

SA(MD). No.353 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 21.04.2026

Delivered on : 30.04.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

SA(MD). No.353 of 2017
and
CMP(MD)No.7528 of 2017

S.Paulraj (Died)

... Appellant/ Respondent /
Plaintiff

2.Padmavathi

3.P.Alagarsamy

4.Vijayalakshmi

5.Pechiyammal

6.Rajalakshmi

7.Sundharakumar

8.Meenadevi

A 2 to A8 are brought on record as LR's of deceased
sole appellant vide Court order dated 23.11.2023.

Vs.

1.K.Subburaman

2.S.Manimegalai

... Respondents / Appellants/
Defendants

3.Mohammed Abdullah @ Naresh

4.K.Chitra

5.Jenifer

(R3 to R5 are also brought on record as LR's of deceased
sole appellant vide Court order dated 23.11.2023.



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PRAYER :-Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment of the Sub court, Virudhunagar, passed in A.S.No.10 of 2014 dated 08.08.2016 reversing the decree and judgment of the District Munsif Court, Virudhunagar, passed in O.S.No.210 of 2008 dated 19.11.2013.

For Appellants : Mr.A.Sivaji

For Respondents : Mr.M.Kannan for R1 & R2

: No appearance for R3 to R5

JUDGMENT

The Legal Representatives of the plaintiff, in O.S.No.210 of 2008, are the appellants herein.

2. I have heard Mr.A.Sivaji, learned counsel for the appellants as well as Mr.M.Kannan, learned counsel for the respondents 1 and 2.

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



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4. The second appeal was admitted on 06.10.2017, on the following substantial questions of law:

“ (a) Is not the judgment and decree of the lower appellate Court vitiated due to the non-framing of the proper and relevant points for consideration as it is mandatory under Order 41 Rule 31 C.P.C?

(b) Is the lower appellate Court correct in law in allowing the appeal based on the oral sale, when such an oral sale was not proved in a manner known to law?

(c) Is the lower appellate Court justified in law by holding that the 1 defendant established his title based on oral sale of immovable property, when section 17 of the Registration Act prohibits such sale?

(d) When the properties, covered by the registered deed, are found as per the claim of the plaintiff, can the lower appellate court reject the suit on imaginary grounds?

(e) Is not the findings of the lower appellate court perverse, based on no material and contrary to the materials on record?

(f) The lower appellate court being the last court, as far as the appreciation of facts and evidence are



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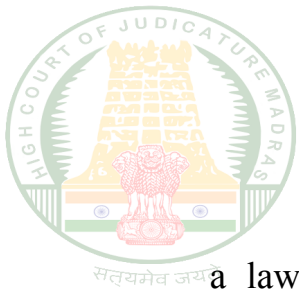
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concerned, erred in law in not doing so in this case while allowing the appeal?

(g) On account of the failure, on the part of the lower appellate Court, in analysing the well considered findings of the trial court as to it's sustainability or otherwise, is not the judgment and decree of the lower appellate court vitiated?"

5. Brief facts that are necessary for deciding the second appeal are as hereunder:

The plaintiff is the owner of the suit property, which has been shown in ABCD in the plaint plan, forming a portion of a larger extent marked as ABGHC?. EADF portion marked in the plaint plan admittedly belongs to the defendant. The plaintiff claims that under registered sale deed dated 15.11.1973, the plaintiff purchased the suit property and he has been in enjoyment of the same ever since. It is contended by the plaintiff that even the document under which the defendants traced title clearly mentioned the fact that the suit property is one of the boundaries and that it belongs to the plaintiff's predecessor in interest. Alleging that the defendants were disturbing the plaintiff's possession, the plaintiff sent



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a lawyer notice on 02.08.2008 and the same was replied to by the defendants making false and vexatious allegations, constraining the plaintiff to file the suit for declaration and for consequential permanent injunction.

6. The suit was resisted by the defendants disputing the plaint plan being a self serving document. The defendants claim that on 03.05.1951, one Subbaiah Kudumban for himself and on behalf of his minor son/ Mariappan sold the east-west 6 ½ yard and north-south 9 ½ yards to the first defendant's grand father, viz., Solaimalai Nadar. Further, by way of an oral sale deed, an extent of one yard, east-west and 1 ½ yards, north-south was also purchased by the said Solaimalai Nadar. Solaimalai Nadar put up construction in the properties purchased and was in possession and enjoyment of the same. On 25.01.1958, the sons of Solaimalai Nadar, viz., the plaintiff and the first defendant's father/Karuppaiah entered into a partition deed in and by which east-west 7 ½ yards and north-south 11 yard was allotted to the first defendant's father/Karuppaiah, who is none else then the brother of the plaintiff. The said Karuppaiah had



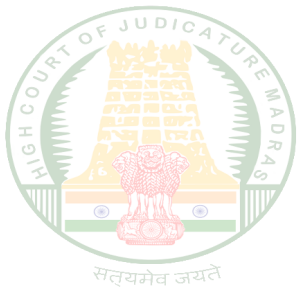
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constructed a house in a portion of the said property allotted to him, leaving vacant site on the southern side. Karuppaiah was also issued natham patta in terms of his entitlement under the partition deed dated 25.01.1958. Thereafter on 02.12.2002, Karuppaiah settled the property in favour of the first respondent. The plaintiff cannot claim right over the vacant land between the defendants' land and the plaintiff's land which in fact belong to one Dharmar. However the said property was also purchased by the first defendant from the said Dharmar. Though it was contended by the defendants that the plaintiff had not properly described the suit property by providing survey numbers, the plaintiff, pending trial, amended the plaint to incorporate the correct survey numbers

7. Based on the pleadings, the trial Court framed the following issues:

- I. Whether the suit belonged to the plaintiff?*
- II. Whether the plaintiff is entitled to relief of declaration and injunction?*
- III. To what the relief, the plaintiff is entitled to?*



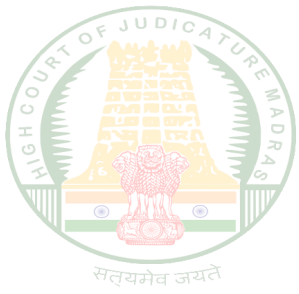
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8. Before the trial Court, two witnesses were examined as P.W.1 and P.W.2 and nine documents were marked as Ex.A1 to Ex.A8. On the side of the defendants, five witnesses were examined as D.W.1 to D.W.4 and eight documents were marked as Ex.B1 to Ex.B8. Exhibits C1 to C3 and Exhibits X1 to X4 were marked as Court documents.

9. After trial, the trial Court found that the plaintiff is in possession and enjoyment of the suit property marked ABCD in the plaint plan and decreed the suit as prayed for.

10. On appeal filed by the defendants in A.S.No.10 of 2014, the Sub Court, Virudhunagar, reversed the findings of the trial Court and dismissed the suit, finding that the plaintiff is not entitled to either the relief of declaration or the relief of permanent injunction.

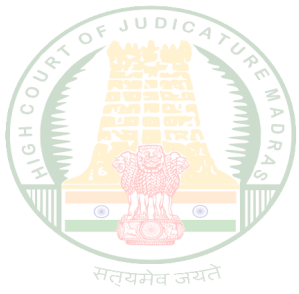


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11. Aggrieved by the reversal findings, the legal representatives of the original plaintiff are before this Court.

12. Arguments of Mr.A.Sivaji learned counsel for the appellants:

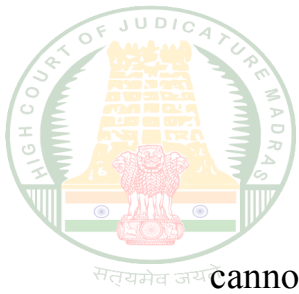
12.1. The learned counsel for the appellants would firstly contend that both the original plaintiff as well as the defendants became entitled to the respective properties under registered documents which admittedly did not contain survey numbers. He would further state that four boundaries of the properties belonging to the plaintiff and the defendants had been clearly set out and therefore, in such circumstances, boundaries will certainly prevail over the extent. It is his further contention that the defendants set up a plea of oral sale in respect of which there has been absolutely no evidence adduced and in such circumstances, it is the contention of Mr.A.Sivaji, learned counsel for the appellants that the plaintiff's claim stood probablised, moreso, the defendants were trying to take shelter under a non existent oral sale in favour of the first defendant in and by which they were staking a claim to a larger extent of property, then what was originally allotted to them.



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12.2. Mr.A.Sivaji, learned counsel for the appellants would also invite my attention to the boundaries, extents mentioned in the partition deed as well as the settlement deed executed by the father of the first defendant, where the north-south measurement has been clearly inflated. He would further state that at the time of execution of Ex.B2-partition deed, dated 25.01.1958, the plaintiff was a minor and therefore the partition deed would not bind the plaintiff. He would take me through the evidence of D.W.2/Karuppaiah, the father of the first defendant and state that D.W.2 had categorically admitted to having given wrong measurement in the registered documents. Relying on the said admissions of D.W.2, Mr.A.Sivaji, learned counsel for the appellants would state that the plaintiff was certainly entitled to a decree as prayed for. He would further state that Solaimalai Nadar had no right to convey the suit property and even Ex.A5 clearly evidences the fact that the southern boundary belonged to the plaintiff's predecessor in interest and in such circumstances, it was not open to the defendants to deny the legitimate rights of the plaintiff, that too claiming under documents that



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cannot bind the plaintiff. Mr.A.Sivaji, learned counsel for the appellants would also invite my attention to the Advocate Commissioner's report and contend that the Advocate Commissioner has not carried out proper measurements and he has given the measurements in the registered documents which are in fact under a cloud in the suit itself. Further, he would state that partition deed can never be a source of a title for the defendants to take shelter. To fortify to his argument, the learned counsel relied on the judgment of this Court in *Lakshmi Ammal and others V. S.Bakthavatsalu Naidu* reported in *2026-2-MLJ-404*.

13. Arguments of Mr.M.Kannan, learned counsel for respondents

1 &2:

13.1. Per contra, Mr.M.Kannan, learned counsel for the respondents 1 and 2 would firstly contend that the plaintiff has suppressed the very factum of parties being closely related in the plaint and admitted to the same when confronted in cross examination alone. Secondly, it is the submission that the plaintiff was a party to the partition deed dated 25.01.1958 and the said partition deed and having accepted

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the said partition deed and not chosen to challenge the same, at any point thereafter, even after the plaintiff attained majority, it is not open to the plaintiff to attack the said partition deed.

13.2. Insofar as the said partition deed being the source of title is concerned, Mr.M.Kannan, learned counsel for the respondents 1 and 2 would state that when the partition deed was between the plaintiff and the defendants and in such circumstances, it cannot be argued that the partition deed cannot be treated as a document of title for the parties. He would further state that pursuant to the partition deed, revenue records were also mutated and the defendants have been in enjoyment possession and enjoyment of the suit property. He would rely on X-series documents in this regard. It is also his submission that P.W.1, the plaintiff, in his cross-examination, had candidly admitted the partition entered into on 25.01.1958. He would also state that the boundaries set out in the plaint do not match the boundaries mentioned in the partition deed, and that the plaintiff is attempting to take advantage of the land left vacant by the first defendant, while construction of the house was in progress and the



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plaintiff is attempting to claim rights over the same and alleges that the defendants had attempted to interfere with his alleged possession. He would further state that the plaintiff, having filed the suit for declaration and injunction, ought to have established his rights, before becoming entitled to a decree, instead of picking holes in the defendants' case or relying on the weakness in the case of the defence. He would also state that even Ex.A2 and Ex.A5 do not speak about any earlier title to the suit property and the plaintiff also traces title only under the partition deed and in such circumstances, it is his submission that the plaintiff cannot give a go-by to the partition deed and claim that the extents mentioned in the sale deeds, Ex.A2 and Ex.A5, executed in his favour, should be treated as valid. The learned counsel would also state that the Advocate Commissioner has gone by the revenue records and not by the sale deed, as contended by the learned counsel for the appellants would also point out that the Courts below have specifically noted that the plaintiff did not even file objections to the Advocate Commissioner's report. The learned counsel would further state that FMB, chitta and Adangal were also produced under X-series which clearly indicated that the plaintiff was

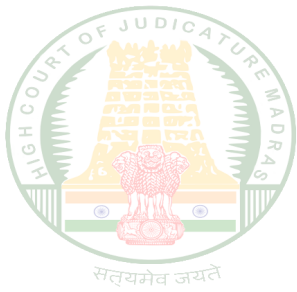


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entitled only to small extent and definitely not entitled to the suit property. He would also point out to Ex.C3, which reflects a well existing and lying in the vacant land between the plaintiff's property and poromboke lands, which were also purchased by the plaintiff.

13.3. It is the submission of Mr.M.Kannan, learned counsel that the plaintiff was clearly attempting to enter into and interfere with the defendants' property. With regard to the alleged admissions of D.W.2, Mr.M.Kannan, learned counsel would state that the admissions do not pertain to the suit property, but only to the mistakes in the measurements mentioned in the settlement deed, which was subsequently executed under Ex.B4 and it was not concerning the suit property or the extent mentioned in the partition deed, Ex.B2 dated 25.01.1958. In support of his submissions, the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in ***Kale and others v. Deputy Director of Consolidation***, reported in ***1976-3-SCC-119*** and also the decision of the Hon'ble Supreme Court in ***Vathsala Manickavasagam v. N.Ganesan*** , reported in ***2013-9-SCC-152***.



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

15. Discussion:

15.1. At the out set, having noticed the substantial questions of law that have been framed, I do not find that the first appellate Court had allowed the appeal only based on the oral sale. Therefore, substantial questions of law B, C are not relevant and do not require a decision in the second appeal.

15.2. Originally, the plaintiff claimed title under Ex.A2 and Ex.A5, both of these documents are of the year 1973. On the other hand, the first defendant claimed right under his grand father, who had purchased the property under Ex.B1- sale deed, in the year 1958. The property of the plaintiff is situate in survey No.785/4 and the property of the defendants situate in survey No.785/2. The plaintiff admits the factum of the



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defendants' owning adjoining lands and in such circumstances, I do not see how the southern boundary mentioning the plaintiff's predecessor in interest, having any bearing since the present dispute revolves only around measurement and extent.

15.3. In order to resolve the controversy, an Advocate Commissioner was appointed even before the trial Court and the Commissioner filed his report, plan and survey plan (FMB), which were marked as Ex.C1 to Ex.C3. The first appellate Court, on going through the Commissioner's report and also survey plans, found that there is no dispute between the parties with regard to the respective entitlement, but, it was only the measurements, which were under a cloud. The only contention of the plaintiff was that he was a minor, when the partition deed, had been entered into and the partition deed did not contain the correct measurements. However, the said partition deed has not only been not questioned even after the plaintiff attained the age of majority, but, on the contrary, has also been acted upon. The plaintiff himself was issued patta based upon Ex.A2 and Ex.A5 and has also mutated revenue



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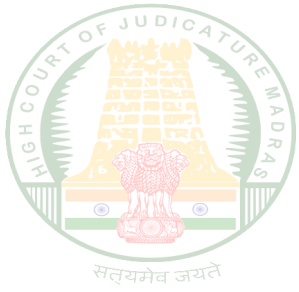
records in his name in respect of survey No.785/4, which is evident from Ex.X1 and Ex.X3. Even in cross examination of P.W.1 admits the partition deed having been executed and the parties taking possession of their respective portions. In the said partition deed, if all, it is the case of the plaintiff that the measurements were incorrect and larger extent was given to the defendants, then the plaintiff who was a party to the said partition deed as a minor ought to have challenged the same at least within a period of three years from the date of attaining the age of majority. The plaintiff has not questioned the partition deed and as already discussed even in his cross examination, he has admitted his entitlement of a portion of east west 7 yards north south – 8 yards alone. However, in the suit schedule, the plaintiff claimed right of 8 yards as in north-south measurement. The said claim has not been established by producing any documentary evidence, as rightly held by the first appellate Court. It is for the plaintiff to prove his case, when he came to the Court seeking the relief of declaration and injunction Mere fact that the defendants have taken a plea of an oral sale deed and have failed to establish the same, would not automatically invite the Court to accept the



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plaintiff's case and decree the suit. The trial Court decreed the suit only based on the failure of the defendants to establish the plea of the oral sale. However, the first appellate Court has rightly reversed the finding holding that the plaintiff has to independently prove his case and cannot take advantage of the weakness in the defendants' case. The first appellate Court has clearly found that the plaintiff has not been able to show how he was entitled to the suit property. The Commissioner's report also clearly indicates that the plaintiff is not entitled to the suit property. Though the arguments was advanced before this Court that the Commissioner did not adopt a proper approach in measuring the suit property, as rightly pointed out by the learned counsel for the respondents 1 and 2, the plaintiff did not even to file any objections to the said commissioner's report. The first appellate Court has, based on the Commissioner's report, the documents, revenue records, and the evidence of D.W.2 to D.W.4, found that the plaintiff has no right over the suit property, which absolutely belongs to the defendants.

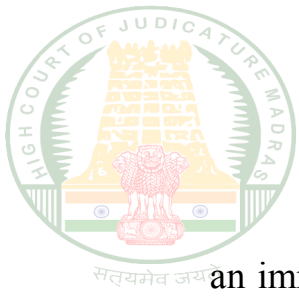


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15.4. As regards the so-called admission of the father of the first respondent/D.W.2 about which substantial arguments were advanced by the learned counsel for the appellants, I find that D.W.2 has only attempted to justify the mention of 11 yards, instead of 9 ½ yards, stating that 1 ½ yards was purchased under an oral sale. The fact remains that the partition deed clearly mentioned 11 yards alone and not 9 ½ yards. In such circumstances, the plaintiff cannot, without challenging the partition deed, contend that the partition deed should have read as 9 ½ yards land and not 11 yards. Insofar as the portions, where he made admissions with regard to the subsequent settlement deed, Ex.B1, instead of 11 yards, it has been mentioned as 13 yards, tThe said admission does not improve the case of the plaintiff. I therefore do not see how the evidence of D.W2 can be treated as an admission as contended by the learned counsel for the appellants.

15.5. Coming to the decision that has been relied on, in ***Lakshmi Ammal*** 's case, this Court held that a partition deed is not a stand alone title document and it will not constitute a valid record to establish title to



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an immovable property. There is no quarrel with regard to the said legal proposition laid down in the said case. However, in the said case, this Court found that apart from relying on the partition deed, no revenue records have been produced to evidence possession and enjoyment of the property and in such circumstances, it was held that mere reliance on the partition deed alone would not suffice to grant declaratory relief in favour of the plaintiff. Moreover, that was a case where the plaintiff alleged trespass by the defendants and the defendants denied the title of the plaintiff. However, in the present case, the plaintiff himself was a party to the partition deed and therefore, having accepted the partition deed which has also been acted upon, it is not open to the plaintiff to contend that the partition deed is not a document of title and that no reliance can be placed on the same.

15.6. In *Kale's* case, the Hon'ble Supreme Court held that even when a family arrangement which required registration is not registered, it would operate as a complete estoppel against the party, who took advantage of the family arrangement. This decision would apply in all



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force to the facts of the present case, since the plaintiff was admittedly to a party to the partition deed and he also sources his title under the said partition deed. In such circumstances, it is not open to the plaintiff to contend that the partition deed is not binding upon him or not that the partition deed did not reflect the correct measurement note.

15.7. In *Vathsala Manickavasagam*'s case, the Hon'ble Supreme Court held that an admission made by a party in the witness box would constitute a substantial piece of evidence and it would be binding on the party, who made such admission making it clear that the onus would be on person making the admission to explain it, failing which, the admission is to be presumed to be true and binding on the maker. In the present case, P.W.1 has admitted to the partition deed dated 25.01.1958 and also to the fact that he was a party to the same.

15.8. The relevant portion of the cross examination are extracted hereunder:

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“1958-ம் வருடம் எனது தகப்பனார் சோலைமலை நாடார், ராமையா, கருப்பையா நாடார் மூவரும் பாகப்பிரிவினை செய்து கொண்டார்கள் என்றால் சரிதான். பாகப்பிரிவினை செய்த போது நான் சகோதரர் நாகராஜன் மைனராக இருந்தோம். மேற்படி பாகப்பிரிவினை படி பிராது வரைபடத்தில் கண்ட (பக்கம் 4) தென்வடல் பாதைக்கும் கிழக்கே கருப்பையா பாகத்திற்கு ஒட்டு வீடு கிடைத்தது. மேற்குபுறம் உள்ள காரைவீடு எனது தகப்பனாருக்கும் மைனர்களான எனக்கும் என் சகோதரருக்கும் பாகமாக கிடைக்கப்பட்டது என்றால் எனக்கு ஞாபகமில்லை. காரைவீட்டுக்கும் அருகில் உள்ள ஒட்டுவீடு ராமையா நாடாருக்கு ஒதுக்கப்பட்டது என்றால் சரிதான்.”

15.9. Therefore, having admitted the execution of the partition deed and having derived benefit under the same, the plaintiff is clearly estopped from claiming otherwise and attack the measurements mentioned in the said partition deed.

15.10. The first appellate Court has also come to the right conclusion that there is no vacant site in survey No.785/4 with measurement of 6 ½ yards east west and 4 yards north-south as



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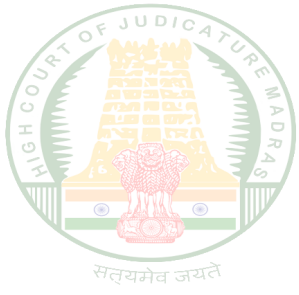
mentioned in the suit property and the suit property is a claim in excess of what the plaintiff is entitled under Ex.A2 and Ex.A5. I do not see any perversity in the appreciation of the evidence by the first appellate Court warranting interference under Section 100 of the Code of Civil Procedure.

16.Result:

The substantial questions of law are answered against the appellants. This Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

30.04.2026

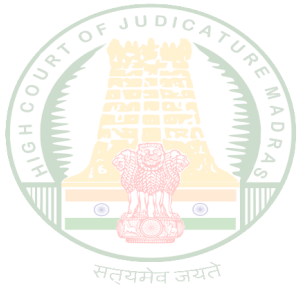
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TO

1. The Subordinate Judge,
Virudhunagar.
2. The District Munsif,
Virudhunagar.
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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