 2nd plaintiff in favour of Mohanasundram in respect of her share in the 'B' Schedule property, contending that the said document shows that the 2nd plaintiff had acted upon the Muchalika. It was further submitted that though the Muchalika was marked in O.S.No.2485 of 2013, the relevant documents were produced during the cross-examination of P.W.1 and questions were put regarding the same.

20. The learned counsel also submitted that Exs.A8 and A9, the settlement deeds, refer to oral partition and separate possession, which supports the appellant's case that the Muchalika was acted upon. According to him, the trial Court failed to frame a proper issue regarding the Panchayat Muchalika. Therefore, relying on the Muchalika, Ex.B1 and the evidence of P.W.1, the appellant contended that the defendant is entitled to 1/2 share in the suit properties.

11/22



A.S.No.933 of 2018

21. The learned counsel for the respondent/plaintiff submitted that, after passing of the preliminary decree, an Advocate Commissioner was appointed and he submitted proposals for division. The appellant filed a reply memo suggesting certain alterations to the Commissioner's proposal, which amounts to acceptance of the preliminary decree.

22. It was further submitted that the alleged Panchayat Muchalika was not marked in the present suit. The defendant did not enter the witness box and did not examine any panchayatdar, scribe, attestor or independent witness to prove the Muchalika. Even the alleged deposit of Rs.50,000/- in favour of the 1st plaintiff's mother was not proved by any receipt, bank record or other evidence.

23. The plaintiff also contended that the Muchalika was created only to defeat the plaintiffs' lawful rights. Ex.B1 sale agreement was executed on 11.03.2011, whereas the alleged Muchalika is dated 24.04.2011. Therefore, the defendant's contention that Ex.B1 was executed on the basis of the Muchalika is factually incorrect. The plaintiffs do not deny the defendant's 1/3 share in the suit properties. However, the alleged Muchalika is unproved and cannot be relied upon to claim any larger share or defeat the plaintiffs' rights.

12/22



A.S.No.933 of 2018

24. Points for determination :

The following points arise for determination:

1. Whether the Panchayat Muchalikka pleaded by the defendants is true, valid and binding on the plaintiffs?
2. Whether the suit schedule properties are in the joint possession and enjoyment of the plaintiffs and defendants, as pleaded in the plaint?
3. Whether no partition had taken place among the legal heirs of the deceased Palani Naicker?
4. Whether the plaintiffs are entitled to the relief of partition in respect of the suit schedule properties?
5. Whether the judgment and decree of the trial Court are liable to be set aside?

Discussion

Point No.1:

25. There is no serious dispute that the suit properties originally belonged to Palani Naicker. It is also not in dispute that, after his death intestate, the properties devolved upon the 1st plaintiff, 2nd plaintiff and the defendant as his legal heirs. The plaintiffs claim partition on the basis of such succession and also rely upon the settlement deeds executed in



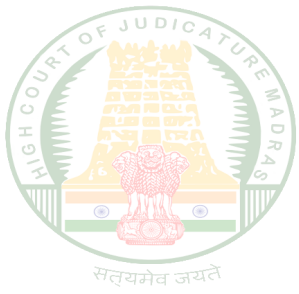
A.S.No.933 of 2018

favour of plaintiffs 2 and 3. The defendant, however, seeks to resist the suit mainly on the basis of the alleged Panchayat Muchalikka dated 24.04.2011 and claims that, under the said arrangement, he is entitled to 1/2 share in the suit properties.

26. When a party relies upon a document as the foundation of his defence, the burden is upon him to produce and prove the said document in the manner known to law. In the present case, the alleged Panchayat Muchalikka was not marked as an exhibit. Though the defendant appears to have been in possession of the document, for reasons best known to him, he did not mark the same. The defendant also did not enter the witness box. No panchayatdar, scribe, attestor or independent witness was examined to prove the execution, contents, voluntariness or binding nature of the alleged Muchalikka.

27. The mere production of the alleged Muchalikka during the cross-examination of P.W.1, and putting suggestions based on the same, cannot amount to proof of the document. P.W.1 did not admit that the alleged Muchalikka was true, valid or acted upon. Therefore, in the absence of proper proof, this Court cannot act upon the alleged Panchayat Muchalikka.

14/22



A.S.No.933 of 2018

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28. The defendant also relied upon Ex.B1, the sale agreement dated 20.11.2010, executed by the 2nd plaintiff in favour of Mohanasundaram in respect of the 'B' Schedule property. But Ex.B1 is not the Panchayat Muchalikka. Further, Ex.B1 is anterior to the alleged Muchalikka dated 24.04.2011. Hence, the contention that Ex.B1 was executed pursuant to the alleged Muchalikka cannot be accepted. P.W.1 has also stated that the sale agreement was not acted upon and that the consideration amount was returned to Mohanasundaram.

29. Therefore, the Panchayat Muchalikka pleaded by the defendant is neither proved nor legally sufficient to defeat the plaintiffs' rights. Point No.1 is answered against the defendant.

Point Nos.2 and 3:

30. The plaintiffs have pleaded that all the suit properties remained in joint possession and enjoyment of the 1st, 2nd plaintiffs and defendants.

31. In respect of the 'A' Schedule property, Ex.A8 registered settlement deed dated 11.03.2011 shows that the 1st plaintiff settled only her undivided 1/3 share in favour of the 2nd plaintiff. Though there is a
15/22



A.S.No.933 of 2018

reference to oral partition and enjoyment between the 1st , 2nd plaintiffs and defendants , the operative portion of Ex.A8 does not establish a completed partition by metes and bounds. Therefore, the 'A' Schedule property cannot be treated as already divided and continues to be available for partition.

32. Similarly, in respect of the 'C' Schedule property, no document or independent evidence has been produced to prove any earlier completed partition or separate allotment of definite portions. Hence, the 'C' Schedule property also has to be treated as joint property available for partition among the parties according to their shares.

33. However, with regard to the 'B' Schedule property, Ex.A9 the settlement deed dated 11.03.2011 executed in favour of the 3rd plaintiff, contains specific recitals that, after the death of Palani Naicker, there was an oral partition and separate enjoyment among the parties. More importantly, the schedule to Ex.A9 the settlement deed dated 11.03.2011 states that, out of the total extent of 1.11 acres, the 1st and 2nd plaintiffs settled their 2/3 share, namely 0.74 acre on the western side, in favour of the 3rd plaintiff, excluding the defendant Loganathan's 0.37 acre on the eastern side. The boundaries mentioned therein also show that definite



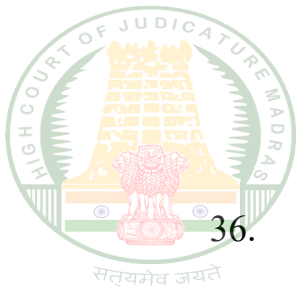
A.S.No.933 of 2018

portions had already been identified and separately enjoyed by the 1st plaintiff, 2nd plaintiff and the defendant.

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34. The trial Court observed that the undivided shares under Exs.A8 and A9 were settled in favour of the concerned plaintiffs. However, on a careful reading of Ex.A9 the settlement deed dated 11.03.2011, it is clear that, in respect of the 'B' Schedule property, the settlors dealt with a specific portion of an already divided property, with definite boundaries adjoining the western side of the defendant's portion. Therefore, the recitals in Ex.A9 the settlement deed dated 11.03.2011 cannot be ignored, especially when the plaintiffs themselves rely upon the said document.

35. Ex.B1, the sale agreement dated 20.11.2010 , though not sufficient to prove the alleged Panchayat Muchalikka, also supports this limited conclusion regarding separate possession of the 'B' Schedule property. Its schedule indicates that the western portion was treated as belonging to the 2nd plaintiff and the eastern portion to the defendant. Though the 1st plaintiff is not a party to Ex.B1, the document may be looked into only for the limited purpose of corroborating the nature of possession in respect of the 'B' Schedule property.

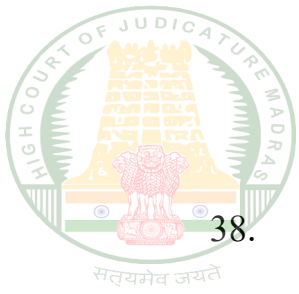


A.S.No.933 of 2018

36. Therefore, while the alleged Panchayat Muchalikka is not proved, the recitals and boundaries in Ex.A9 the settlement deed dated 11.03.2011, supported by the limited reference in Ex.B1, show that the 'B' Schedule property had already been orally divided and separately enjoyed. The plaintiffs, having relied upon Ex.A9 the settlement deed dated 11.03.2011, are bound by its recitals and cannot seek partition of the entire 'B' Schedule property as though it continued to remain joint. Accordingly, the 'A' and 'C' Schedule properties are held to be available for partition, whereas the 'B' Schedule property is held to have been already divided and separately enjoyed. Point Nos.2 and 3 are answered accordingly.

Point No.4:

37. In view of the findings under Point Nos.2 and 3, the plaintiffs are entitled to partition only in respect of the 'A' and 'C' Schedule properties. In the 'A' Schedule property, by virtue of Ex.A8, the 2nd plaintiff is entitled to claim the share settled in his favour by the 1st plaintiff, without affecting the defendant's share. In respect of the 'C' Schedule property, the 1st plaintiff, 2nd plaintiff and the defendant are entitled to their respective 1/3 shares.



A.S.No.933 of 2018

38. However, in respect of the 'B' Schedule property, Ex.A9 the settlement deed dated 11.03.2011 itself shows that the plaintiffs' side and the defendant were already in possession of definite portions. Therefore, the 3rd plaintiff, who claims under Ex.A9 the settlement deed dated 11.03.2011, cannot again seek partition in respect of the 'B' Schedule property as though it remained undivided. The relief of partition in respect of the 'B' Schedule property is therefore liable to be rejected.

39. Accordingly, the plaintiffs are entitled to a preliminary decree for partition only in respect of the 'A' and 'C' Schedule properties. The claim for partition in respect of the 'B' Schedule property is dismissed. Point No.4 is answered partly in favour of the plaintiffs and partly in favour of the defendant.

Point No.5:

40. The trial Court was right in rejecting the defence based on the alleged Panchayat Muchalikka, since the said document was not proved and was not shown to have been acted upon. However, the trial Court failed to properly consider the effect of the recitals and boundaries in Ex.A9 the settlement deed dated 11.03.2011 with regard to the 'B' Schedule property. The finding of the trial Court that the plaintiffs are

19/22



A.S.No.933 of 2018

entitled to partition in respect of the 'B' Schedule property cannot be sustained.

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41. The judgment and preliminary decree of the trial Court therefore require modification. The decree granted in respect of the 'A' and 'C' Schedule properties is confirmed. The decree granted in respect of the 'B' Schedule property is set aside. Point No.5 is answered accordingly.

42. In the result, the appeal is partly allowed. The judgment and preliminary decree dated 09.07.2018 passed in O.S.No.592 of 2015 are modified by confirming the decree for partition in respect of the 'A' and 'C' Schedule properties and by dismissing the claim for partition in respect of the 'B' Schedule property. There shall be no order as to costs. Consequently, connected miscellaneous petitions, if any, stand closed.

09.06.2026

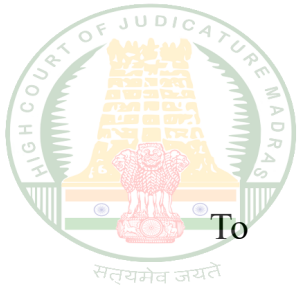
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Speaking Order /Non-speaking order

Neutral citation: Yes/No

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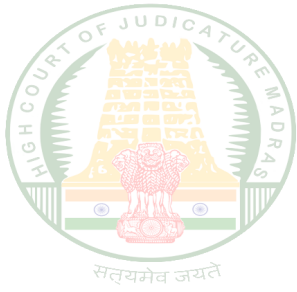


A.S.No.933 of 2018

To

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1. The III Additional District and Sessions Court, Coimbatore.
2. The Section Officer,
V.R.Records,
Madras High Court.



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A.S.No.933 of 2018

DR. A.D. MARIA CLETE, J

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PRE DELIVERY JUDGMENT
A.S. No. 933 of 2018

09.06.2026