



.CRP.No.1843 of 2021.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 15.03.2023

Delivered On: 28.04.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1843 of 2021

and

C.M.P.No.14374 of 2021

C.Sivaraj

... Petitioner/2nd Defendant/Petitioner

Vs.

Pushpalatha

... Respondent/Plaintiff/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal Order dated 26.02.2021 in I.A.No.1 of 2020 in O.S.No.615 of 2019 on the file of the learned I Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.C.R.Prasanan

For Respondent : Mr.L.Mouli

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal Order passed by the learned I Additional District and Sessions Judge, Coimbatore, in I.A.No.1 of 2020 in O.S.No.615 of 2019 dated 26.02.2021.



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2.The brief facts, which are necessary to decide the Civil Revision Petition, are as follows:-

2.1.The Revision Petition is filed by the second Defendant in the suit in O.S.No.615 of 2019 on the file of the learned Additional District and Sessions Judge, Coimbatore. The suit in O.S.No.615 of 2019 on the file of the learned First Additional District and Sessions Judge, Coimbatore, was filed by the Respondent in this Civil Revision Petition who is none other than the sister of the Revision Petitioner against the step-mother of the Plaintiff. The suit in O.S.No.615 of 2019 was filed by the Plaintiff seeking the relief of declaration that the decree passed in O.S.No.401 of 2011 on the file of the Principal Sub Court, Tiruppur as null and void. Also, seeking relief of partition and permanent injunction. The second Defendant in the suit in O.S.No.615 of 2019 filed I.A.No.1 of 2020 in O.S.No.615 of 2019 seeking rejection of the plaint in O.S.No.615 of 2019 under Order VII, Rule 11(d) of Code of Civil Procedure. After due enquiry, the learned I Additional District and Sessions Judge, Coimbatore, dismissed the petition in I.A.No.1 of 2020 in O.S.No.615 of 2019. Aggrieved by the order of dismissal of I.A.No.1 of 2020 in O.S.No.615 of 2019, the Petitioner in I.A.No.1 of 2020 and second Defendant in O.S.No.615 of 2019 had



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preferred this Civil Revision Petition under Article 227 of the Constitution of India.

3.The learned Counsel for the Petitioner submitted that the father of the Revision Petitioner and the Respondent Ponnusamy had purchased the properties through sale deeds. The suit in O.S.No.615 of 2019 was filed by the sister of the Revision Petitioner, the Respondent herein against the step-mother of the Plaintiff. The father of the Plaintiff and the second Defendant Ponnusamy died on 20.07.2008 leaving the Plaintiff and first Defendant as legal heirs to succeed to the properties left by the father of the Plaintiff. The Plaintiff had filed the suit for the relief of specific performance of agreement for sale of the property. The sale agreement was dated 20.08.2007.

3.1.As per the plaint averments, the Plaintiff Pushpalatha had stated in the plaint that on the date of execution of the agreement for sale dated 20.08.2007 with one Ponnusamy, part of the sale consideration was paid. It is the contention of the Plaintiff in the suit that the second Defendant is claiming right in 'A' schedule of the suit property as if he got a sale deed by order passed in E.P.No.11 of 2014 in O.S.No.401 of 2011 on the file of the learned II Additional Sub Judge, Coimbatore under a registered Document



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No.12223/16 dated 22.12.2016 registered with the office of the Sub Registrar, Sullur. He had taken possession of the property through the order passed in E.P.No.614 of 2018 in O.S.No.401 of 2011 on the file of the learned II Additional Sub Judge, Coimbatore. It is the contention of the Plaintiff in the suit that the recitals in the sale deed disclose that the second Defendant acquired title only in SF No.755/1 of Neelampur Village, 'A' schedule property. The sale deed contains recitals that the title was with the deceased Ponnusamy under registered sale deed dated 25.02.1994. It is the contention of the Plaintiff that she is not a party in O.S.No.401 of 2011 on the file of the learned Principal Sub Judge, Tiruppur which suit was filed by the second Defendant in O.S.No.615 of 2019 for the relief of specific performance against the first Defendant who is the wife of Ponnusamy. The suit relates to 'A' schedule. As per the plaint averments in O.S.No.401 of 2011 the deceased R.Ponnusamy, father of the Plaintiff in O.S.No.615 of 2019 is stated to have executed a sale agreement to sell his property in S.F.No.755/1 of Neelampur Village with the second Defendant on 20.08.2007. After the death of Ponnusamy, the father of the Plaintiff in O.S.No.615 of 2019 the second Defendant in O.S.No.615 of 2019 had filed the suit against the first Defendant in O.S.No.615 of 2019 (step mother of



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the Plaintiff) as if she alone was the legal heir of the deceased Ponnusamy for the relief of specific performance and had obtained decree on 01.03.2012.

3.2.It is the contention of the Plaintiff in O.S.No.615 of 2019 that she is unaware of the proceedings in O.S.No.401 of 2011 on the file of the learned Principal Sub Judge, Tiruppur and she is not a party to the said proceedings. The decree passed in O.S.No.401 of 2011 on the file of the learned Principal Sub Judge, Tiruppur would not bind her. The same would bind the first Defendant in O.S.No.615 of 2019 only to her half share in 'A' schedule property and nothing more as the claim against the Plaintiff by the second Defendant with regard to 'A' schedule property is barred under law. In the said circumstances, the second Defendant in O.S.No.615 of 2019 cannot claim entire 'A' schedule property by virtue of the sale deed registered under Document No.12223/16 dated 22.12.2016 registered with the Sub Registrar, Sulur. The third Defendant in the suit in O.S.No.615 of 2019 is a third party claiming right over the 'B' schedule property. The suit properties are vacant sites and not partitioned between the heirs of the deceased R.Ponnusamy.



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3.3. Therefore, the Plaintiff had filed the suit in O.S.No.615 of 2019 to declare the decree passed in O.S.No.401 of 2011 on the file of the learned Principal Sub Judge, Tiruppur as not binding on her as she was not a party to the said suit. The Plaintiff in O.S.No.615 of 2019 reserves her right for the relief of partition to divide the properties into two shares and allot one share to her. Therefore, the suit was filed for the relief of declaration that the decree passed in O.S.No.401 of 2011 is not binding on the half share of the Plaintiff in O.S.No.615 of 2019 and for the relief of partition to divide the 'A' schedule property into two shares and allot one half share to the Plaintiff in O.S.No.615 of 2019 and also for the relief of permanent injunction against the second Defendant alienating or encumbering the suit property in favour of other third parties.

3.4. I.A.No.1 of 2020 in O.S.No.615 of 2019 was filed by the second Defendant in O.S.No.615 of 2019 for the relief of rejection of plaint on the ground that the Plaintiff cannot file a suit to declare the decree in O.S.No.401 of 2011 is not binding on her. She has to file a petition under Order XXI, Rule 102 of CPC and separate suit is barred by law. The present suit filed by the Plaintiff in O.S.No.615 of 2019 against the Defendants



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during the pendency of E.A.No.1 of 2019 in E.P.No.614 of 2018 is not maintainable. Therefore, the suit in O.S.No.615 of 2019 is to be rejected under Order VII, Rule 11 of CPC as the claim of the Plaintiff in O.S.No.615 of 2019 is barred by law. The said petition was resisted by the Plaintiff in O.S.No.615 of 2019 as Respondent in I.A.No.1 of 2020. After due enquiry, the petition in I.A.No.1 of 2020 in O.S.No.615 of 2019 was dismissed by the learned I Additional District Judge, Coimbatore by order dated 26.02.2021.

3.5. Aggrieved by the same, the second Defendant in O.S.No.615 of 2019 who is the Petitioner in I.A.No.1 of 2020 had filed this Civil Revision Petition under Article 227 of the Constitution of India seeking to set aside the order of the learned I Additional District and Sessions Judge, Coimbatore and to reject the plaint in O.S.No.615 of 2019 under order VII, Rule 11 of CPC.

4. It is the further contention of the learned Counsel for the Revision Petitioner that the Petitioner herein had entered into an agreement for sale of property with one Ponnusamy. He had paid the valuable consideration and



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was waiting for execution of the sale deed. At that time, Ponnusamy died. Therefore, he filed the Suit for specific performance in O.S.No.401 of 2011 on the file of the learned Principal Sub Judge, Tiruppur seeking execution of sale deed in continuation of the sale agreement deed dated 20.08.2007. After receiving the remaining part of sale consideration, when the summon in the Suit was served on the Wife of Ponnusamy viz., Kuppathal, she appeared before the Court through Counsel and filed memo and instituting the Suit. Therefore, the decree was passed on 01.03.2012, which is extracted hereunder:

“Suit for direct the defendant to execute sale deed of the schedule mentioned property as per sale agreement dated 20.08.2007 on receipt of remaining part of sale consideration within a stipulated time and on its failure, execute sale deed through Court of law on deposit of remaining part of sale consideration and for delivery of possession of the suit property to Plaintiff and for costs.

Submit decree memo filed and recorded. The suit is decreed as prayed for. Time for payment of balance sale consideration 1 month. Time for execution of sale deed within 1 month from date of payment of balance amount.”

4.1. After the Suit was decreed, the said Kuppathal did not come forward to receive the balance sale consideration for execution of sale deed and the balance sale consideration was deposited in the Court. Instead of



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the Defendant executing the sale deed, Court has executed the sale deed in E.P.No.11/4 in O.S.No.401 of 2011. In continuation of the execution of sale deed, E.P was filed for delivery of possession by the Petitioner herein as Decree Holder in E.P.No.614/2018 in O.S.No.401 of 2011. He invited the attention of this Court to the schedule of property is extracted hereunder:

“சொத்து விவரம்

திருப்பூர் ரிடிடு, சூலூர் சப்ரிடிடு. சூலூர் தாலுக்கா, நுலம்பூர் கிராமம்.

க.ச.எண்.755/1 நெ, காலை நத்தத்தில்.

சு.ரவீந்திரன், சு.மகேந்திரன் இடங்களுக்கும் = வடக்கு

கிழமேல் தடத்துக்கும் = தெற்கு

தென்வடல் வீதிக்கும் = கிழக்கு

பழனியப்பன் வீட்டுக்கும் = மேற்கு

இதன் மத்தியில்

இரு புரமும் கிழமேல் = 96 அடி

இரு புரமும் தென்வடல் = 48 அடி

இந்தளவுள்ள 4608 சதுரடி அல்லது 10 சென்ட் 252 சதுரடி

காலிமனை ஜாகாவும். மேற்படி ஜாகாவுக்கு போக வரவிடப்பட்டுள்ள தடத்தில்

மாமூல் வழிநடை பொது பாத்தியம் வகையறா சகிதம்.”

4.2. While so, the Respondent herein had filed the Suit in O.S.No.615 of 2019 stating that the sale deed alleged to have been executed by the learned Sub Judge in continuation of the decree in O.S.No.401 of 2011 does



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not bind her as she is not a party to the Suit and also seeking partition to divide the property. The relevant portion reads as follows:

“The Plaintiff, therefore, prays that this Hon'ble Court may be pleased to pas a decree for

a. Partition to divide A and B schedule Suit properties into 2 shares and allot one share to her and put her in possession.

b. Declaration to declare that the decree passed in O.S.No.401 of 2011 on the file of Principal Sub Court, Tirupur would not bind her as she is not a party therein.

c. Permanent injunction restraining the second Defendant or his men or agents from in any way attempting to sell/encumber A schedule suit property to any 3rd party.

d. Permanent injunction restraining the third Defendant or his men or agents from in any way attempting to disturb the possession of the Plaintiff in Suit properties.

e. cost and

f. Such other and further Orders which this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.”

4.3. Also, she had filed E.A.No.4 of 2019 in E.P.No.614/2018, the Petitioner herein had filed counter in E.A.No.4 of 2019 in E.P.No.614/2018 in O.S.No.401 of 2011 before the learned Second Additional Sub Judge, Coimbatore denying the claim of the Respondent herein as Petitioner in



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E.A.No.4 of 2019, the relevant portion reads as follows:

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“4. The averments in Para 4 of the Petition are all false. The second Respondent Kuppathal is the legally wedded wife of Late. Ponnusamy, and she is the only legal heir of Late. Ponnusamy who died on 20.07.2008 leaving the second Respondent as his only legal heir.

5..... Then this Respondent deposited the remaining part of sale consideration to the Court and filed the E.P.No.11/2014 before the Honourable Court and secured necessary Order for execution of sale deed and through Court of Law secured the sale deed registered through Court of Law on 22.12.2016. Then filed Execution in E.P.No.614/2018 for delivery of possession and as per the Orders of the Honourable Court the Court delivered the possession of the Petition mention property. All the above referred judicial acts are bona fide. The Petitioner has nothing to do with the Petition mention property has come forward with this present petition just to drag on the proceeding. Hence there is no merit in the Petition.”

4.4. In the light of those developments, the Petitioner herein as Defendant in the Suit in O.S.No.615 of 2019 filed a Petition to reject the Plaintiff in I.A.No.1 of 2020 in O.S.No.615 of 2019 under Order VII Rule 11 (d) of Civil Procedure Code on the ground that *“as per Order XXI Rule 102 of CPC all matters regarding delivery of possession has to be agitated only in the Execution and as per the said provision, the separate Suit is barred by Law. Hence the present Suit filed by the Respondent during pendency of E.A.No.4 of 2019 filed by the very same Respondent/Plaintiff that too*



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regarding matters in execution is barred by Law. The present Suit under Order VII Rule 11 of CPC is barred by Law.”

4.5. The Plaintiff in O.S.No.615 of 2019 as Respondent in I.A.No.1 of 2020 filed counter. On enquiry, the learned first Additional District Judge, Coimbatore had dismissed the I.A. The relevant portion reads as follows:

“8. இந்த தாவா A மற்றும் B அட்டவணை சொத்துக்களில் பாகம் கேட்டு எதிர்மனுதாரரால் தாக்கல் செய்யப்பட்டுள்ளது. தாவா A அட்டவணை சொத்து பொறுத்து மட்டுமே E.A.No.4 of 2019-ல் பரிகாரம் கோரப்பட்டுள்ளது. அ.வ.எண்.401/2011 ல் காட்டப்பட்ட A அட்டவணை சொத்திற்கு பதிலாக இந்த தாவா B அட்டவணை சொத்தை தவறாக சுவாதீனம் கொடுக்கப்பட்டதால் மறு சுவாதீனத்திற்கு பரிகாரம் கேட்டு E.A.No.4 of 2019 தாக்கல் செய்யப்பட்டுள்ளது. மேலும் அ.வ.எண்.401/2019 ல் இந்த எதிர்மனுதாரர் ஒரு தரப்பினர் இல்லை என்பதால் அந்த வழக்கில் ஏற்பட்ட தீர்ப்பாணை தன்னை கட்டுப்படுத்தாது என்றும், இந்த தாவாவில் பரிகாரம் கோரப்பட்டுள்ளது. அதனால் கோவை, இரண்டாவது கூடுதல் சார்பு நீதிமன்றத்தில் E.A.No.4 of 2019-ஐ இந்த எதிர்மனுதாரர் தாக்கல் செய்து விட்டதால் இந்த தாவா உ.வி.மு.ச. கட்டளை 21 விதி 102 ன் படி தடை செய்யப்படுவதாக கூற முடியாது. மேலும் பணம் சார்ந்த ஆள்வரை அதிகார வரம்பின் அடிப்படையில் இந்த தாவாவை இங்குதான் தாக்கல் செய்யமுடியும்.”



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The Suit filed by the Plaintiff in O.S.No.615 of 2019 seeking declaration in the decree passed in O.S.No.401 of 2011. The Plaintiff in O.S.No.615 of 2019 is not a party and sought to declare the title as null and void and for partition in 'A' and 'B' properties. Whereas, E.A.No.4 of 2019 was filed seeking return of delivery of the property which does not form part of the property of Kuppathal to which the claim of the Plaintiff in O.S.No.401 of 2011 is attracted.

4.6. It is the contention of the learned Additional District Judge that the Petition filed in E.A.No.4 of 2019 under Order XXI Rule 102 of Civil Procedure Code cannot be treated as bar for the Suit.

4.7. The learned Counsel for the Revision Petitioner invited the attention of this Court to the Order XXI, Rule 100 of Civil Procedure Code which is extracted as under:

"100. Order to be passed upon application complaining of dispossession. – Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination – (a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or



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(b) pass such other order as in the circumstances of the case, it may deem fit."

4.8.The said order of the learned I Additional District and Sessions Judge, Coimbatore is perverse and is to be set aside. Therefore, this Civil Revision Petition and the Petition under Order VII, Rule 11 (d) of the Civil Procedure Code in I.A.No.1 of 2020 in O.S.No.615 of 2019 is to be allowed and the Plaint in O.S.No.615 of 2019 is to be rejected.

5.In support of his contention, the learned Counsel for the Revision Petitioner relied on the following rulings:-

5.1. **1997 SCC OnLine Kar 431** in the case of **V.K.Rama Setty -vs- A.Gopinath** wherein it has been held as under:

“10.We are of the view that keeping in view the language employed in Order XXI, Rule 99 it is optional for a person, who is other than judgment debtor and has been dispossessed, to make an application to the Court complaining of such dispossession. Under Rule 99 the use of word “may” gives an option to a person to file application before the executing Court averring his grievance. But this rule does not make his remedy exhaustive thereby debarring him from preferring a suit for possession completely. It will be for him to choose either of the two forums. This explains the observation of the Division Bench. The Division Bench had not pronounced that even if an aggrieved person prefers an application under Rule 99, then still he will have a right to file a separate suit as well. We are clearly of the opinion that drawing of any such inference is a misreading of the



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judgment-of the Division Bench since such an inference will be in the death of Rule 101 of Order 21, C.P.C. and therefore the same cannot be held to be a good law, if at all it was intended to be so laid down. We do not find it necessary to record any detailed reasoning of our own on the said aspect since in our opinion, the issue is now finally concluded by the judgment of the Supreme Court in the case of Noorduiddin v. Dr. K.L. Anand, (1995) 1 SCC 242: (1994 AIR SCW 5093).”

5.2. 2019 (6) CTC 543 in the case of ***Mari and another -vs-***

Thangavel and another wherein this Court has held as under:

“15. In view of the above, 1st question of law answered in favour of the appellant. On the additional question of law framed, Mr.P.Valliappan, learned counsel would contend that Ex.B2 shows that the respondents herein/plaintiffs in O.S.No.186 of 2002 had infact invoked Order XXI Rule 97 to 99 of C.P.C., and obstructed the execution of the decree. The law is now well settled that a person who intends to obstruct execution of the decree, setting up independent title need not wait for actual dispossession. He could move the Court under Order XXI Rules 97 to 99 of C.P.C. apprehending dispossession. Once such application is filed, the obstructors will have to prosecute the same. Order XXI Rule 101 C.P.C., provides that the Executing Court can determine all questions relating to right, title and interest of the obstructors in the said application itself for the purposes of deciding the said question, the Court which hears the application shall be deemed to have jurisdiction to decide those questions. Order XXI Rule 101 C.P.C., reads as follows:

“101. Question to be determined All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in



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force, be deemed to have jurisdiction to decide such questions ”

16. A perusal of the above provision would show that all questions relating to the right, title and interest arising between the parties to the proceedings namely an applications under Order XXI Rules 97 to 99 are the representations, shall be determined by the Court dealing with such application, “not by way of a separate suit” emphasized.

17. Therefore, the remedy to the person who is sought to be dispossessed in execution of decree to which he is not a party has to move the executing Court under Order XXI Rules 97 to 99 and prove his independent right. It is not open to such a person to institute a separate suit for the said purpose. From the evidence on record, it can be seen that the respondents have approached the executing Court, invoking provisions under Order XXI Rules 97 to 99 of C.P.C., by filing an application as evidenced by Ex.B2.”

6. The learned Counsel for the Respondent submitted that the Plaintiff is the daughter of Ponnusamy. The Defendant in O.S.No.410/2011 was step-mother of the Plaintiff in O.S.No.615 of 2019. She had filed memo admitting to the decree in O.S.No.401 of 2011 which had caused loss to the daughter of Ponnusamy, denying her share in the property left by Ponnusamy/her father. Therefore, she had filed the Suit in O.S.No.615 of 2019 after receipt of wrongful delivery of possession against the claim of the Plaintiff's daughter and late Ponnusamy which forced her to file E.A.No.4 of 2019 and the Order of re-delivery of possession was on her. It



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is her contention that the Suit in O.S.No.401 of 2011 was filed collusively between the Plaintiff and the step-mother of the Plaintiff in O.S.No.615 of 2019. Therefore, the Order passed by the learned I Additional District Judge is a well-reasoned Order as per the Provisions of law and does not warrant any interference of this Court. This Civil Revision Petition filed under Article 227 of Constitution of India does not warrant interference of this Court and this Petition is having no merits and is to be dismissed.

7. Point For Consideration:

Whether the Order passed by the learned I Additional District Judge, Coimbatore dismissing the I.A.No.01 of 2020 in O.S.No.615 of 2019 is to be set aside and the Plaint in O.S.No.615 of 2019 is to be rejected?

8.On perusal of the Order passed by the learned I Additional District Judge, Coimbatore dismissing the I.A.No.01 of 2020 in O.S.No.615 of 2019, the Petition under Order VII, Rule 11 (d) of CPC is found to be unacceptable in the facts and circumstances of this case, even if the decree is presumed to be collusive at the stage of E.P. Since the sale deed was executed by the Court, the aggrieved party who had come to know about



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those averments only when delivery was taken by the Execution Court through the Bailiff. She had immediately filed E.A seeking order of re-delivery of possession on her, then E.A has to be treated as claim Petition and it shall be conducted as the trial in the Suit. As per the reported rulings cited by the learned Counsel for the Revision Petitioner, separate suit is not maintainable as all questions relating to execution of the decree can be agitated in the execution proceedings as claim petition which is to be treated as a suit. Therefore, all the questions arising out of the said decree can be tried by the Execution Court itself. Therefore, the contention of the learned Counsel for the Petitioner to reject the Plaint is found acceptable only in the light of the Order XXI, Rule 100 to 103 of CPC.

9. Point For Consideration is answered in favour of the Revision Petitioner and as against the Respondent. The Order passed by the learned I Additional District and Sessions Judge, Coimbatore dismissing the I.A.No.1 of 2020 in O.S.No.615 of 2019 is to be set aside and the Plaint in O.S.No.615 of 2019 is to be rejected.



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In the result, ***this Civil Revision Petition is allowed.*** The Order passed by the learned I Additional District Judge, Coimbatore dismissing the I.A.No.1 of 2020 in O.S.No.615 of 2019 is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

28.04.2023

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The I Additional District and Sessions Judge, Coimbatore.
2. The II Additional Sub Judge, Coimbatore.
3. The Principal Sub Judge, Tiruppur.
4. The Section Officer, V.R.Section, High Court, Madras.



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