



CNR: KAHC010399562017

NC: 2026:KHC:51278
RSA No. 1747 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR SECOND APPEAL NO.1747 OF 2017 (PAR)

BETWEEN:

SMT. SHIVALINGAMMA
DEAD BY LRS

1. SMT PRABHA
D/O LATE SHIVALINGAMMA
AGED ABOUT 41 YEARS,
2. SRI SHIVAMADU
S/O LATE SHIVALINGAMMA
AGED ABOUT 37 YEARS

BOTH ARE RESIDING AT
KEMPEGOWDANA DODDI
KASABA HOBLI
RAMANAGARA TALUK
RAMANAGARA DISTRICT – 562 117.

3. SMT LAKSHMI
D/O LATE SHIVALINGAMMA
W/O RAVI
R/A CHEERANAHALLI
AGED ABOUT 36 YEARS,
MANDYA TALUK AND DISTRICT-562 117.

...APPELLANTS

(BY SRI. R HEMANTH RAJ, ADVOCATE)

AND:

1. SMT. CHIKKATHAYAMMA
W/O LATE ERAIAH @ DODDONU @ THAMMIAH
DIED.

SINCE DEAD BY SOLE LR OF R-1 IS
REPRESENTED BY R-2.

Digitally
signed by
VANDANA S
Location:
High Court
of Karnataka



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2. SMT PADMAMMA
W/O LATE THAMMAIAH
D/O LATE ERAIAH @ DODDONU @ THAMMAIAH
AGED ABOUT 56 YEARS
R/A KODHALIPURA, ATHAGURU HOBLI
MADDUR TALUK
MADYA DISTRICT-562 117.
3. THE PRESIDENT
RAMANAGARA CHANNAPATNA
URBAN DEVELOPMENT AUTHORITY
RAMANAGARA-562 117.
4. SMT SOWMYA B K
W/O KUMARASWAMY
AGED ABOUT 41 YEARS,
R/A VIVEKANANDA NAGAR
B.M.ROAD, RAMANAGARA TOWN
RAMANAGARA-562 117.

...RESPONDENTS

(BY SRI. K.R. SRINIVASAN FOR
SRI. B.G. THAMMAIAH, ADVOCATES FOR R-2;
SRI. PRADEEP J.S., FOR
SRI. N. SUBBA SHASTRY, ADVOCATE FOR R-4;
R-3 SERVED
VIDE ORDER DATED 08.01.2020, R-2 IS
TREATED AS LR OF DECEASED R-1)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 30.07.2007 PASSED IN O.S.NO.211/2007 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE & CJM, RAMANAGARA AND THE IMPUGNED JUDGMENT AND DECREE DATED 15.06.2017 PASSED IN R.A.NO.56/2012 ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, RAMANAGARA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 30.07.2012 PASSED IN OS.NO.211/2007 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM, RAMANAGARA.

THIS APPEAL, COMING ON FOR *HEARING*, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



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CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

This appeal by the plaintiff in O.S.No.211/2007 on the file of the Principal Senior Civil Judge and CJM, Ramanagara, is directed against the impugned judgment and decree dated 30.07.2012 whereby the said suit filed by the appellant-plaintiff for partition and separate possession of her alleged $\frac{1}{2}$ (half) share in the suit schedule immovable properties was dismissed by the Trial Court and confirmed by the First Appellate Court in R.A.No.56/2012 whereby the First Appellate Court dismissed the appeal filed by the appellant-plaintiff.

2. For the sake of convenience, the parties in this appeal are referred to as per their status and rank before the Trial Court.

3. Briefly stated the facts giving rise to the present appeal are as under:

3.1 The original plaintiff – Shivalingamma instituted the aforesaid suit against defendant No.1 – Chikkathayamma and defendant No.2 – Padmamma and two others *inter alia* contending



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that the plaintiff is the 1st daughter of Chikkathayamma and late Eraiah, while defendant No.2 –Padmamma is the 2nd daughter of the said Chikkathayamma and late Eraiah. It was contended that the suit schedule immovable properties were owned and possessed by late Eraiah, who expired prior to institution of the suit and upon his demise, the plaintiff and defendant Nos.1 and 2 being the Class-I heirs succeeded to the suit schedule immovable properties, which formed part of the estate of late Eraiah. It was further contended that the request and demand made by the plaintiff to the defendant Nos.1 and 2 were not complied with by defendant Nos.1 and 2, who instead alienated item No.4 of the suit schedule immovable property in favour of defendant No.4, who was subsequently impleaded as additional defendant No.4 in the suit. So also, defendant No.3, which is the local planning authority i.e., Ramanagara-Channapatna Urban Planning and Development Authority, was also impleaded as additional defendant No.3 in the suit on the ground that defendant No.3 had acquired portion of the suit schedule immovable property and had deposited the compensation amount before the Civil Court. Under these circumstances, the plaintiff instituted the aforesaid suit for partition



and separate possession of her legitimate share in the suit schedule immovable properties and for other reliefs.

3.2 Defendant Nos.1 and 2 entered appearance and filed their written statement *inter alia* disputing and denying the alleged relationship of the plaintiff with late Eraiah and Chikkathayamma. It was specifically contended by defendant Nos.1 and 2 that the plaintiff was not the daughter of late Eraiah and Chikkathayamma and instead the plaintiff was the daughter of one Basavegowda and Chikkamma, who were not in any way related or connected to either the aforesaid late Eraiah or to his wife Chikkathayamma or their daughter Padmamma. It was also contended that the said late Eraiah did not leave behind any male issues and accordingly, the defendant Nos.1 and 2 were the only Class I heirs of late Eraiah and the plaintiff did not have any manner of title, interest, possession or share over the suit schedule immovable properties and that the suit was liable to be dismissed.

4. It is a matter of record and an undisputed fact that during pendency of the suit, the original plaintiff - Smt.Shivalingamma expired leaving behind her two daughters viz.,



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Smt. Prabha and Smt. Lakshmi and one son Sri. Shivamadu to succeed to her estate and to prosecute the suit and they came on record and continued to prosecute the suit as the legal representatives of the deceased plaintiff.

5. The Trial Court framed the following issues and additional issues:

(i) *Whether the plaintiff proves that she is the daughter of 1st defendant and Eraiah @ Doddonu @ Thammaiah ?*

(ii) *Whether the plaintiff is entitled to her half share in the suit properties?*

(iii) *Whether the plaintiff is entitled to the relief of partition and separate possession sought?*

Additional issue:

(i) *Whether the defendant No.4 proves after verifying title deed furnishing by D.1 and 2 after confirming the right and possession of D.1 and 2 in respect of item No.4 she has purchased it and she is in possession of said property as absolute owner?*

6. Before her demise, the original plaintiff examined herself as PW1 but before she was cross-examined, she expired



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and thereafter her legal representatives including her daughter Smt. Prabha were brought on record. The said daughter Smt. Prabha examined herself as PW2 and documentary evidence at Exhibits P1 to P18 were marked on behalf of the plaintiffs. It is also not in dispute that the defendant Nos.1 and 2 did not cross-examine the aforesaid PW2 nor adduce any defence evidence on their behalf. After hearing the parties, the Trial Court came to the conclusion that the plaintiff had not established her alleged relationship with late Eraiah and Chikkathayamma and consequently, proceeded to dismiss the suit filed by the plaintiff, who was represented by her legal representatives.

7. Aggrieved by the impugned judgment and decree passed by the Trial Court, the legal representatives of the deceased plaintiff filed an appeal in R.A.No.56/2012, which was contested by the respondents-defendants and culminated in the impugned judgment and decree dated 15.06.2017 whereby the said appeal filed by the legal representatives of the original plaintiff was dismissed by the First Appellate Court. During pendency of the appeal, the appellants – legal representatives of the original



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plaintiff filed application – I.A.No.2 under Order XLI Rule 27 CPC seeking permission / leave to produce three additional documents by way of additional evidence. The said application having been opposed / contested by the defendants, the First Appellate Court not only dismissed the appeal but also application – I.A.No.2 filed by the appellants – legal representatives of the original plaintiff under Order XLI Rule 27 CPC for permission to adduce additional evidence. Accordingly, aggrieved by the impugned judgment and decree passed by the First Appellate Court, the legal representatives of the original plaintiff are before this Court by way of the present appeal, which was admitted by this Court on 12.09.2017 to consider the following substantial questions of law:

- i) *Whether the Courts below were right in law in holding that appellants have failed to prove that appellant No.1 is the wife and appellant No.2 is the daughter of Eraiah @ Doddonu @ Thammaiah inspite of production of genealogical tree and adducing oral evidence in that regard?*
- ii) *Whether the first appellate court was right in law in rejecting the application filed by the appellants under Order 41 Rule 27 of CPC for production of documents which are relevant to prove issue No.1 that appellant No.1 is the wife and appellant*



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No.2 is the daughter of Eraiah @ Doddonu @ Thammaiah?

- iii) *Whether the Courts below were right in law in dismissing the suit of the appellants/plaintiffs solely on the ground that they have not proved that they are the wife and daughter of Eraiah @ Doddonu @ Thammaiah even though their case has not been denied by defendants by adducing any evidence?*

Substantial questions of law No.(i) and (iii):

8. A perusal of the material on record will clearly indicate that it is a matter of record and an undisputed fact that the original plaintiff – Smt.Shivalingamma claimed to be the daughter of late Eraiah and Chikkathayamma – defendant No.1, whose undisputed daughter was Smt.Padmamma – defendant No.2; it is also not in dispute that the original plaintiff – Smt. Shivalingamma expired during the pendency of the suit after being examined as PW1 and her evidence was obviously discarded / eschewed from the record. However, subsequently her children i.e., Prabha, Shivamadu and Lakshmi were brought on record as her legal representatives and amongst them Smt. Prabha, the daughter of original plaintiff –



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Smt.Shivalingamma examined herself as PW2 and documentary evidence at Exhibits P1 to P18 were marked on her behalf. It is also a matter of record that the defendants did not choose to cross-examine PW2 and the oral and documentary evidence adduced on behalf of the plaintiffs remained unimpeached, unchallenged and uncontroverted by the defendants by way of cross-examination. It is well settled that ordinarily, if a witness is not cross-examined by the adverse party, the evidence of the unimpeached, uncontroverted and unchallenged oral and documentary evidence of a party witness / witness would have to be accepted especially when there is no rebuttal / contra evidence adduced by the adverse party to impeach the said evidence of a witness / party witness, who is not cross-examined by the adverse party as held by the Apex Court and this Court in various judgments including the judgment of the Apex Court in the case of **Muddasani Venkata Narsaiah (D) Th. Lrs. Vs. Muddasani Sarojana – (2016) 12 SCC 288**, wherein at paragraphs 15 and 16 it is held as under:

“15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW 1 and PW 2 have not been cross-examined as to factum of execution of sale



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deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non-cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal v. Debnath Bhagat [Bhoju Mandal v. Debnath Bhagat, AIR 1963 SC 1906] . This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the Court would presume that the witness account has been accepted as held in Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. [Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177 : AIR 1958 P&H 440]

16. In Maroti Bansi Teli v. Radhabai [Maroti Bansi Teli v. Radhabai, 1943 SCC OnLine MP 128 : AIR 1945 Nag 60] , it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established. The High Court of Calcutta in A.E.G. Carapiet v. A.Y. Derderian [A.E.G. Carapiet v. A.Y. Derderian, 1960 SCC OnLine Cal 44 : AIR 1961 Cal 359] has laid down that the party is obliged to put his case in cross-examination of witnesses of opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely technical one. A Division Bench of the Nagpur High Court in Kuwarlal Amritlal v. Rekhlal Koduram



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[Kuwarlal Amritlal v. Rekhlal Koduram, 1949 SCC OnLine MP 35 : AIR 1950 Nag 83] has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in Karnidan Sarda v. Sailaja Kanta Mitra [Karnidan Sarda v. Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288 : AIR 1940 Pat 683] has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff.]

9. In the instant case, as stated supra, though the evidence of PW1 (original plaintiff – Shivalingamma) was discarded / eschewed on account of her demise before she tendered herself for cross-examination, one of the legal representatives of the original plaintiff i.e., Smt. Prabha (PW2) examined herself as a witness and continued to prosecute the suit after the demise of her



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mother (the original plaintiff) and the oral and documentary evidence of PW2 had not been challenged, impeached or controverted by the defendants by way of any cross-examination. Under these circumstances, I am of the considered opinion that both the Trial Court and the First Appellate Court clearly fell in error in not accepting the unimpeached, uncontroverted and unchallenged oral and documentary evidence of the plaintiffs, in particular, PW2 for the purpose of passing the impugned judgments and decrees, which are vitiated warranting interference by this Court.

10. As noticed earlier, the defendants not only did not cross-examine PW2 or impeach, controvert or challenge her oral and documentary evidence, the defendants also did not choose to lead any defence evidence in support of their defence despite having filed the written statement. It is well settled that if a party abstains from adducing any evidence or stepping into the witness box without any reasonable or proper explanation, adverse inference would necessarily have to be drawn against a party, who does not choose to enter / step into the witness box as held by the



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Apex Court and this Court in various judgments including the judgment of the Apex Court in the case of ***Vidhyadhar Vs. Manikrao and another – (1999) 3 SCC 573***, wherein at paragraph No.17, it is held as under:

“17. Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh [AIR 1927 PC 230 : 32 CWN 119] . This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh [AIR 1930 Lah 1 : ILR 11 Lah 142] and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh [AIR 1931 Bom 97 : 32 Bom LR 924] . The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat [AIR 1970 MP 225 : 1970 MPLJ 586] also followed the Privy Council decision in Sardar Gurbakhsh Singh case [AIR 1927 PC 230 : 32 CWN 119] . The Allahabad High Court in Arjun Singh v. Virendra Nath [AIR 1971 All 29] held that if a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a Division Bench of the Punjab and Haryana High Court in Bhagwan Dass v. Bhishan Chand [AIR 1974 P&H 7] drew a presumption



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under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box."

11. In the instant case, as stated supra, the defendants having filed their written statement not only did not cross-examine PW2 but also did not adduce any defence evidence nor step into the witness box and both the Trial Court and First Appellate Court clearly misdirected themselves in not drawing adverse inference against the defendants in this regard. At this stage, learned counsel for the respondents – defendants submits that in the event the present appeal is to be allowed and the judgments and decrees passed by the Trial Court and the First Appellate Court are set aside and the matter is remitted back to the Trial Court for reconsideration afresh and in accordance with law, liberty may be reserved in favour of the respondents – defendants to cross-examine PW2 and other witnesses and also to adduce defence evidence in support of their defence. The said submission is placed on record.

12. Accordingly, substantial questions of law No.(i) and (iii) are answered in favour of the appellants by setting aside the



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impugned judgments and decrees passed by the Trial Court and First Appellate Court.

Substantial question of law No.(ii):

13. As stated earlier, upon dismissal of their suit, the legal representatives of the original plaintiff not only filed an appeal but also filed I.A.No.2 under Order XLI Rule 27 CPC for permission to adduce additional evidence along with documents, which also came to be dismissed by the First Appellate Court while dismissing the appeal filed by the appellants; in this context, the First Appellate Court committed a grave and serious error of law and fact in embarking / venturing into the merits of the documents sought to be produced by way of additional evidence without appreciating that so long as the appellants had established due diligence in not filing the application along with the documents before the Trial Court, the only question that would arise for consideration while deciding I.A.No.2 was whether the documents sought to be produced along with I.A.No.2 were relevant and necessary for the purpose of adjudication of the appeal; it is pertinent to note that by way of additional evidence, the plaintiffs



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intended to produce documents for the purpose of establishing their alleged relationship with late Eraiah and Chikkathayamma and consequently, it cannot be said that the said documents were not relevant, material or unnecessary for the purpose of disposal of the appeal, especially when parties would necessarily have to be given an opportunity to adduce evidence in relation to the said documents by setting aside the judgment and decree of the Trial Court and remitting the matter back to the Trial Court for reconsideration afresh in accordance with law after following the procedure prescribed under Order XLI Rule 28 CPC and as such, it is clear that the First Appellate Court committed an error in summarily rejecting the application for additional evidence by embarking / venturing into the merits of the documents, which is impermissible in law.

14. Under these circumstances, I am of the considered opinion that the First Appellate Court committed an error in rejecting I.A.No.2 filed by the appellants under Order XLI Rule 27 CPC and consequently, substantial question of law No.(ii) also deserves to be answered in favour of the appellants by setting



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aside the finding on I.A.No.2 recorded by the First Appellate Court and by allowing I.A.No.2 filed by the appellants for production of additional evidence.

15. At this stage also, learned counsel for the respondents-defendants submits that in the event this Court were to set aside the judgments and decrees passed by the Trial Court and First Appellate Court and permit the appellants to adduce additional oral and documentary evidence in support of their claim by including the documents produced along with I.A.No.2, liberty may be reserved in favour of the respondents-defendants to also adduce evidence in support of their defence. Even this submission made on behalf of the respondents-defendants is placed on record. Accordingly, even substantial question of law No.(ii) is answered in favour of the appellants.

16. The aforesaid facts and circumstances and discussions clearly indicate that the substantial questions of law Nos.(i) to (iii) formulated above deserves to be answered in favour of the appellants-plaintiffs by setting aside the impugned judgments and decrees passed by the Trial Court and the First Appellate



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Court and remitting the matter back to the Trial Court for reconsideration afresh and in accordance with law by issuing certain directions. It is needless to state that merely because the impugned judgments and decrees passed by the Trial Court and the First Appellate Court are hereby set aside and the substantial questions of law are answered in favour of the appellants, no opinion is expressed on the merits / demerits of the rival contentions and all rival contentions between the parties including the claim of the original plaintiff – Shivalingamma that she was the daughter of late Eraiah and Chikkathayamma are kept open and the matter deserves to be remitted back to the Trial Court for reconsideration afresh and in accordance with law by leaving open all contentions.

17. In the result, I pass the following:

ORDER

- (i) The appeal is hereby ***allowed and disposed of.***
- (ii) The impugned judgment and decree dated 30.07.2012 passed in O.S.No.211/2007 by the Prl. Senior Civil Judge & CJM, Ramanagara and the impugned



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judgment and decree dated 15.06.2017 passed in R.A.No.56/2012 by the Prl. District & Sessions Judge, Ramanagara are hereby set aside.

(iii) Matter is remitted back to the Trial Court for reconsideration afresh and in accordance with law.

(iv) I.A.No.2 filed by the appellants in R.A.No.56/2012 under Order XLI Rule 27 CPC is hereby allowed. The documents produced by the appellants-plaintiffs along with I.A.No.2 are hereby directed to be received on record and shall stand transmitted by the First Appellate Court to the Trial Court, immediately, without any delay.

(v) The appellants and respondents are directed to appear before the Trial Court on **12.10.2026** without awaiting any further notice from the Trial Court.

(vi) Liberty is reserved in favour of both the appellants and respondents to adduce additional oral and documentary evidence in support of their respective claims and defences.



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(vii) Liberty is also reserved in favour of the respondents to cross-examine PW2 as well as any other witnesses to be examined by the plaintiffs and also defence evidence in support of their defence.

(viii) Liberty is further reserved in favour of the appellants – plaintiffs to cross-examine the defendants and any other witnesses to be examined by them.

(ix) Respondent No.3 – Authority is directed to deposit the entire compensation amount before the Trial Court, which shall be invested in a nationalized bank and the same would be subject to the final outcome of the suit.

(x) All rival contentions on all aspects of the matter including the alleged relationship of the original plaintiff – Shivalingamma with late Eraiah and Chikkathayamma are kept open and no opinion is expressed on the merits / demerits of the rival contentions.

(xi) The Trial Court is directed to reconsider the matter afresh and dispose of the suit within a period of six months from **12.10.2026**.



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(xii) Liberty is also reserved in favour of the parties to file appropriate application before the Trial Court seeking framing of additional issues, if required.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

SV
List No.: 1 SI No.: 71