



S.A.Nos.689 & 690 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

S.A.Nos.689 & 690 of 2017 and
C.M.P.Nos.17723 & 17724 of 2017
and C.M.P.No.6104 of 2023

Judgment reserved on 22.03.2024	Judgment pronounced on 30.10.2024
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Tmt.Vijayalakshmi

...

Appellant in both Appeals

Vs.

1. G.Ramanibai (died)

2. G.Baktavatchalam

... Respondents in S.A.No.689 of 2017

1. G.Baktavatchalam

2. G.Ramanibai (died)

... Respondents in S.A.No.690 of 2017

3. C.Usha Rani

4. C.Uma Rani

5.C.Ramesh Babu

6.C.Suresh Babu

...

Respondents in both Appeals

(RR3 to R6 brought into record
as LR's of the deceased Ramanibai
vide court order dated 02.02.2022
made in CMP Nos.21818 of 2021,
357 & 361 of 2022 in S.A.No.689
of 2017 and CMP Nos.19122, 19124
& 19127 of 2021 in S.A.No.690 of 2017.



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Prayer in S.A.No.689 of 2017 : This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the order dated 16.09.2016 passed in A.S.No.10 of 2015 by XVIII Additional Judge, City Civil Court, Chennai by confirming the judgment and decree dated 15.09.2024 passed in O.S.No.9164 of 2011 by the XIII Asst. Judge, City Civil Court, Chennai.

Prayer in S.A.No.690 of 2017 : This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the order dated 16.09.2016 passed in A.S.No.11 of 2015 by XVIII Additional Judge, City Civil Court, Chennai by reversing the judgment and decree dated 15.09.2024 passed in O.S.No.1260 of 2011 by the XIII Asst. Judge, City Civil Court, Chennai.

In both Appeals

For Appellant	}	
in S.A.Nos.689 &	}	Mr.L.Dhamodaran
690 of 2017	}	

For R-2 in S.A.	}	Mr.Venkataseshan,
No.689 of 2017	}	Senior Counsel for
& R-1 in S.A.	}	Mr.V.V.Sathya
No.690 of 2017	}	

For R-2 in S.A.	}	
No.690 of 2017	}	Died
& R-1 in S.A.No.	}	
689 of 2017	}	

For R-4 in	}	Mr.T.Easwaradhas
both the appeals	}	



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R3, R-5 & R-6 in }
both the appeals } No appearance

J U D G M E N T

These two appeals arise out of a common judgment rendered in A.S.Nos.10 & 11 of 2015.

2. For the sake of convenience, the parties are referred to as per their ranking in their litigative status before the Trial Court.

3. Before the Trial Court, XIII Asst. Judge, City Civil Court, Chennai, there are two suits. O.S.No.1260 of 2011 is filed by one Bakthavatchalam against Vijayalakshmi and G.Ramanibai. The said Ramanibai is the sister of Bakthavatchalam who alleged to have entered into an agreement of sale with Vijayalakshmi. The said Vijayalakshmi filed O.S.No.9164 of 2011 against the brother and sister namely the plaintiff and the second defendant in the above suit.

3 (a) The prayer in the above suit in O.S.No.1260 of 2011 is to declare



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the registered sale agreement dated 14.07.1997 as unenforceable, null and void and to cancel the same on the ground that since the sister has executed release deed in respect of 1/3rd of her share in favour of the plaintiff brother Bakthavatchalam.

3(b) The prayer in O.S.No.9164 of 2011 is filed by the agreement holder Vijayalakshmi (said to have executed by sister Ramanibai in her favour) to declare the release deed dated 27.05.2010 executed by the first defendant (sister in favour of the second defendant) brother as invalid, illegal and not binding on the plaintiff with further prayer directing the Ramanibai to execute the sale deed in respect of her 1/3rd undivided share in favour of the plaintiff upon deposit of Rs.4,55,000/- towards balance of sale consideration failing which court may direct to executed the sale deed and for permanent injunction restraining the second defendant (brother) from alienating or encumbering the suit property.



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4. On filing of memo, both the suits were taken up for joint trial and oral and documentary evidence were recorded in the first suit namely O.S.No.1260 of 2011 filed by the brother against sister and the agreement holder to declare the registered sale agreement dated 14.07.1997 as null and void and unenforceable.

5. On the side of the plaintiff, PW1 (Bakthavatchalam) was examined as PW1 and Exs.A1 to A6 were marked. On the side of the defendants, husband of the first defendant Vijayalakshmi was examined as DW1 and Exs.B1 to B6 were marked.

6. The learned Trial Court, based upon the oral and documentary evidence, came to the conclusion that date of filing of the suit in O.S.No.1260 of 2011 gives rise to cause of action and accordingly, decreed the suit filed by the agreement holder Vijayalakshmi in O.S.No.9164 of 2011 and dismissed the suit filed by the brother Bakthavatchalam in O.S.No.1260 of 2011.



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7. A.S.No.10 of 2015 is filed against O.S.No.9164 of 2011 and A.S.No.11 of 2015 is filed against O.S.No.1260 of 2011 before the XVIII Additional Judge, City Civil Court, Chennai. After hearing the parties, by judgment dated 16.09.2016, the learned Additional Judge, allowed the suit filed by Bakthavatchalam in O.S.No.1260 of 2011 and dismissed the suit filed by agreement holder Vijayalakshmi in O.S.No.9164 of 2011 and hence S.A No.690 of 2017 is filed against A.S.No.11 of 2015 against O.S.No.1260 of 2011 and S.A.No.689 of 2017 is filed against A.S.No.10 of 2015 against O.S.No.9146 of 2011.

8. Heard the learned counsel for the parties and perused the materials on record.

9. At the time of admission, the following substantial question of law are framed -

(a) Whether the Lower Appellate Court is correct in rendering the finding that the plaintiff has not averred and proved her readiness and willingness in performing her part of



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the agreement ?

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(b) Whether the first respondent was accrued with any cause of action to file the suit bearing O.S.No.1260 of 2011 in the absence of privity of contract between the appellant and first respondent ?

10. Question of law (a) relates to O.S.No.9146 of 2011.

10(i) From the documentary evidence adduced before this Court, I find that the plaintiff brother in O.S.No.1260 of 2011. The plaintiff has filed the suit praying for declaration to declare the sale agreement dated 14.07.1997 entered between the 1st and 2nd defendant as unenforceable null and void and cancel the same. The plaintiff in this case is the 2nd defendant in the O.S.No.9164/2011.

Foundation facts :-

10(ii) The plaintiff in his plaint and evidence has stated that the suit property forms of larger extent of 1.77 acres belongs to his father Mr.Ganesa Naidu, who expired on 7.8.1995 leaving behind the plaintiff the elder brother Kuppusamy and sister Ramanibai the 2nd defendant herein as his legal heirs.



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Without the knowledge of the plaintiff, the 2nd defendant executed the agreement of sale to sell her 1/3rd of her undivided share in the suit property in favour of the 1st defendant herein.

10(iii) The registered sale agreement dated 14.7.1997 is marked as Ex.A1. The subject matter of both the suit is Ex.A1. As per terms of Ex.A1, according to brother Bakthavatchalam, the plaintiff, time for completion of contract was six months from 14.7.1997. The said period of six months elapsed on 13.01.1998 and thereafter, upon expiry, the limitation period of three years thereof which ended on 13.01.2001, the period for enforcing the agreement had come to an end. Thus, the agreement had become unenforceable as time barred. So prayed for decreeing his suit.

10(iv) On perusal, I find that the registered sale agreement is shown as encumbrance in the encumbrance certificate. The same is marked as Ex.A4. Unless the sale agreement is declared as cancelled, the plaintiff would not be able to enjoy the property. On perusal of Ex.A4-encumbrance certificate, I find that the sale agreement - Ex.A1 is a registered document. Clause 6 of the



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agreement reads that both the parties hereby mutually agree to complete the sale transaction within a period of six months from the date of agreement.

The principles governing the limitation of specific performance suit namely the Second Appeal in the suit in O.S.No.9164 of 2011, Article 54 of Limitation Act is the relevant article for the starting point of limitation which reads as follows -

For specific performance of a contract the period of is 3 years from the date fixed for limitation performance or if no such date is fixed when the plaintiff has notice that performance is refused.

10(v) The suit agreement is dated 14.07.1997. Time for completion is six months. It expires on 13.01.1998. There is no time extension. The limitation period is three years from the date of refusal to perform. As the contract has not been fulfilled by either party within the time frame, there is deemed refusal. The limitation period of three years from 13.01.1998 ends on 13.01.2001. Thus, the agreement has become time barred on 13.01.2001. The suit by Agreement holder Vijayalakshmi ought to have been filed before that date.



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10(vi) Thus, from the oral and documentary evidence, I find that the suit property originally belonged to Ganesa Naidu and he died intestate on 07.08.1995. Bakthavatchalam, Kuppusamy and Ramanibai are the legalheirs of Gamesa Naidu. The said Ramanibai executed a sale agreement in favour of Vijayalakshmi on 14.07.1995 and received the advance amount of Rs.50,000/-

10(vii) The agreement holder Vijayalakshmi has stated that in total, she paid Rs.1,35,000/- to Ramanibai and the sale consideration amount was fixed as Rs.5,50,000/-. According to agreement holder, it is Ramanibai who evaded performing the contract stating that the property was not yet divided and also stated that she filed C.S No.310/2009 before the Hon'ble High court for partition and it was pending. So, she waited for the performance of contract. But the said Ramanibai entered into a compromise with his brother Bakthavatchalam and received the amount of Rs.20,00,000/- and released her share through release deed on 27.05.2010 which is against law and hence the suit in O.S.No.9164/2011 was filed as against the said Bakthavatchalam and Ramanibai to declare the release deed as null and void and also to direct the



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said Ramanibai to execute sale deed in favour of Vijayalakshmi. After contest, I find that the suit was decreed and A.S No.10 of 2015 was filed and allowed. Hence, the present Second Appeals.

10(viii) Bakthavatchalam filed O.S.No.1260 of 2011 to declare the sale agreement in favour of Vijayalakshmi as null and void and the suit was dismissed and appeal in A.S.No.11 of 2015 was allowed. During trial, the said Bakthavatchalam was examined as PW1. He has stated in his evidence that in the year 2004 he knew about the sale agreement and he also accepted that he got the certified copy of the said sale agreement in the year 2004 and the document was marked as Ex.A1. On perusal of ExA1, it is seen that it was applied and got by him in the year 2004. The registered sale agreement between Ramanibai and Vijayalakshmi was obtained by Bakthavatchalam on 07.06.2004. But he filed the suit to declare the sale agreement as null and void only in the year 2011. The Trial Court appears to have rendered a finding that the date of knowledge of the agreement was in the year 2004 but the suit was filed after 7 years which is barred by limitation and dismissed the suit filed by Bakthavatchalam.



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WEB COPY 10(ix) On consideration of pleadings and evidence in both suits, I find that the sale agreement was between Vijayalakshmi and Ramanibai. The said Vijayalakshmi filed the suit in O.S.No.9164/2011 in the year 2011. The sale agreement was executed between Vijayalakshmi and Ramanibai on 14.07.1997. So, till 2011, the said Vijayalakshmi (agreement holder) had not filed any suit, but Bakthavatchalam, immediately after getting release deed from her sister, filed the suit in O.S.No.1260 of 2011 against Vijayalakshmi to declare the sale agreement as null and void. Then, Vijayalakshmi filed the suit in O.S.No.9164 of 2011, that too after 14 years.

10(x) The second prayer in O.S.No.9146 of 2011 is in the nature of specific performance of the alleged agreement between Ramanibai and Vijayalakshmi.

10(xi) The first substantial question of law is in effect is whether the plaintiff Vijayalakshmi (agreement holder) has pleaded and proved the readiness and willingness as required under Section 16(3) of the Specific



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Relief Act. Vijayalakshmi has not entered the witness box and only her husband was examined as DW1. The readiness and willingness of the parties have to be proved with respect to suit for specific performance. But in this case, the said Vijayalakshmi entered into sale agreement with Ramanibai on 14.07.1997. The original sale agreement was marked as Ex.B3. She was not preferred to examine herself as witness. She gave power of attorney to her husband through Ex.B2 and her husband was examined as DW1. With respect to specific performance of contract, the readiness and willingness has to be proved by the plaintiff by examining herself. But in this case, she was not examined. No doubt, husband can be treated as competent witness to speak on behalf of his wife.

11. The learned counsel for the Vijayalakshmi (agreement holder) drew my attention to Ex.B1 and contended that as per the decree in C.S.No.310 of 2009, there was a compromise between the the parties and relied upon Ex.B5. On perusal of the same, this Court finds that since a suit was filed by the settlor Ramanibai for partition, the agreement holder Vijayalakshmi has waited for the outcome of the partition suit. But on verification of Ex.B1, it



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could be ascertained that the suit in C.S.No.310 of 2009 was filed by Ramanibai against her brother Bakthavatchalam and Kuppusamy in the year 2009 only. The suit filed before Hon'ble High Court was decreed and the document was marked as Ex.A3. Then compromise was arrived at and release deed was executed by Ramanibal in favour of Bakthavatchalm on 27.05.2010 and the document was marked as Ex.B5.

12. On a combined reading of Exs.A4, A5, A6, B5, B6 and B7, this Court finds that the encumbrance certificate for the period from 1994 to 2011 was marked as Ex A4. Through this document, it is clear that in the year 1997, a sale agreement was executed by Ramanibai for 1/3rd undivided share in favour of Vijayalakshmi and in the year 2010, the release deed was executed by Ramanibai in favour of Bakthavatchalam. Since Bakthavatchalam got release deed from her sister Ramani Bai, it was informed to Vijayalakshmi on 03.11.2010 through a letter which is marked as ExA5. After that, through Ex.A6, the agreement holder Vijayalakshmi gave reply to the letter to Bakthavatchalam on 10.11.2010. Then a legal notice was issued by Vijayalakshmi through Ex.B6 only on 26.9.2011 stating that she was ready to



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give the balance sale consideration amount of Rs.4,55,000/- and willing to purchase the 1/3rd share of the property. The legal notice was issued after the letter was given by the said Bakthavatchalam on 03.11.2010. Before 2011, there was no whisper by the said Vijayalakshmi that she was always ready and willing to perform the contract assumes significance. Furthermore, the acknowledgment card was marked as Ex.B.7 and the reply given by Ramanibai on 03.10.2011 was marked as Ex.B8.

13. It remains to be stated that the pre-suit notice exchanged between the parties goes to show that a sale agreement was entered into between Ramanibai and Vijayalakshmi on 14.07.1997 with respect to 1/3rd of undivided share and she received an advance amount of Rs.50,000/-. On the sale agreement, there is an endorsement that Rs.50,000/- was paid on 28.12.1998 and Rs.35,000/- on 03.01.1999. Through these documents, it is clear that the said Ramanibai received a sale consideration of amount of Rs.1,35,000/- till 03.01.1999. The period mentioned in the agreement was three months from the date of execution of sale agreement. But she received the amounts after the period of six months till 03.01.1999. The sale



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consideration mentioned in the sale agreement is Rs.10,000/- per cent. Sale agreement with Vijayalakshmi was entered into with respect to the 1/3rd undivided share of schedule mentioned property, the total extent of which is 1.77 cents. Hence, this Court finds that the suit sale agreement was entered in the year 1997 but till 1999, a sum of Rs.1,35,000/- alone was paid and balance of the amount remains to be unpaid till the date of filing of the suit and even on the date of hearing of the Second Appeals, assumes significance.

14. It is axiomatic law that when the plaintiff seeks the relief of specific performance of said sale agreement, she has to specifically plead and prove that she is ready and will to complete the sale transaction. As stated supra, the plaintiff Vijayalakshmi, agreement holder has not examined herself but her husband was examined as DW1. On perusal of the evidence of DW1, it is seen that husband of Vijayalakshmi who is the power agent has categorically stated as follows -



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“வா.சா.ஆ.6 கிரய ஒப்பந்தத்தை நிறைவேற்றி கொடுக்குமாறு கோரவில்லை என்றும் எனது மனைவி ரமணிபாய்க்கு கிரய ஒப்பந்தத்தை நிறைவேற்ற எந்த அறிவிப்பும் அனுப்பவில்லை என்றும் எனது மனைவி கிரய ஒப்பந்தத்தை நிறைவேற்ற நடவடிக்கை எடுக்காததால் ரமணிபாய் அவரது சொத்தை விடுதலை பத்திரம் எழுதி வைத்தார் என்றால் சரியல்ல என்றும் எஞ்சிய கிரய தொகையை தனது மனைவி வைப்பீடு செய்யவில்லை என்றும் வழக்கு முழு விவரம் என் மனைவிக்கு தான் தெரியும் என்றாலும் அவர் வந்தால் அவரது வழக்கு பற்றி தெரியும் என்பதால் வரவில்லை என்றால் சரிதான் என்றும் சாட்சி கூறியுள்ளார்”.

15. From the above evidence, it is seen that DW1 has stated that his wife alone know about the facts relating to the case. He has also stated that his wife did not send any notice to Ramanibai that she is ready and willing to purchase the property. He also accepted that the balance sale consideration amount was not yet deposited in the court. Through his evidence, it is clear that the said Vijayalakshmi, who is the plaintiff in the suit in C.S.No.1260 of 2011 has not appeared before the trial court and deposed evidence to prove



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her case. Thus, this Court finds that though the sale agreement was made in the year 1999, specific time has been fixed for completion of sale transaction as three years. Period of limitation three years starts from the last payment made in the year 1989 but unfortunately, till 2010, no steps have been taken by Vijayalakshmi to complete the sale transaction and agreement was not performed within the prescribed period and till 2010, Ramanibai (sister of Bakthavatchalam) executed the release deed on 27.05.2010 in favour of her brother Bakthavatchalam as could be seen from Ex.B5.

16. On a closer reading of the evidence of PW1 and the documentary evidence, I find that the plaintiff Vijayalakshmi has not proved that she is ready and willing to perform her part of the contract. So, the sale agreement in favour of Vijayalakshmi executed by Ramanibai by lapse of time has become unenforceable. Hence, the relief sought for by Vijayalakshmi as plaintiff in O.S.No.9164 of 2011 cannot be granted.



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WEB COPY 17. It is to be stated that even with regard to the extent owned by Ramanibai, there is a dispute. As stated supra, Ramanibai is entitled to only 1/9th share. Hence, I find that once the plaintiff Vijayalakshmi in O.S.No.9164 of 2011 has failed to prove her readiness and willingness to perform her part of contract, consequently, she is not entitled for the relief of any injunction besides the plaintiff in O.S.No.9164 of 2011 is only an agreement holder and she cannot seek for any injunction against the original owner since no right has been transferred in the agreement. Hence, I find that there is no error in the judgment of the Lower Appellate Court in rejecting the claim of the plaintiff Vijayalakshmi in O.S.No.9164 of 2011. The substantial question of law is answered in affirmation in favour of the respondent and against the appellant. The Lower Appellate Court is correct in rendering the finding that the plaintiff Vijayalakshmi has not pleaded and proved her readiness and willingness in performing her part of contract. Hence, the Lower Appellate Court is right in rejecting the case of the plaintiff Vijayalakshmi in O.S.No.9164 of 2011. The substantial question of law (a) is answered accordingly against the appellant and in favour of the respondent.



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WEB COPY 18. It is to be stated that during the existence of the agreement, no law prevents the vendor exchanging her right in favour of the third party relative. Since the plaintiff is only an agreement holder, her right is only to get the sale deed from the vendor and she cannot ask for the relief of declaration of null and void of the release deed.

19. Substantial question of law (b)

19(i) Admittedly, sister Ramanibai, second defendant in O.S.No.1260 of 2011 had released her share in favour of her brother Bakthavatchalam and hence the brother steps into the shoes of her sister by virtue of said release deed. As on date, the said release deed is not set aside. Hence, it is still in force.

19(ii) On the point of extent of share held by Ramanibai, it remains to be stated that the suit property forms part of a larger extent of 1 Acre 77 cents situated at Survey No.104A, Velachery Village. The property originally belonged to the paternal grandfather of the Defendants- Lakshmana Naidu.



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Upon his death, there was partition between his two sons Ganesh Naidu, father of the Defendants and Varadarajalu Naidu, effected by a Registered Partition Deed dated 24.12.1945. In and out of the partition, the larger extent of property comprising of 1 Acre 77 cents fell to the share of Ganesh Naidu. Therefore, Ganesh Naidu, father of the defendants succeeded to his father's property. With the birth of two sons, the 2nd defendant and his brother Kuppusamy, the property became ancestral coparcenary property in the hands of Ganesh Naidu.

19(iii) Ganesh Naidu died on 07.08.1995 leaving behind him two sons and a daughter, the 1st defendant herein. Being a class 1 heir, the daughter became entitled to one share in the 1/3rd share of Ganesh Naidu thus being entitled to 1/9th share and the 2nd defendant and his brother being entitled to 4/9th share each. It was this 1/9th undivided share in the property, Survey No.104A, Velachery Village which was released by defendant No.1 in favour of defendant No.2 by a Registered Release Deed dated 27.05.2010. Therefore, the property own by the 1st defendant which was transferred to the 2nd defendant by a Release Deed was only the undivided 1/9th share and not 1/3rd



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19(iv) The sale agreement does not create any interest in the property. By virtue of the release deed executed by the sister Ramanibai, the brother Bakthavatchalam became the lawful owner and hence she cannot enjoy from dealing the property and the same tantamount on the restrain of enjoyment of the property in violation of Section 10 of the Transfer of Property Act. In short, injunction cannot lie against true owner. Agreement expired on 13.01.1998. Suit ought to have been filed on or before 2011. Present suit is filed after 13 years. Accordingly, both the substantial questions of law are held against the appellant and in favour of the respondent.

20. In the result, both **the Second Appeals are dismissed** to the extent indicated above. The judgment and decree passed by the Lower Appellate Court in A.S.Nos.10 & 11 of 2015 is hereby confirmed. Consequently, the suit in O.S.Nos.9164 of 2011 filed by Vijayalakshmi is dismissed and suit in O.S.No.1260 of 2011 filed by Bakthavatchalam is decreed.



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WEB COPY 21. This Court is not expressing anything with regard to the validity of the release deed said to have been executed by the sister Ramanibai in favour of the Bakthavatchalam which is the subject matter of the connected A.S.No.105 of 2023. No costs. Consequently, the connected Miscellaneous Petitions are closed.

30.10.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

1.The XVIII Additional Judge,
City Civil Court,
Chennai

2.The XIII Additional Judge,
City Civil Court,
Chennai

3.The Section Officer
VR Section, High Court
Madras.

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RMT.TEEKAA RAMAN, J.

(igr)

**Judgment in
S.A.Nos.689 & 690 of 2017**

30.10.2024