

*S.A(MD)No.65 of 2023*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 16.02.2026

Delivered on : 17.04.2026

CORAM:

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

S.A.(MD).No.65 of 2023

and

C.M.P(MD)Nos.1821 and 15956 of 2023

and

C.M.P(MD)No.1151 of 2024

1.Kannappan

2.Kannappa Subramaniam

3.Radhakrishnan @ Chinna Radha

4.Devi

: Appellants

/Vs./

1.Marimuthu

2.Karuppiah

3.Angusamy

: Respondents

**PRAYER in S.A(MD)No. 65 of 2023** : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 14.11.2022 in A.S.No.20 of 2019 on the file of the Sub Court, Sivagangai, confirming the judgment and decree, dated 10.01.2019 made in O.S.No.226 of 2016 on the file of the District Munsif Court, Sivagangai.



S.A(MD)No.65 of 2023

WEB COPY

**PRAYER in C.M.P(M)No.1821 of 2023** : Petition filed under Order 39 Rules 1 and 2 of the Civil Procedure Code, to grant an order of interim injunction restraining the respondents herein, their men, agents or any one claiming on their behalf from in any manner interfering with their peaceful possession and enjoyment of suit property which is subject matter of O.S.No.226 of 2016 on the file of the District Munsif Court, Sivagangai, pending disposal of the above appeal.

**PRAYER in C.M.P(M)No.15956 of 2023** : Petition filed under Order VI Rule 17 of the Civil Procedure Code, to amend the description of property mentioned in the schedule to the plaint in O.S.No.226 of 2016 on the file of the District Munsif Court, Sivagangai, to the extent of six cents instead of 12 cents and more fully described in the schedule to the petition filed herewith.

**PRAYER in C.M.P(MD)No.1151 2024:** Petition filed under Order 41 Rule 21 of the Civil Procedure Code, to accept the add evidence (i) certified copy of the sale deed 1/1341/1979 on the file of the Sub Registrar Office, Sivagangai (ii) Certified copy of the sale deed 1/227/2002 on the file of the Sub Registrar Office, Sivagangai (iii) Copy of encumbrance certificate (iv) Copy of field maps additional evidence in the above second appeal.

For Appellants : Mr.S.Srinivasa Raghavan.

For Respondents : Mr.D.Senthil,  
for Mr.N.Ananda Kumar.



*S.A(MD)No.65 of 2023*

## **JUDGMENT**

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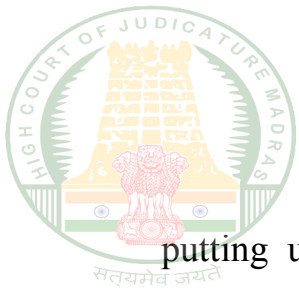
The Second appeal is directed against the judgment and decree, dated 14.11.2022 in A.S.No.20 of 2019 on the file of the Sub Court, Sivagangai, confirming the judgment and decree, dated 10.01.2019 made in O.S.No.226 of 2016 on the file of the District Munsif Court, Sivagangai.

2. The appellants are the plaintiffs. They have filed a suit in O.S.No.226 of 2016, before the District Munsif Court, Sivagangai, seeking permanent injunction restraining the defendants and their men from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit property.

3. For the sake of convenience and brevity, the parties hereinafter referred as per ranking/status before the trial Court.

4. The case of the plaintiffs, in brief, is as follows:

a) The suit property was purchased by one Aru. Gana. Kannappa Chettiar, the father of plaintiffs 1 to 3, from Palaniyandi Servai and his brother Soman Servai, sons of Subbiah Servai, under a registered sale deed dated 29.09.1944. From the date of purchase, the said Kannappa Chettiar had been in possession and enjoyment of the suit property. He had been leasing out the property for



*S.A(MD)No.65 of 2023*

putting up temporary shops during the Mariamman Temple festival and was collecting rents therefrom.

b) The said Kannappa Chettiar died intestate on 24.01.1986 and, after his demise, plaintiffs 1 to 3 became entitled to the suit property as his legal heirs and have continued to be in possession and enjoyment of the same. Since the suit property had been wrongly classified as “Sarkkar Manai”, the plaintiffs approached the Revenue Department seeking correction of the revenue records. Pursuant to the proceedings of the Headquarters Deputy Tahsildar, Kalaiyarkovil, patta for an extent of 0.05.0 hectares in Survey No.37/165 was granted in favour of the plaintiffs under Patta No.80.

c) Consequent to the grant of patta, the relevant revenue records, including Chitta and Adangal, were mutated in the names of the plaintiffs. Thereafter, the plaintiffs sold an extent of two cents out of the suit property to the fourth plaintiff under a registered sale deed dated 01.06.2009. The fourth plaintiff constructed a residential house therein and, after obtaining electricity and water service connections, has been residing there with his family.



*S.A(MD)No.65 of 2023*

WEB COPY

d) The defendants, claiming certain alleged rights over the suit property, submitted a petition before the District Collector, Sivagangai, on 13.05.2014. However, after due enquiry, the said petition came to be dismissed. The defendants had also lodged a complaint alleging land grabbing and fabrication of documents, but the said complaint was also closed after enquiry.

e) The defendants, who have absolutely no manner of right, title or interest over the suit property, attempted to interfere with the plaintiffs' peaceful possession and enjoyment of the same on 10.12.2016. The said attempt was resisted by the plaintiffs. Hence, the plaintiffs were constrained to file the above suit seeking the relief of permanent injunction.

5.The defence of the defendants, in brief, is as follows:

a) One Subbiah Servai had four sons, namely, (i) Vellaichamy Servai, (ii) Kamatchi Servai, (iii) Palaniyandi Servai and (iv) Soman Servai. The plaintiffs claim to have purchased the suit property only from Palaniyandi Servai and Soman Servai. Therefore, according to the defendants, the plaintiffs could have acquired title only to an undivided extent of 6 cents in the suit property. However, without notice to the defendants and by suppressing the true facts, the plaintiffs



had fraudulently obtained transfer of patta in their names. Aggrieved by the same, the defendants preferred an appeal before the Revenue Divisional Officer, Sivagangai and, after enquiry, the patta was restored in the name of Subbiah Servai, as it originally stood.

b) Since the plaintiffs are entitled only to an undivided extent of 6 cents, they are not entitled to seek the relief of permanent injunction in respect of the entire extent of 12 cents. The plaintiffs were never in possession and enjoyment of the suit property. Moreover, plaintiffs 1 to 3, having already conveyed the entire property purchased by them in favour of the fourth plaintiff, have no locus standi to maintain the present suit. According to the defendants, the plaintiffs have no valid cause of action and the alleged cause of action is false and untenable. Hence, the suit is liable to be dismissed.

6. The learned trial Judge, upon considering the pleadings framed the following issues :

*(i) Whether six cents in the suit property are belonging to the defendants ?*

*(ii) Whether the plaintiffs are in possession and enjoyment of the suit property ?*



S.A(MD)No.65 of 2023

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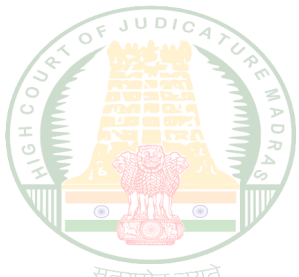
(iii) *Whether the plaintiffs are entitled to get the relief of permanent injunction ?*

(iv) *To what other reliefs, the parties are entitled to ?*

7. During trial, the plaintiffs examined four witnesses as P.W.1 to P.W.4 and exhibited ten documents as Ex.A.1 to Ex.A.10. The defendants examined three witnesses as D.W.1 to D.W.3 and exhibited 26 documents as Ex.B.1 to Ex.B.26.

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the judgment and decree, dated 10.01.2019, dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiffs preferred an appeal in A.S.No.20 of 2019 and the learned Subordinate Judge, Sivagangai, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree, dated 14.11.2022, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the plaintiffs have preferred the present second appeal.

9. Though the second appeal has been pending since 2023, the same has not yet been admitted and consequently, no substantial question of law has been formulated.



*S.A(MD)No.65 of 2023*

**C.M.P(MD)No.15956 of 2023 :**

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10 .The present Civil Miscellaneous Petition has been filed under Order VI Rule 17 of the Code of Civil Procedure seeking amendment of the plaint.

11.The plaintiffs, in the affidavit filed in support of the said petition, have stated that, due to an inadvertent mistake, the plaint schedule property was described as the entire extent of 12 cents of land, instead of restricting it to the extent of 6 cents purchased by them on the eastern side of Natham Survey No. 37/165. According to them, the plaint schedule ought to have been confined only to the said extent of 6 cents situated on the eastern side of the said survey number, along with the corresponding four boundaries relating thereto. It is further stated that the said mistake had crept in unintentionally and without any wilful or deliberate motive and that no prejudice would be caused to the respondents, if the proposed amendment is allowed.

12. The respondents have filed a counter affidavit opposing the proposed amendment and contended, inter alia, that the appellants, under the guise of amendment, are seeking to fundamentally alter the very nature and character of the suit at the stage of second appeal. According to them, the original suit was



*S.A(MD)No.65 of 2023*

one for bare injunction in respect of 12 cents of land with specific four boundaries and the claim of the plaintiffs had already been negated by both the Courts below. It is their further contention that the present application has been filed only with a view to overcome the findings rendered by the Courts below and to fill up the lacunae in the plaintiffs' case and that therefore, the petition is liable to be dismissed.

13. It is pertinent to note that, at the stage of second appeal, the plaintiffs now seek to amend the plaint by restricting their claim from 12 cents to 6 cents. Originally, the suit proceeded on the footing that the plaintiffs were in possession and enjoyment of the entire extent of 12 cents. By now restricting the claim to 6 cents, the plaintiffs are attempting to set up an altogether different case, namely, possession over an unidentified portion within a larger extent of property.

14. It is well settled that an amendment which alters the fundamental character of the suit cannot ordinarily be permitted, particularly at the appellate stage. As rightly pointed out by the learned counsel for the defendants, the defect in the plaintiffs' case is not merely one of incorrect description of extent, but goes to the very root of the claim of exclusive possession. Mere reduction of the extent from 12 cents to 6 cents would not cure the inherent legal defect in the plaintiffs'



*S.A(MD)No.65 of 2023*

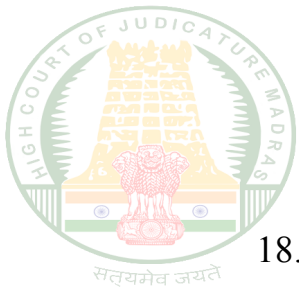
case, especially when the plaintiffs admittedly claim only an undivided share and have not identified any specific 6 cents by metes and bounds.

15. Moreover, a second appeal under Section 100 of the Code of Civil Procedure is confined only to substantial questions of law. Permitting the proposed amendment at this stage would necessarily require a fresh factual enquiry and reopening of the entire case, which is impermissible in a second appeal.

16. Considering the above, this Court has no hesitation to hold that the present petition is absolutely devoid of merits and the same is liable to be dismissed. Accordingly, the amendment petition stands dismissed.

**C.M.P(MD)No.1151 of 2024 :**

17. The present Civil Miscellaneous Petition has been filed under Order XLI Rule 27 of the Code of Civil Procedure seeking reception of additional evidence.



*S.A(MD)No.65 of 2023*

18. The defendants, in the affidavit filed in support of the petition, have stated that in the sale deed executed in favour of the fourth plaintiff, it has been recited that an extent of 2 cents in Survey No.37/165 and 4 cents in Survey No.37/164 were conveyed. According to the defendants, plaintiffs 1 to 3 are not possessed of any property in Survey No.37/164. It is their further case that the entire extent in Survey No.37/164 measures only 7½ cents, out of which one Chellathurai, Pandi and Rajendran had purchased 2 cents and one Rajalakshmi had purchased 5½ cents and therefore, the plaintiffs could not have conveyed any property in the said survey number. The defendants have further stated that they have produced certain documents, namely, sale deeds, encumbrance certificates and field map, to substantiate the said contention and prayed that the same may be received as additional evidence.

19. The plaintiffs have filed a counter affidavit disputing the averments made in the affidavit filed in support of the petition and contended that the petitioners have not satisfied any of the requirements contemplated under Order XLI Rule 27 of the Code of Civil Procedure. It is their further contention that the petitioners have not explained the relevancy or necessity of the proposed documents for adjudication of the dispute involved in the present case and that therefore, the petition is liable to be dismissed.



*S.A(MD)No.65 of 2023*

WEB COPY

20. In the present case, the dispute relates to the property situated in Survey No.37/165 and not Survey No.37/164. Though the plaintiffs have alleged that the fourth plaintiff purchased 2 cents in Survey No.37/165 and 4 cents in Survey No. 37/164, the specific case of the defendants is that plaintiffs 1 to 3 had already conveyed the entire property purchased under Ex.A.1.

21. As rightly contended by the learned counsel for the plaintiffs, when the present dispute primarily concerns Survey No.37/165, the attempt to establish that Survey No.37/164 was owned by certain third parties is not relevant or necessary for deciding the issues arising in the present case.

22. Moreover, the defendants have not established the existence of any of the conditions contemplated under Order XLI Rule 27 of the Code of Civil Procedure so as to warrant reception of additional evidence at the appellate stage. Hence, this Court concludes that the present petition is devoid of merits and is liable to be dismissed. Accordingly, the above Civil Miscellaneous Petition stands dismissed.

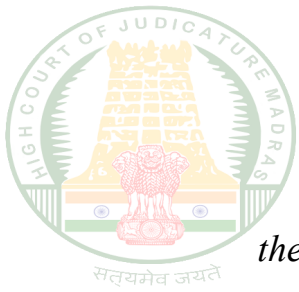


S.A(MD)No.65 of 2023

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23. Before entering into further discussion, it is necessary to refer the mandate of Hon'ble Supreme Court for High Courts in deciding the second appeal under Section 100 of the Civil Procedure Code, given in the case of ***Gurnam Singh (dead) by LRs., and others Vs. Lehna Singh (dead) by LRs.,*** reported in ***AIR 2019 SC 1441***, that the jurisdiction of the High Court in an appeal under Section 100 of the Code of Civil Procedure is strictly confined to the case involving substantial question of law and the relevant passage is extracted hereunder:

*“18. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to re-appreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. We have noticed and even as repeatedly observed by this Court and even in the case of *Narayanan Rajendran v. Lekshmy Sarojini*, (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under Section 100 of*



S.A(MD)No.65 of 2023

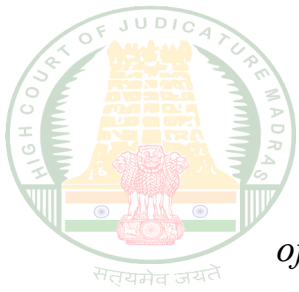
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*the CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law.”*

24. The Hon'ble Supreme Court in the case of ***Chandrabhan Vs. Saraswati and others*** reported in ***2022 SCC OnLine SC 1273*** has specifically held that right of appeal is not automatic and right of appeal is conferred by statute and when statute confers a limited right of appeal restricted only to cases which involve substantial questions of law, it is not open to the High Court to sit in appeal over the factual findings arrived at by the First Appellate Court and the Hon'ble Supreme Court summarized the principles relating to Section 100 C.P.C., which are as follows;

*“(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.*

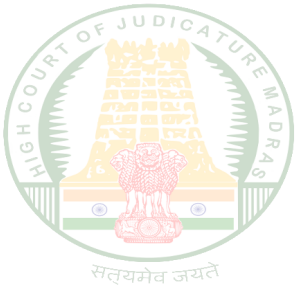
*(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision*



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*of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.*

*(iii) The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."*



*S.A(MD)No.65 of 2023*

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25. Bearing the settled legal position in mind, let us proceed with the present case.

26. It is not in dispute that the suit property originally belonged to Subbiah Servai. It is also not in dispute that the Subbiah Servai had four sons, (i) Vellaichamy Servai, (ii) Kamatchi Servai (iii) Palaniyandi Servai (iv) Soman Servai. It is the specific case of the plaintiffs that Kannappa Chettiar, father of the plaintiffs 1 to 3 purchased the suit property from Palaniyandi Servai and Soman Servai by virtue of sale deed, dated 29.09.1944 under Ex.A.1.

27. It is the further case of the plaintiffs that they have obtained patta in respect of the suit property in Patta No.80; that they have sold two cents of land in the suit property to the fourth plaintiff by virtue of a sale deed, dated 01.06.2009 under Ex.A.4 and the fourth plaintiff constructed a house and is residing therein, that the plaintiffs have been in possession and enjoyment of the suit property and that since the defendants had attempted to interfere, the plaintiffs were forced to file the above suit.



*S.A(MD)No.65 of 2023*

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28. As rightly pointed out by the learned counsel for the defendants, it is evident from Ex.A.1 sale deed standing in the name of Kannappa Chettiar, father of the plaintiffs 1 to 3, that he purchased 2/4 shares in the suit property. According to the defendants, father of the plaintiffs 1 to 3 had only purchased undivided 6 cents in the suit property.

29. The third plaintiff in his cross examination would admit that Vellaichamy Servai and Kamatchi Servai, two other sons of Subbiah Servai had not subscribed their signatures in Ex.A.1 sale deed and that Ex.A.1 reveals that the sale is only with respect to undivided 2/4 shares, but the suit was filed for the entire extent of 6014 sq.feet.

30. It is pertinent to note that the learned counsel appearing for the appellants would fairly concede that the Kannappa Chettiar had only purchased 6 cents of land, but the plaintiffs filed the suit for the entire extent inadvertently and that therefore, the appellants filed a petition under Order 6 Rule 17 of C.P.C in C.M.P(MD)No.15956 of 2023, to amend the plaint for restricting the extent of the suit property as 6 cents instead of 12 cents.

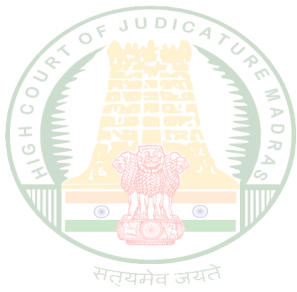


*S.A(MD)No.65 of 2023*

31. A cursory perusal of Ex.A.1 would reveal that the purchaser Kannappa Chettiar had only purchased common 2/4 shares in the suit property referred therein. Considering the above, the Courts below have rightly come to a finding that the father of the plaintiffs 1 to 3 had only purchased undivided 6 cents in the suit property.

32. As already pointed out, the plaintiffs filed the suit claiming permanent injunction in respect of 12 cents of land by describing the property with the specific four boundaries and alleging interference of the defendants for the entire extent. However, it is admitted that the father of the plaintiffs 1 to 3 had only purchased only 2/4 shares in the suit property. Though the plaintiffs claimed that their father had purchased the eastern portion of the property, the evidence on record does not clearly establish the exact identity of the land in their possession.

33. According to the plaintiffs, as already pointed out, they have sold two cents of land on the eastern side to the fourth plaintiff. However, the second plaintiff while giving evidence has stated that some more land is available on the western side of the property. The above contradictory evidence creates serious uncertainty regarding the actual extent and location of the property claimed by the plaintiffs.



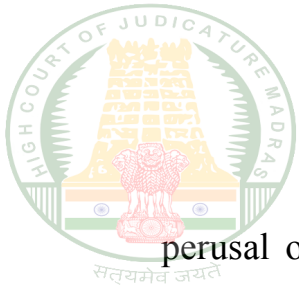
*S.A(MD)No.65 of 2023*

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34. Even assuming that the sale in favour of the said Kannappa Chettiar relates to the eastern portion, the plaintiffs have not produced any material to show the precise demarcation of the alleged 6 cents in a suit for bare injunction. The plaintiffs must clearly establish their possession of the suit property. When the identity and extent of the suit property are uncertain, the Court cannot grant a decree for injunction.

35. As rightly contended by the learned counsel appearing for the defendants, the contradiction on the evidence of the defendants regarding location and extent of the land would seriously affect the plaintiffs' case. Considering the evidence available on record, the Courts below have rightly come to a conclusion that the plaintiffs have not proved their claim and hence, they are not entitled to get the reliefs of permanent injunction and the same cannot be faulted.

36. It is pertinent to note that the appellants have not shown that any material evidence was ignored by the first appellate Court or that there was no evidence at all. It is not their case that any wrong inference had been drawn by the first appellate Court from the proved facts by applying law erroneously. On



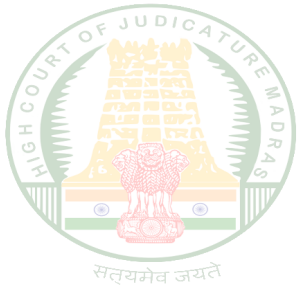
*S.A(MD)No.65 of 2023*

perusal of the judgments of the Courts below and as rightly contended by the learned counsel for the defendants, no question of law much less Substantial Question of Law is made out. Hence, no substantial question of law is made in the second appeal, the same is liable to be dismissed. Considering the facts and circumstances of the case, the parties are to be directed to bear their own costs.

37. In the result, the Second Appeal is dismissed, confirming the concurrent judgments of the trial Court made in O.S.No.226 of 2016 on the file of the District Munsif Court, Sivagangai, and in A.S.No.20 of 2019 on the file of the Sub Court, Sivagangai. C.M.P(MD)No.15956 of 2023 and 1151 of 2024, are dismissed. C.M.P(MD)No.1821 of 2023, is closed. Parties are directed to bear their own costs.

**17.04.2026**

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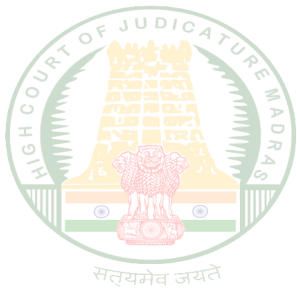


*S.A(MD)No.65 of 2023*

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**To:**

- 1.The Sub Court, Sivagangai
- 2.The District Munsif Court, Sivagangai.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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*S.A(MD)No.65 of 2023*

**K.MURALI SHANKAR,J.**

DAS

Pre-delivery Judgment made in  
S.A.(MD).No.65 of 2023  
and  
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and  
C.M.P(MD)No.1151 of 2024

Dated: 17.04.2026