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C.R.P.Nos.1152 & 1153 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.Nos.1152 & 1153 of 2021
and
C.M.P. Nos.8869 and 8870 of 2021

C.R.P.No.1152 of 2021:

Rajammal

... Petitioner

-Vs-

1.V.M.Mani
2.K.Ananthanayaki

... Respondents

C.R.P.No.1153 of 2021 :

Rajammal

... Petitioner

-Vs-

Velan

... Respondent

Prayer in C.R.P.No.1152 of 2021:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in C.M.A.No.2 of 2018 on the file of the learned Subordinate Judge, Palacode, confirming the decree and order in I.A.No.96 of 2018 in O.S.No.15 of 2018, dated 09.02.2021 by the learned District Munsif, Palacode.

Prayer in C.R.P.No.1153 of 2021:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed



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in C.M.A.No.1 of 2018 on the file of the learned Subordinate Judge, Palacode, confirming the decree and order in I.A.No.95 of 2018 in O.S.No.15 of 2018, dated 09.02.2021 by the learned District Munsif, Palacode.

For Petitioner	: Mr.K.Venkateswaran
in both cases	
For Respondents	: Mr.P.Valliappan,
in both cases	Senior Counsel
	for Mr.T.Deeraj

COMMON ORDER

These Civil Revision Petitions had been filed to set aside the order dated 09.02.2021 passed in C.M.A.Nos.1 and 2 of 2018 on the file of the learned Subordinate Judge, Palacode, confirming the decree and judgment dated 05.06.2018 made in I.A.No.95 of 2018 in O.S.No.15 of 2018 and I.A.No.96 of 2018 in O.S.No.15 of 2018 on the file of the learned District Munsif, Palacode.

2. The Petitioner herein as Plaintiff in O.S.No.15 of 2018 had filed I.A.No.95 of 2018 in O.S.No.15 of 2018 against the Defendants restraining them from alienating item No.2 of the suit properties without due process of law.

3. The Petitioner herein as Plaintiff in O.S.No.15 of 2018 had filed I.A.No.96 of 2018 against the Defendants restraining them from putting up



any construction or from altering the physical appearance of the item No.1 of the suit properties.

4. The learned Counsel for the Revision Petitioner submitted that the Revision Petitioner herein as Plaintiff filed the suit in O.S.No.15 of 2018 on the file of the learned District Munsif, Palacode, seeking the relief of permanent injunction against the Defendants 1 to 4 not to create encumbrance in respect of the suit schedule property .

5. The Revision Petitioner herein as Plaintiff had initially filed the suit in O.S.No.172 of 2016 and O.S.No.179 of 2016 on the file of the learned District Munsif, Palacode, and moved for an interim injunction in I.A.No.859 of 2016 in O.S.No.172 of 2016 whereby the interim injunction was initially granted. After due enquiry, it was dismissed.

6. Aggrieved by the same, the Revision Petitioner herein had preferred C.R.P.No.4040 of 2017 before this Court. The learned Judge had dismissed the Civil Revision Petition with an observation that any alienation made by the respondents therein will be subject to the outcome of the suit.

Subsequently, the Plaintiff filed another suit in O.S.No.15 of 2018. He had



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filed I.A.Nos.95 & 96 of 2018 in O.S.No.15 of 2018. After due enquiry, the learned District Munsif, Palacode, had dismissed I.A.Nos.95 & 96 of 2018 in O.S.No.15 of 2018 by order dated 05.06.2018.

7. Aggrieved by the same, the Plaintiff had filed C.M.A.Nos.1 & 2 of 2018 before the learned Subordinate Judge, Palacode, which was dismissed by order dated 09.02.2021. Aggrieved by the same, the above Civil Revision Petitions in C.R.P.Nos.1152 & 1153 of 2021 have been filed.

8. The learned Counsel for the Revision Petitioner further submitted that if the Respondents are not restrained from further alienating or creating encumbrances, the Plaintiff will suffer miscarriage of justice and will not be able to proceed with the suit. Therefore, he seeks to set aside the order passed by the learned District Munsif, Palacode, and confirmed by the learned Subordinate Judge, Palacode.

9. The learned Senior Counsel for the Respondents invited the attention of this Court to the order passed by the learned District Munsif, Palacode, and also to the counter filed by the 2nd Defendant/Respondent in I.A.No.95 of 2018 in O.S.No.15 of 2018 on the file of the learned District



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Munsif, Palacode, which is as follows:-

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“5.மனு அபிடவிட் பாரா 4ல் சொல்லியுள்ள சங்கதிகளான பதிவு 8 வாரிசுரிமை சட்டப்படி மனுதாரர் உயில்வழி காப்பாளர் என்பது அபாண்டமான பொய். 1ம் பிரதிவாதிக்கு வழக்கு சொத்து குறித்து எவ்வித உரிமையும் இல்லை என்பது சரியல்ல பொய். இந்நிலையில் 1ம் பிரதிவாதியும், நித்தன் என்பவரும் வழக்கு சொத்தை விற்ற க முயற்ச்சி செய்தார்கள் என்பதும் அதனால் மனுதாரர் கனம் நீதிமன்றத்தில் ஓ.எஸ்.எண்.172/2016 என்ற அசல் வழக்கு 1ம் பிரதிவாதி, நித்தன் மற்றும் சார்பதிவாளர் காரிமங்கலம் ஆகியோர்கள் மீது தாக்கல் செய்துள்ள வழக்கு விளம்புகை பரிகாரத்திற்காக தவறான சங்கதிகள் அடிப்படையிலும் போர்ஜரியான உயில் சாசன அடிப்படையிலும் தொடரப்பட்ட வழக்காகும். அந்த வழக்கில் மனுதாரர் இடைக்கால தடைஉத்தரவு கோரி I.A.No.859/2016 தாக்கல் செய்யப்பட்ட மனு தள்ளுபடி செய்யப்பட்டு அந்த உத்தரவு சென்னை உயர் நீதிமன்றத்தில் C.R.P.No.4040/2017ல் பிறப்பிக்கப்பட்ட உத்தரவு படி உறுதி செய்யப்பட்டுள்ளது. மனுதாரருக்கு வழக்கு சொத்தில் சட்டப்படியான சொத்துரிமையும், சுவாதீனமும் இல்லாத நிலையில் பல வழக்குகளை தாக்கல் செய்து கொண்டு உண்மை சொத்துரிமையாளரான இந்த எதிர்மனுதாரருக்கு தொடர் தொல்லைகள் கொடுத்து வருகிறார். நீதிமன்றத்தில் தவறான சங்கதிள் அடிப்படையிலும் போர்ஜரியான ஆவணங்களையும் தாக்கல் செய்து சட்டவிரோத முறையில் சொத்தை அபகரிக்க வீண் வழக்கு விவகாரங்களை மனுதாரர் தொடர்ந்து வருவது முறையற்றது கண்டிக்கத்தக்கதாகும்.



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6.மனு அபிடவிட் பாரா 5ல் சொல்லியுள்ள சங்கதிகளான கனம் நீதிமன்றம் I.A.No.859/2016 in O.S.No.172/2016ல் மனு சொத்து குறித்து வில்லங்கபாரதீனம் செய்யகூடாது என இடைக்கால தடை உத்தரவு 1ம் பிரதிவாதி எதிராக பிறப்பிக்கப்பட்டுள்ளது என்பது மேற்படி மனு தள்ளுபடி ஆகிவிட்டது. மேற்படி தடை உத்தரவானது வில்லங்க சான்று காரிமங்கலம் சார்பதிவாளர் அலுவலகம் ஆவணஎண்.5/2017 வால்டும் எண்351 பக்கம் எண்.173 தேதி 10.11.2016 பதிவாகியுள்ளது என்பது சரியல்ல காரணம் மனு அனுமதிக்கப்பட்டதை பதிவு செய்த மனுதாரர் தள்ளுபடியான விவரத்தை வில்லகத்தில் பதிவு செய்யாமல் விட்டது உள்நோக்கம் கொண்டது. அதற்கு மனுதாரர் பதில் அளிக்க கடமைப்பட்டவர் இதில் இருந்தே மனுதாரரின் கபடநாடகங்கள், பொய் வேசங்கள் தெள்ள தெளிவாகிறது. சொத்தை அபரிக்க செயல்படுவது அவரது குறிக் கோள் ஆகும்.”

10. Therefore, after filing of the suit, after more than five years, this Court cannot issue order directing injunction or granting interim injunction when the suit is ripe for trial. Therefore, he seeks the indulgence of this Court to dismiss the Civil Revision Petitions with a direction to the Trial Court to dispose of the suit. Further, the learned Senior Counsel for the Respondents submitted that the newly constituted Court at Karimangalam and all three suits, viz., O.S.No.172 of 2016, O.S.No.179 of 2016 and O.S.No.15 of 2018 had been transferred to the Court at Karimangalam.



WEB COPY **Point for consideration:**

Whether the judgment passed by the learned Subordinate Judge, Palacode in C.M.A.Nos.1 and 2 of 2018 dated 09.02.2021 by confirming the order and decree of the learned District Munsif, Palacode, in I.A.No.95 of 2018 I.A.No.96 of 2018 in O.S.No.15 of 2018 dated 05.06.2018 is to be set aside?

11. Heard the learned Counsel for the Revision Petitioner and the learned Senior Counsel for the Respondents.

12. Perused the typed set filed along with the memorandum of Civil Revision Petitions and the order passed by the learned District Munsif, Palacode, in I.A.No.95 of 2018 and I.A.No.96 of 2018 in O.S.No.15 of 2018 dated 05.06.2021 and the judgment of the learned Subordinate Judge, Palacode, in C.M.A.Nos.1 and 2 of 2018 dated 09.02.2021.

13. On consideration of the rival submission and on perusal of the typed set it is found that, the Revision Petitioner herein had filed the suit in O.S.No.15 of 2018 seeking declaration that the document No.1231 of 2017 executed by the Defendants 2 to 4 in respect of item No.1 of the suit property as null and void and not binding on the Plaintiff granting mandatory injunction against the 2nd Defendant to vacate and handover physical



possession of the item No.2 of the suit to the Plaintiff. The Plaintiff claims title to the suit property based on the Will executed by S.J.Suresh bonsle, Will dated 24.01.2007. In the very same plaint, it is stated that already the first Defendant in O.S.No.15 of 2018 had filed O.S.No.83 of 2016 without impleading the Plaintiff as a necessary party. The Defendants in O.S.No.15 of 2018 as Respondents in I.A.No.95 of 2018 resisted the same.

14. After due enquiry, the Petition in I.A.No.95 of 2018 in O.S.No.15 of 2018 was dismissed by the learned District Munsif, Palacode, as per order dated 05.06.2018. Against which the Petitioner in I.A.No.95 of 2018 and Plaintiff in O.S.No.15 of 2018 had filed C.M.A.No.1 of 2018 on the file of the learned Subordinate Judge, Palacode. Already, the suit was filed by Leela @ Leelawathy through her Power of Attorney agent Nittin Viswanath Salila on the file of the same learned District Munsif, Palacode, in O.S.No.83 of 2016 against the very same property, seeking declaration of title over the suit property and seeking permanent injunction against Defendants 1 to 4 in O.S.No.83 of 2016. The 4th Defendant is the Plaintiff in O.S.No.15 of 2018. As per the plaint averments, the Defendants in O.S.No.83 of 2016 have no right or claim over the properties. The properties have been purchased by the husband of the Plaintiff, by name J.S.Bhonsle jointly along with his son,



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S.J.Suresh Bonsle, who are natives of Karnataka and reside in Bengaluru.

They wanted to run a Dhaba along with an agricultural farm. Since the son and husband of Plaintiff in O.S.No.83 of 2018 died. She had executed special Power of Attorney for her nephew Nithin Viswanath Salian to take care of the property, including to file cases to protect the property and defend cases to protect the property. Therefore, the suit in O.S.No.83 of 2016 even prior to the filing of the suit by the Revision Petitioner herein as Plaintiff in O.S.No.15 of 2018. Based on a Will alleged to have been executed by her late S.J.Suresh Bonsle, the Plaintiff in O.S.No.15 of 2018 seeks to declare the sale deeds alleged to have been executed by Defendants 2 to 4 in favour of the first Defendant as null and void when the title itself had not been declared in her favour. Therefore, the order passed by the learned District Munsif, Palacode, dismissing the I.A.No.95 of 2018 in O.S.No.15 of 2018 is found to be proper. There is a prior suit in the very same Court between the mother of the deceased S.J.Suresh Bonsle wherein this Plaintiff in O.S.No.15 of 2018 had been impleaded as 4th Defendant.

15. Under those circumstances, the order passed by the learned District Munsif, Palacode, is found to be reasonable order and does not warrant any interference. Aggrieved by the dismissal of I.A.No.95 of 2018 in



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O.S.No.15 of 2018, the Plaintiff in O.S.No.15 of 2018 had preferred Appeal in C.M.A. After hearing the arguments of both the Appellant and the Respondents, the learned Subordinate Judge, Palacode, had dismissed C.M.A.No.2 of 2018 by judgment dated 09.02.2021.

16. The learned Subordinate Judge, Palacode, had on the basis of the averments in the grounds of Appeal as well as the averments in the plaint, stated that the Appellant/wife in C.M.A was not in possession on the date of filing of the suit. Also, the learned Subordinate Judge, Palacode, had recorded that the Revision Petitioner/Appellant in C.M.A had filed O.S.No.172 of 2016 and O.S.No.179 of 2016 and O.S.No.15 of 2018 is the third suit. The first Defendant in O.S.No.15 of 2018 had filed another suit in O.S.No.83 of 2016. O.S.No.83 of 2016 is the earliest suit in which the Plaintiff in O.S.No.15 of 2018 is the fourth Defendant. Also, the learned Subordinate Judge had observed that for every subsequent development, the Plaintiff cannot go on filing suits for every subsequent event. Subsequent events are *lis pendents*. Therefore, as per Section 52 of the Transfer of Property Act, any person dealing with property pending litigation is bound by the final outcome of the decision of the Court, that is the judgment in the earlier suit and therefore there is *prima facie* dispute regarding title to the property between the Plaintiff



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and the Defendant in O.S.No.15 of 2018 clearly based upon allegations in the affidavit of the Petitioner in I.A.Nos.95 & 96 of 2018 and the counter of the Respondent in I.A.Nos.95 & 96 of 2018. The Court cannot decide which is true. Under those circumstances, injunction has to be refused. When the Petitioner has not established his title, the attempt of the Petitioner seeking injunction cannot at all be accepted. In the light of the above, the judgment of the learned Subordinate Judge, Palacode, is found to be well-reasoned judgment and it does not warrant any interference by this Court exercising power under Article 227 of the Constitution of India.

17. O.S.No.83 of 2016 is the earliest suit filed by the mother of S.J.Suresh Bonsle, who is alleged to have executed Will in favour of the Petitioner herein. The said Will is not a registered Will. It has to be proved only in the trial. Before trial, the Petitioner having approached the Court seeking declaration that the sale deed alleged to have been executed by Defendants 2 to 4 in favour of the first Defendant in O.S.No.15 of 2018 cannot at all be accepted as observed by the learned Subordinate Judge, Palacode, in his judgment in C.M.A. For every subsequent transaction, the Plaintiff had filed different suits ignoring the provisions of Section 52 of the Transfer of Property Act. Therefore, the Plaintiff is not entitled to interim injunction.



WEB COPY18. As per the reported ruling in **2022 SCC Online AP 135** in **K.Ravi**

Prasad Reddy Vs. G.Giridhar, the suit was filed for relief of Specific Performance of Agreement of Sale. While so, pending the suit, the Plaintiff had filed I.A.No.334 of 2017 in O.S.No.108 of 2017 seeking interim injunction restraining the Respondents (Defendants in the suit) or the agents or successors from executing or creating any registered document or encumbrance in respect of the suit property (which is the subject matter of the suit for specific performance). Here, the facts in the case are different. Already, the mother of the deceased, S.J.Suresh Bhonsle had sought declaration of title. She had claimed title to the property based on the sale deed executed in her husband and son's favour. Based on which, possession is with the Bhonsle. While so, the Defendants in O.S.No.83 of 2016 are alleged to have trespassed into the property. They don't have title or any right in the property. In O.S.No.83 of 2016, the 4th Defendant is the Revision Petitioner before this Court. The Revision Petitioner had filed O.S.No.15 of 2018 in I.A.No.95 & 96 of 2018 restraining Defendants from creating encumbrances in the property. When her title itself is questioned, she cannot maintain an interim injunction restraining the Defendants from alienating the properties.

Therefore, the reported ruling in **2022 SCC Online AP 135** in **K.Ravi Prasad**



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Reddy Vs. G.Giridhar, will not help the Revision Petitioner herein in this case. Hence rejected.

19. The reported ruling of the Hon'ble Supreme Court in ***Appeal (Civil) No.6792 of 2004 in Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass***, the facts are different. In that case, the suit had been filed for possession of suit scheduled property. The interim application was filed seeking interim injunction from alienating the suit property and from putting up any construction thereon. The Trial Court granted injunction, in the Appeal before the learned District Judge by the Respondents, the Appeal was allowed. Against the grant of decree in C.M.A by the learned District Judge, the Plaintiff in the suit filed Revision before the Hon'ble High Court which was dismissed. The Revision was dismissed based on the oral undertaking given by the learned Senior Counsel for the Respondents in the Civil Revision Petition. The Respondents had no intention of alienating any part of the property and also gave an undertaking that they will not raise any construction. If at all construction is put up they will not seek compensation for the removal of construction if the suit decreed in favour of the Plaintiff. Under those circumstances, the Plaintiff in the suit had preferred Civil Appeal before the Hon'ble Supreme Court in which the interim injunction granted by



the Trial Court was restored. The said decision will also not help the Plaintiff in this case.

20. The learned Counsel for the Revision Petitioner also relied on decision of this Court in O.A.No.348 of 2011 in C.S.No.254 of 2011, **C.Rabia Begm Vs. C.Abdul Aleem**. In the facts of the decision, a civil suit had been filed seeking to enforce the Plaintiff's, right of pre-emption.

Therefore, the suit has been filed by the plaintiffs seeking for declaration that the plaintiffs are entitled to enforce their right of preemption to buy the shares of the Defendants 1 to 11 in the suit B-Schedule Property as per compromise decree in C.S.No.570 of 1978 dated 30.04.1985 and for direction to the Defendants 1 to 12 to jointly execute a sale deed in respect of the suit 'B' Schedule Properties in favour of the plaintiffs, after receiving a sum of Rs.1,40,22,400/- and on their failure, and on the plaintiffs depositing the said sum, the Court itself may execute the sale deed, though its officer in respect of the suit 'B' Schedule Property.

21. The earlier Civil Suit No. 570 of 1978, dated 30.04.1985 was decreed in terms of compromise by which it was stated in the decree that if any of the sharers wanted to sell it they shall not sell it to third parties instead they shall sell only to other co-sharers (right of pre-emption). In the facts of case in C.S.No.254 of 2011, the Defendants are alleged to have violated the earlier decree in C.S.No.570 of 1978 and attempted to sell their shares to third parties. Therefore, to enforce the decree in the earlier compromise decree, the



Civil Suit No. 254 of 2011 was filed by the Plaintiff in C.S.No.254 of 2011 seeking right of pre-emption. Under those circumstances, interim injunction was sought not to create encumbrance in the suit property regarding the shares of the Defendants 1 to 11 in C.S.No.254 of 2011 which was granted by the Court. The said facts are different from the facts of the case before this Court. Therefore, it is not helpful to the Petitioner in the Civil Revision Petition.

22. The learned Counsel for the Revision Petitioner also relied on the order passed by this Court in ***S.V.Doraisamy Vs. T.Dayalan and 8 Ors.*** In the facts of the above case, the Plaintiff had filed the suit before the learned District Munsif, Tambaram, seeking permanent injunction against the Defendants. As per the plaint averments, the Plaintiff had entered into sale agreement with the Defendants and 75% of the sale account was paid to Defendants 1 to 7 by which possession was handed over to the Plaintiff. Subsequently, the Defendants had handed over documents of title to the Plaintiff, balance of the sale consideration was also paid after taking possession. Each of the Defendants had issued receipt for payment of full sale consideration. After handing over possession, Defendants 1 to 7 did not execute the Sale Deed but they had attempted to execute Sale Deed for third parties. Therefore, the Plaintiff had filed suit seeking injunction not to create



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encumbrances. Also, the Plaintiff had filed an interim injunction application seeking interim injunction against Defendants 1 to 7 not to interfere with possession of the property having been handed over to the Plaintiff. The learned District Munsif, Tambaram, denied interim injunction. Aggrieved by the same, the Plaintiff filed C.M.A.Nos.5 and 6 of 2000 before the learned Sub Judge, Poonamallee, which was also dismissed. Hence, the Revision Petition. After hearing the arguments, the learned Judge of this Court had allowed both Civil Revision Petitions. Therefore, the Civil Revision Petitions were allowed, granting temporary injunction to the Plaintiff in the suit before the learned District Munsif, Tambaram, who is the Revision Petitioner before the High Court. The said decision will also not help the Plaintiff in this case.

23. As already stated above, the Revision Petitioner before this Court is the 4th Defendant in the earliest suit in O.S.No.83 of 2016. Therefore, the subsequent suit filed by the 4th Defendant as Plaintiff in O.S.No.15 of 2018 will not help the Plaintiff's case. Therefore, the refusal of injunction is found to be well-reasoned order. Also, as observed by the learned Subordinate Judge, Palacode, for every transaction, the Plaintiff had filed subsequent suit, ignoring the provision of Section 52 of the Transfer of Property Act. In the light of the above, the ruling cited in favour of the Petitioner is not found



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applicable to the facts of this case. There is already dispute regarding title between the Revision Petitioner herein and the Plaintiff in the earlier suit in O.S.No.83 of 2016. While so, it is not fair on the part of any Court to grant interim injunction against the so-called Defendants in O.S.No.15 of 2018 which is a subsequent suit. Therefore, the refusal of interim injunction by the learned District Munsif, Palacode, is a well considered order. The same is the case with the judgment of the learned Subordinate Judge, Palacode, refusing to grant interim orders in favour of the Appellant in C.M.A.Nos.1 & 2 of 2018. This Court exercising its powers under Article 227 of the Constitution of India, cannot interfere with the well-reasoned judgment of the learned Subordinate Judge, Palacode, in C.M.A.Nos.1 & 2 of 2018 dated 09.02.2021.

24. In the light of the above discussion, the point for consideration is answered in favour of the Respondents and against the Revision Petitioner. The judgment passed by the learned Subordinate Judge, Palacode, in C.M.A.Nos.1 and 2 of 2018 dated 09.02.2021 by confirming the decree and judgment dated 05.06.2018 made in I.A.No.95 of 2018 in O.S.No.15 of 2018 and I.A.No.96 of 2018 in O.S.No.15 of 2018 on the file of the learned District Munsif, Palacode, does not warrant any interference from this Court and the same is to be confirmed.



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WEB COPY In the result, these **Civil Revision Petitions are dismissed.** The judgment passed by the learned Subordinate Judge, Palacode, in C.M.A.Nos.1 and 2 of 2018 dated 09.02.2021 by confirming the decree and order dated 05.06.2018 made in I.A.No.95 of 2018 in O.S.No.15 of 2018 and I.A.No.96 of 2018 in O.S.No.15 of 2018 on the file of the learned District Munsif, Palacode is hereby confirmed. No costs. Consequently connected Miscellaneous Petition is closed.

29.04.2024

cda

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



WEB COPY



C.R.P.Nos.1152 & 1153 of 2021

To

1. The Sub-Judge, Palacode.
2. The District Munsif, Palacode.
3. The Section Officer,
VR Records,
High Court, Chennai.



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C.R.P.Nos.1152 & 1153 of 2021

SATHI KUMAR SUKUMARA KURUP, J.,

cda

Order in
C.R.P.Nos.1152 & 1153 of 2021

29.04.2024