

SA(MD). No.237 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.04.2026

Delivered on : 05.06.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

SA(MD). No.237 of 2017

1. Krishnapillai (Died), ... Appellant / Appellant / Plaintiff
2. Rugmini(Died),
3. Santhosh Kumar,
4. Harikumar,
5. Sunil Kumar,
6. Minikumari, ... Appellants

(A2 to A6 are brought on record as LR's deceased
sole appellant vide Court order dated 21.02.2020)

Vs.

1. Anilkumar,
2. Unni,
3. Subathira,
4. Rathinamma, ... Respondents / Respondents 1, 3to 5/
Defendants



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PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 20.01.2017 passed in A.S.No. 8 of 2014 on the file of Subordinate Judge, Kuzhithurai, confirming the judgment and decree dated 28.10.2013 passed in O.S.No.566 of 2004 on the file of the I Additional District Munsif, Kuzhithurai.

For Appellants : Ms.J.Anandhavalli,

For Respondents : Mr.K.N.Thampi, for R1

JUDGMENT

The plaintiff, who suffered concurrently before the trial Court and the first appellate Court, in a suit for permanent injunction, is the first appellant herein. The appellants 2 to 6 are the legal heirs of the deceased first appellant / plaintiff.

2. The second appeal was admitted by me on 17.04.2026 on the following substantial questions of law:

I. Is not the Courts below misread Exhibit A.4 insofar as the right of the appellant's mortgage right is concerned?



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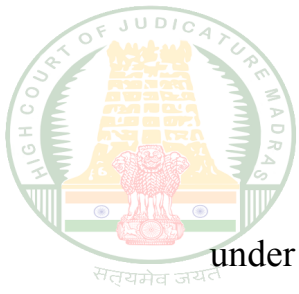
II. Is not the Courts below committed an error in dismissing the suit without lookin into the basic fact that the decree for redemption in respect of $\frac{1}{4}$ of 90 cents in Survey No.2521 having not been redeemed and delivering is in respect of B schedule of 60 cents, in O.S.No.393 of 1982 which there is no mortgage?

3. I have heard Ms.J.Anandhavalli, learned counsel for the appellants, legal representatives of the plaintiff / first appellant and Mr.K.N.Thampi, learned counsel for the contesting first respondent/ first defendant.

4. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

5. For better appreciation and adjudication of the second appeal, the following relevant facts are culled out:

The property in old survey No.2521, R.S.No.147/1A in Methukummal village, originally belonged to one Puthalathu Veedu,



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under partition deed dated 28.07.1975, to which, the plaintiff was a party, the plaintiff being allotted B schedule properties to the said partition deed. According to the plaintiff, his entitlement was half jenmom right and $\frac{1}{4}$ mortgage right, totalling $\frac{3}{4}$ th share in old survey No.2521. The plaintiff claimed to be in possession of the suit property, paying land tax. The plaintiff also put up a building after obtaining sanction from the local panchayat and was residing there, by paying building taxes to the panchayat. Referring to the partition deed, the plaintiff also contends that parents of the plaintiff had a mortgage right, which was released in favour of the plaintiff. The plaintiff earlier filed a suit in O.S.No.398 of 1982 for partition and other reliefs against the first defendant, who was the fifth defendant in the said suit. A preliminarily decree was passed and thereafter a final decree was also passed on 12.10.1999. In the said suit, the second defendant herein was the first defendant and the third defendant's father was the second defendant. The original extent of land in old survey No.2521 is 90 cents, however, after re-survey, the available extent is only 78 cents. An Advocate Commissioner was appointed in O.S.No.398 of 1982 and plot Nos.A and A1 were allotted to the plaintiff having a total area of 39 cents and his $\frac{1}{4}$ mortgage right, according to the



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plaintiff, falls in plot No.B of an extent of 19.5 cents. The plaintiff is in possession of the said plot No.B and the mortgage had also become time barred and thus the plaintiff cannot be even evicted except by due process of law. Alleging that the first defendant is attempting to forcibly dispossess from the plaintiff, from plaint A schedule property, the suit came to be filed.

6. The first defendant filed a written statement contending that the partition deed relied on by the plaintiff does not in any manner affect the right of the first defendant to plaint A schedule property. The plaintiff, though party to the partition deed, was not allotted any such survey number. The claim of the plaintiff to be entitled to half jenmon right and 1/4th mortgage right title, totalling 3/4th share over the entire extent is denied. O.S.No.398 of 1982 is a collusive suit between the plaintiff and his sister. Proper and necessary parties were not impleaded in the said suit in O.S.No.398 of 1982. This defendant's right was upheld in O.S.No.567 of 1993 and the same was confirmed in A.S.No.68 of 1998. The father of the third defendant, viz., Chandrasekharan Nair and Somasekharan Nair were defendants 2 and 1 in O.S.No.398 of 1982 and



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they were also entitled to 1/4th right in the plaint schedule property, survey number which has been recognized and a preliminarily decree as well as final decree granted and allotted plot No.B, which is now the suit property allotted to Chandrasekharan Nair and Somasekharan Nair. While disposing of O.S.No.398 of 1982, the Court besides granting a preliminarily decree also directed redemption of their share in O.S.No. 853 of 1969. Plot No.B in O.S.No.398 of 1982 was taken delivery by Somasekharan Nair in execution of the decree in O.S.No.853 of 1969 on 04.10.2001. The claim of the plaintiff is that a mortgage right continues to subsist over the plaint A schedule property is unsustainable. Eversince the delivery were effected on 04.10.2001, the first defendant, being alienee of the decree holder has been in absolute possession and enjoyment of the plaint A schedule property as the absolute owner. The plaintiff is bound by the decree and consequent delivery in O.S.No.853 of 1969. The plaintiff is not in possession of the suit schedule property and it is only the first defendant, who is in possession, and is entitled to an extent of 43 ½ cents, which is inclusive of plaint A schedule property. The delivery alleged to have been effected on 28.01.2001 is only a paper delivery and no actual delivery was effected on land. Since the vendor of



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the first defendant took possession only from the parents of the present plaintiff, details of the mortgage were also not provided in the plaint. Hence, the first defendant sought for dismissal of the suit contending that there is no merit in the claims put forth and there was also no cause of action for seeking a relief of injunction.

7. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and 8 documents were marked as Ex.A1 to Ex.A8. On the side of the defendant, the first defendant examined himself as D.W.1 and 12 documents were marked as Ex.B1 to Ex.B.12.

8. The trial Court, on appreciation of pleadings, oral and documentary evidence held that the first defendant was in possession of the suit property and the plaintiff is not entitled to the relief of permanent injunction, dismissed the suit.

9. Though the plaintiff preferred an Appeal in A.S.No.8 of 2014 before the Subordinate Court, Kuzhithurai, the first appellate Court concurred with the findings of the trial Court and consequently,



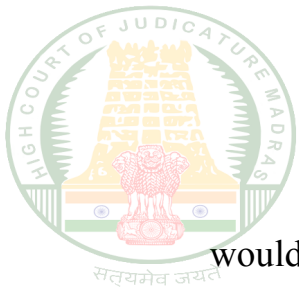
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dismissed the appeal.

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10. As against the concurrent findings of the trial Court as well as the first appellate Court, the present second appeal has been filed.

11. Ms.J.Anandhavalli, learned counsel for the appellants would harp on the fact that under the partition deed dated 28.07.1975, which has been exhibited in Ex.A4, besides half share, an additional 1/4th mortgage right was also assigned to the plaintiff, which enlarged the right of the plaintiff to 3/4th in the whole survey No.2521. She would further contend that the Courts below have not appreciated the case of the plaintiff that he was claiming only under as a mortgagee to a portion of survey No.2521 and the suit in O.S.No.398 of 1982 was only in respect of 60 cents belonging to the father of the plaintiff, viz., Mathavan Pillai, which was allotted to him in O.S.No.853 of 1969 and it did not include 1/4th right or even the mortgage property in the first place, which was to be redeemed by the respondents. Insofar as the delivery effected in E.P.No.97 of 2001 is concerned, on which strong reliance was placed by the learned counsel for the respondents, Ms. J. Anandhavalli



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would contend that the delivery was only in respect of the partition decree and not in respect of the mortgaged property. Referring to the observation of the Courts below, the Court Amin has located 22 ½ cents was identified and delivered, she would state that the Courts below have not appreciated Ex.B8 and the Courts have incorrectly interpreted Ex.A4, omitting the mortgage right that was given to the appellants/plaintiff.

12. The learned counsel for the appellants, would also take me through Ex.A4 dated 28.07.1975, where life interest was given to the parents of the plaintiff, including a right to put up construction. Referring to Ex.A5 and more specifically B schedule mentioned, in and by which specific property was allotted to the plaintiff, she would state that a total extent of 14 ¾ cents has been allotted to the plaintiff. Referring to Ex.B8, the proceedings in E.P.No.97 of 2001, she would contend that the final decree was only in respect of 22 ½ cents in respect of alleged mortgage right of the plaintiff and referring to the schedule portion, it is her contention that schedule only reflected entire 90 cents in survey No.2521 and not 22 ½ cents in respect of which, the respondents claim that their vendors were put in possession. She would point out that



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even boundaries have not been set out in the schedule and she would contend that the report of the surveyor or Commissioner does not entitle the respondents to even contend that they were put in possession of 22 ½ cents.

13. Ms.J.Anandhavalli, learned counsel, relying on Ex.B9, which is an obstruction application filed by the plaintiff in E.A.No.232 of 2001 in E.P.No.97 of 2001 in O.S.No.853 of 1969, in the said execution proceedings, would reiterate her submission that the said execution proceedings were not in respect of the mortgage rights, viz., 1/4th share, but, only the partition decree passed in O.S.No.853 of 1969, and that the execution petition filed and delivery recorded in favour of the first defendant, the alienee of the decree holder was only a paper order, Ms. J. Anandhavalli, learned counsel, would contend that the plaintiff has been in continuous physical possession and enjoyment of the suit property and that the Courts below were swayed by the earlier proceedings, particularly E.P. No.97 of 2001 and the dismissal of the obstruction petition filed by the plaintiff.



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14. It is also her submission that in the said final decree proceedings, the plaintiff was not impleaded as a party / respondent and the said proceedings will not bind the plaintiff, even though the E.P was terminated on 08.09.2006.

15. Per contra, Mr.K.N.Thampi, learned counsel for the first respondent / first defendant would firstly contend that in a suit for bare injunction seeking to restrain the defendants from interfering with the alleged possession being with the plaintiff, it is the duty of the plaintiff to prove possession, being with the plaintiff on the date of filing of the suit. Inviting my attention to Ex.A4-partition deed, referring to B schedule to the said partition deed allotting 14 $\frac{3}{4}$ cents alone to the plaintiff. Mr.K.N.Thampi, learned counsel, would state that the plaintiff cannot attempt to improve his case during trial and claim an extent over and above said 14 $\frac{3}{4}$ cents. In any event, it was contended that, in respect of the excess extent claimed by the plaintiff, the plaintiff failed to produce any documentary evidence, particularly any sale deed vesting title in



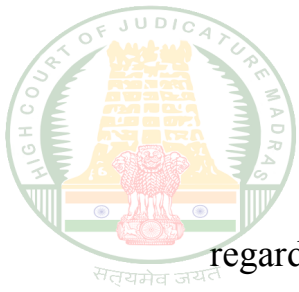
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favour of the plaintiff.

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16. Pointing out to the judgment in O.S.No.853 of 1969, which is not only for redemption, Mr.K.N.Thampi, would state that the vendors of the first defendant, namely the parents of the plaintiff, were parties to the said suit in O.S. No.398 of 1982 and the suit was filed only pending O.S.No.853 of 1969 and subsequently O.S.No.853 of 1969 was decreed and 22 ½ cents was allotted to the predecessors in title of the first defendant, viz., Chandrasekharan Nair and Somasekharan Nair. He would further state that the plaintiff, vide Ex.B9, filed an obstruction application in E.A. No.232 of 2001 in E.P. No.97 of 2001 in O.S. No.853 of 1969, obstructing to the delivery of the property in favour of the first defendant. He would further state that the said E.A.No.232 of 2001 was dismissed and the said order has become final, with no appeal or revision has been preferred therefrom. It is therefore the submission of Mr.K.N.Thampi that it is not open to the appellants to turn around and would contend that his entitlement is 19 ½ cents and not 14 ¾ cents. As

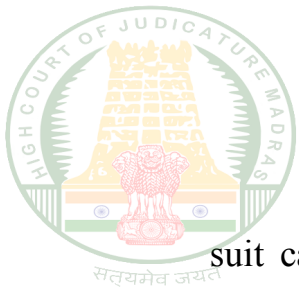
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regards the arguments of Ms.J.Anandhavalli, that the plaintiff was not a party, he would state that the plaintiff was not a necessary party and he invites my attention to the findings of the trial Court in O.S.No.566 of 2004 more specifically in paragraph No.11 and contended that the trial Court specifically exempted the legal heirs of Madhavan Pillai, from being impleaded. He would therefore state that there is no merit in the submission of the learned counsel for the appellants that since the appellants were not parties to the said proceedings, the judgment and decree would not bind him.

17. Mr.K.N.Thampi, would contend that in any event, his parents were parties, the plaintiff was fully aware of the proceedings and despite the same, the exemption granted therein were also not put in challenge. That apart, Mr.K.N.Thampi, would also invite my attention to Ex.B11, the suit filed in O.S.No.376 of 2010 by the plaintiff's daughter herself, one Minikumar. The suit was filed against the first respondent/ first defendant, viz., Anilkumar. In the said suit also, the plaintiff's daughter prayed for permanent injunction to restrain the first respondent herein from interfering with the alleged possession. After elaborate trial, the



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suit came to be dismissed and the plaintiff's daughter did not file any appeal therefrom.

18.Mr.K.N.Thampi, would further contend that once the mortgage was redeemed by way of redemption decree, the plaintiff cannot continue to claim that the mortgage was subsisting. He would further state that when the title of the plaintiff itself is under a cloud, the plaintiff ought not to have chosen to file a suit for bare injunction, more so, without seeking the relief of declaration. He would therefore state that even on this ground, the suit was liable to be dismissed, and rightly so, the Courts below dismissed the suit. There is no perversity in the findings arrived at by the Courts below warranting interference in the second appeal.

19. In support of his contentions, Mr.K.N.Thampi, has relied on the following decisions:

(i) Judgment of the Hon'ble Supreme Court in ***Anathula Sudhakar v. P.Buchi Reddy (dead)*** reported in ***2008-4-SCC-594***;

(ii) Judgment of this Court in ***Renganathan (died) v. Loganathan*** reported in ***2022-5-CTC-106***;



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(iii) Judgment of the Hon'ble Supreme Court in ***Rajeev Gupta v.***

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Prashant Garg reported in ***2025-SCC Online SC-889***; and

(iv) Judgment of this Court in ***S.A.No.1255 of 2004***

(M.Krishnapillai (died) v. Anilkumar dated 19.07.2024. In fact the said second appeal was filed at the instance of the plaintiff / first appellant herein and subsequent to the demise of the plaintiff, his legal heir filed against the first respondent herein. The said second appeal was challenging the concurrent findings rendered in favour of the first respondent herein in O.S.No.569 of 1993 and in A.S.No.68 of 1998. The said suit was filed by the first respondent to declare his right and also for consequential permanent injunction, to restrain the appellants from estopping his peaceful possession and enjoyment.

20. I have carefully considered the submissions advanced by the learned counsel for the parties.

21. It is seen from the judgment in the said second appeal that the very same defence was taken by the appellants therein. I find that the property which is the subject matter of the lis in the said suit schedule



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was only 5 cents forming part of the suit property, out of the total extent.

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22. The specific case of the plaintiff as seen from the plaint is that schedule B property was allotted to him under the partition deed – Ex.A4 dated 28.07.1975. It is vehemently contended by Ms.J.Anandhavalli that there are averments in the plaint claiming right under B schedule property. There is further specific reference to 1/4th mortgage right over the entire suit property as well. In fact, the claim to be in possession is only based under the said mortgage right, which falls in plot No.B of final decree in O.S.No.398 of 1982, which is a suit filed by the plaintiff himself for partition and other relief.

23. According to the plaintiff, it was specifically alleged in the final decree proceedings that the 1/4th mortgage right fell within Plot No. B measuring 19½ cents. On examining the partition deed – Ex.A4, I find that schedule B property to the said partition deed was allotted to the plaintiff. Tamil translation copy of Ex.A4, which was in Malayalam has been filed as Ex.A5. It is seen that Schedule ‘B’ to the said partition deed



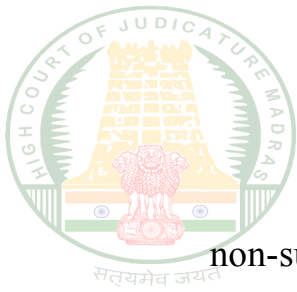
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sets apart a total extent of 14³/₄ cents alone, and does not make any mention of the alleged mortgage interest said to have been conveyed in favour of the plaintiff. Further, the father and mother of the plaintiff were parties in O.S.No.853 of 1969, which was filed for redemption as well as partition. The vendors of the first defendant / first respondent were also parties to the said proceedings. The final decree in I.A.No.712 of 1982 came to be passed on 28.06.2001, granting a 1/4th share right of redemption in favour of the vendors of the first defendant / first respondent, who are the plaintiffs in O.S.No.853 of 1969. Pursuant to the said final decree, execution petition was also filed for recovery of possession and in the said proceedings, the plaintiff filed E.A.No.232 of 2001 with a view to obstruct to the delivery of property in favour of the vendors of the first defendant / first respondent. However, the obstruction application came to be dismissed, and the plaintiff allowed the said order to attain finality, by not preferring any appeal therefrom. Further, in the execution petition, it is seen that the possession was handed over, delivery was recorded and the execution proceeding itself was terminated and the said proceedings have also become final. It is however contended by Ms. J. Anandhavalli that the alleged delivery was



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only a paper delivery, since the plaintiff was already in continuous possession. The claim of the plaintiff is restricted to the alleged subsisting 1/4th mortgage right. However, there has been a decree for redemption which has culminated in final decree proceeding as well and the execution petition has also been terminated. Though it is contended by the learned counsel that he is not a party to the suit, when his father was admittedly a party, it would certainly bind the plaintiff and it cannot be argued by the appellants that the final decree or the execution proceedings will not bind the plaintiff, because he was not a party in his personal capacity. Further on the very same grounds, daughter of the plaintiff also filed a suit in O.S.No.376 of 2010, which came to be dismissed after elaborate trial. From the oral and documentary evidence adduced by the parties, it is also clear that the portion allotted to the plaintiff is A and A1 and not portion of B. The evidence in this regard has also been rightly appreciated by the trial Court as well as the first appellate Court in coming to the conclusion that the plaintiff was never in possession of portion of B, which is now in suit property. The Courts have also found that it is only the first defendant, who was in possession of portion of B, viz., the suit property and therefore, the plaintiff was



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non-suited to the discretionary relief of permanent injunction.

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24. The first appellate Court also, on an independent assessment of the evidence adduced at trial, came to the conclusion that the plaintiff was entitled only to 14 $\frac{3}{4}$ cents and not 19 $\frac{1}{2}$ cents and the suit property was not under the occupation of the plaintiff. Having attempted to obstruct the delivery of possession in the final decree proceedings and having failed, and the said order having attained finality, I am unable to see how the appellants can persist with or justify the very same claim in subsequent proceedings. The first appellate Court also rightly pointed out that no right was claimed by the plaintiff in the said application over the 1/4th mortgage right, and it is only for the purposes of the present litigation that the plaintiff has raised the contention that he is entitled to 19 $\frac{1}{2}$ cents, and not merely 14 $\frac{3}{4}$ cents.

25 All three cases, viz., **Anathula Sudhakar's** case, **Renganathan's** case and **Rajeev Gupta's** case which have been relied on by Mr.K.N.Thampi, are decisions for the proposition that a suit for bare injunction is not maintainable, when title to the property is under a cloud

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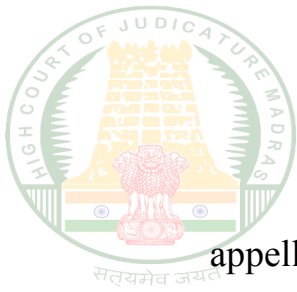


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and that in such circumstances, necessarily, the plaintiff will have to seek for a declaratory relief along with the applicable relief of possession and enjoyment, as the case may be.

26. Though it has been argued by Ms.J.Anandhavalli, learned counsel, that there is no cloud on title, when there has been prior litigation and parents of the plaintiff themselves were parties to the earlier proceedings and the plaintiff also claims a larger extent of lands, viz., 19 ½ cents, over and above his entitlement of 14 ¾ cents on the basis of a subsisting mortgage right, in such circumstances, I am unable to countenance the argument of Ms.J.Anandhavalli, there is no serious cloud on title of the plaintiff. The plaintiff's title has been disputed throughout. At least after the written statement was filed in the present suit, the plaintiff ought to have amended the plaint. Applying the above decision to the facts of the present case, I am constrained to hold that the suit for bare injunction, without seeking the relief of declaration, is not maintainable.

27. The findings rendered by the trial Court as well as the first



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appellate Court are based on the pleadings, appreciation of oral and documentary evidence adduced by the parties and I do not see any mis-reading of evidence. I also do not find that the findings are based on no evidence also. In such circumstances, this Court, in exercise of jurisdiction under Section 100 CPC, is not entitled to interfere with the concurrent findings of the Courts below.

28. In view of the above, I am unable to find any merit in the second appeal warranting interference with the concurrent findings of the Courts below. Substantial questions of law are answered against the appellants.

29. In fine, this second appeal is dismissed. There shall be no order as to costs.

05.06.2026

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TO

1. The Subordinate Judge,
Kuzhithurai.
2. The I Additional District Munsif,
Kuzhithurai.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J.

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**Pre- delivery judgment made in
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05.06.2026