



A.S.No.314 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2026

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CORAM :

**The Hon'ble Mr.Justice N.SATHISH KUMAR
and
The Hon'ble Mr.Justice M.JOTHIRAMAN**

A.S.No.314 of 2010 and C.M.P.No.13001 of 2026

- 1.Mariammal
- 2.A.Madheswaran
- 3.M.Geetha
- 4.Minor Aravind

... Appellants

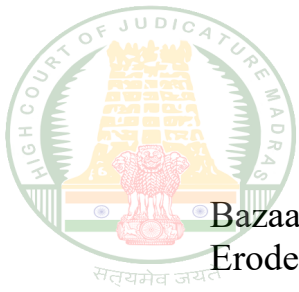
Versus

- 1.A.Murugesan
- 2.A.Kumaresan
- 3.K.Sasikala
- 4.K.Kailash
- 5.N.Dhanasekaran
- 6.M.Shanmugam

7.The Elavamalai Primary Cooperative
Agricultural Bank Ltd
No.1161, Rep by its Secretary
Kalingarayanpudur, Erode District

8.The Elkavamalai Primary Cooperative
Building Society Ltd
AA, 377, Rep by its Secretary
Kalingarayanpalayampudur
Bhavani Taluk, Erode District
9.Bhavani Cooperative House
Society Ltd
No.AA.377 Rep by its Secretary
Valnapuram, Bhavani Taluk
Erode District

10. Periyar Central Cooperative Bank Ltd
Rep by its Secretary



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Bazaar Street, Bhavani Taluk
Erode District

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11. The Bhavani Cooperative Production
& Sales Ltd
No.K.954, Rep by the Secretary
Mettur Road, Bhavani Taluk
Erode District

... Respondents

Prayer: Appeal Suit has been filed under Section 96 read with Order XLI Rule 1 of Code of Civil Procedure seeking to set aside the judgment and decree dated 30.10.2009 made in O.S.No.18 of 2007 on the file of the learned I Additional, Erode.

For Appellants : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.T.R.Rajaraman

For Respondents : Mr.S.Parthasarathy, Senior Counsel
for Mr.V.S.Kesavan for R1
Mr.S.Kaithamalai Kumaran for R9
Mr.R.Gopinath for R6
No appearance for R2, 3, 4, 5, 7, 8, 10 & 11

- - - -

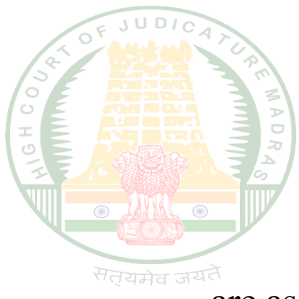
JUDGMENT

(The judgment of the court was made by **N.SATHISH KUMAR, J.**)

The present appeal suit has been preferred by the appellants / defendants 1 to 4 in O.S.No.18 of 2007 aggrieved over the judgment and preliminary decree, dated 30.10.2009 passed by the learned I Additional District Judge, Erode in a partition suit filed by the first respondent herein/plaintiff.

2.The parties in this case are hereinafter referred to as per their rankings before the trial court.

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3.The facts which are necessary for the disposal of this first appeal are as follows:

3.1.The plaintiff, defendants 2 and 6 are the sons of the first defendant and one Ayyasamy. The 3rd defendant is the wife of the second defendant and defendants 4 and 5 are their children. The 7th defendant is the wife of the 6th defendant and the 8th defendant is his son. The defendants 9 and 10 are purchasers of portion of suit properties and the defendants 11 to 15 are banks. The father of the plaintiff K.P.Ayyasamy died on 23.01.2002 leaving behind the plaintiff, the defendants 1, 2 and 6 as his wife and children. It is the case of the plaintiff that his father had 5 brothers and sisters. The grandfather of the K.P.Ayyasamy was known as Karuppandi @ Karuppanna Pillai. The ancestor of Karuppanna Pillai owned agricultural lands at Pongampalayam and Punjai Thalavaipalayam Villages. The father of the plaintiff and his five brothers orally divided their properties. In the said partition, the 1st item of the suit properties allotted to K.P.Ayyasamy. The grandfather of the plaintiff sold some common properties and gave the money to his sons. Hence, out of joint family nucleus, the father of K.P.Ayyasamy invested the money in hotel business at Bhavani 40 years back in a rented premises. The plaintiff and defendants 1 to 3 contributed to hotel business and the suit properties were purchased in the name of the defendants 1, 2 and 3 out of the joint



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family nucleus. Though sale deeds stand in the name of defendants 1 to 3

and Ayyasamy, they have enjoyed the family properties in common putting into common hotchpot. The defendants 1 to 3 had no source of income to purchase the properties in their name. When the plaintiff demanded the partition, same was denied, hence, the suit for partition.

3.2.It is the case of the first defendant/mother of the plaintiff in the written statement is that the suit properties is the absolute property of her husband and it is denied that there was joint family property which has yielded sufficient nucleus to purchase other properties. The ancestors of her husband were native of Kongampalayam, near Uthukuli. They were doing coolie work and thereafter, they shifted their residence to Koogalur, Gobichettipalayam Taluk. The first defendant and her husband were also doing coolie work. Her parents are native of Kalingarayanpalayam and her father was running a mutton stall, who was earning through the said business and he was also running a hotel in the name of Muruga Bhavan. She was married in the year 1953 at the age of 13. Her father permitted herself and her husband to work in the hotel. Thereafter, they took over the hotel and were continuing the business. Her father was supplying mutton. They earned good profit & her husband purchased the 4th item of the suit property under two sale deeds both dated 25.06.1956, he purchased the second item on 01.05.1957, 5th item on 17.06.1957, third

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item on 29.05.1968, 6th item on 19.08.1969, 11th item on 07.09.1977 and

10th item on 17.04.1975 through the income from the business. The first

defendant was working with her husband immediately after the marriage.

The first defendant purchased a vacant site on 20.06.1964 described

under 8th item. According to her, her husband had no ancestral property

and they have purchased the suit items only through the income from

their business. Out of income derived from the business, the 7th item of

the suit properties was purchased by the second defendant on 14.09.1985.

The items 2 to 6, 10 and 11 are separate properties of Ayyasamy. Her

husband executed a settlement deed in favour of the 6th defendant. She

executed settlement deeds in respect of 9th item in favour of the second

defendant on 02.12.1994, 08.12.1994 & 14.12.1994. She also executed a

settlement deeds on 24.04.2002 in favour of the plaintiff in respect of the

properties covered under the sale deeds dated 11.06.1971 & 20.06.1964.

The first defendant and her husband jointly executed a will dated

19.12.1994 while they were in sound and disposing state of mind in

favour of their sons. After the death of Ayyasamy, the plaintiff insisted the

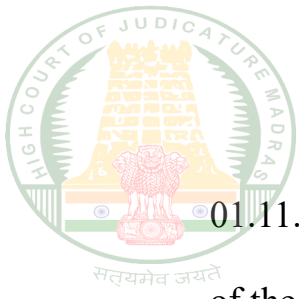
first defendant to settle the properties allotted to him in the will dated

19.12.1994 and thereafter, she executed two settlement deeds dated

24.04.2022 in favour of the plaintiff. Therefore, the plaintiff cannot seek

any relief and he is estopped from claiming right over the properties. On

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01.11.2022, she has executed another will in good state of mind in favour of the second defendant. Hence, the suit is liable to be dismissed.

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3.3.The written statement is filed by 2nd defendant and the same is adopted by the defendants 3 to 5, wherein, they have denied the existence of ancestral nucleus. The items 2 to 6, 10 and 11 are the self acquired properties of Ayyasamy, likewise, the property purchased by the first defendant are her separate possession. The second respondent took over the hotel through which he purchased the 7th item under two registered sale deeds dated 14.09.1985 and 20.11.1985 and the same is a separate property. The father of the second defendant executed a settlement deed in favour of the 6th defendant. The first defendant has executed settlement deeds in favour of the second defendant. Likewise, the first defendant executed two registered settlement deeds in favour of the plaintiff. Hence, the suit is liable to be dismissed.

3.4. In the additional written statement filed by the first defendant, it is the contention that items 16 and 17 are not joint family properties. The father in law of the plaintiff was very poor who never provided any money to the wife of the plaintiff and therefore, the properties purchased in her name are not self acquired properties and it is a self acquired property of the first defendant purchased out of the hard work in the hotel business. The said contention was also adopted by the defendants 3 to 5.



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4. Based on the above pleadings, the trial court framed the following issues:

(i) Whether the parties of the suit are the members of joint family as alleged in the plaint?

(ii) Whether the family possess any joint family ancestral properties as alleged in the plaint?

(iii) Whether there was any ancestral nucleus to invest in hotel business?

(iv) Whether there is any joint family business as alleged in the plaint?

(v) Whether the properties purchased by individuals are joint family properties?

(vi) Whether the item 12 to 15 belong to joint family?

(vii) Whether the plaintiff is entitled to 5/16 shares in items 1 to 12, item 16 and item 17?

(viii) Whether the plaintiff is entitled to a sum of Rs.3,12,500/- with interest at the rate of 12% from the date of the suit till date of the actual payment?

(ix) Whether the defendants 1 to 8 are bound to render true and correct accounts of the funds deposited with



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defendants 11 to 15?

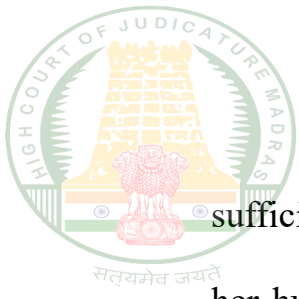
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5.On the side of the plaintiff, PW1 to PW4 were examined and Exs.A1 to A39 were marked. On the side of defendants, D.W.1 to D.W.2 were examined and Exs.B.1 to B.20 were marked.

6.Based on the materials available and after appreciating the evidence, the trial court holding that all the properties are joint family properties passed a preliminary decree for division of the suit schedule properties items 1 to 13 into 16 equal shares and allotment of 5 such shares to the plaintiff and further, directed the defendants 1 to 8 to pay the plaintiff a sum of Rs.3,12,500/- with interests. Aggrieved over the same, the defendants 1 to 3 have preferred the present appeal.

7.The learned senior counsel for the appellants submitted that the Trial Court has proceeded as if the entire property is purchased by the defendants or transferred in their names by way of settlement deeds are the result of joint family nucleus. Absolutely there is no evidence whatsoever brought on record to show that joint family possessed properties yielding sufficient nucleus to purchase all the properties. The evidence of PW1 itself clearly shows that he has not filed any documents whatsoever to prove the existence of joint family property which yielded

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sufficient nucleus, whereas, DW1/mother has clearly narrated about how her husband has purchased the properties out of their hotel business. In the absence of any evidence to prove the joint family nucleus which yielded sufficient nucleus to purchase other properties, the Trial Court was wrong in decreeing the suit. In support of his contention, the learned senior counsel placed reliance on the following judgments:-

a. *Shrinivas Krishnarao Kango vs. Narayan Devji Kango and others* reported in (1954) 1 SCC 544

b. *Achuthan Nair vs. Chinnammu Ammu and others* reported in AIR 1966 SC 41

c. *D.S.Lakshmaiah and another vs. L.Balasubramanyam and others* reported in (2003) 10 SCC 310

d. *Makhan Singh (Dead) by LRs. vs. Kulwant Singh* reported in (2007) 10 SCC 602

e. *Angadi Chandranna vs. Shankar and others* reported in 2025 SCC OnLine 877

8. Whereas, the learned senior counsel for the first respondent submitted that even if sufficient nucleus has not been proved, the plaintiff is certainly entitled to share in the properties left by their parents.

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Therefore, would submit that though in the additional documents which are sought to be marked, the Will has been projected to show that the mother has bequeathed the house in favour of the second respondent, it is only with regard to small extent, therefore, even leaving that property, the decree may be granted allotting the plaintiff's share. Hence, seeks for appropriate orders.

9. In the light of the above submissions made by the respective learned counsel and learned senior counsel, the short points that arise for consideration in this appeal are as follows:

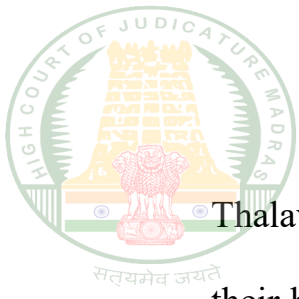
(a) Whether the suit properties are purchased out of joint family nucleus?

(b) Whether the ancestral property yielded sufficient nucleus to purchase other properties?

Points (i) & (ii)

12. The relationship of the parties are not in dispute. The plaintiff, defendants 2 and 6 are the sons of the first defendant and one Ayyasamy. The 3rd defendant is the wife of the second defendant and defendants 4 and 5 are their children. The 7th defendant is the wife of the 6th defendant and the 8th defendant is his son. The plaint proceeded as if the grandfather of the plaintiff owned agricultural lands at Pongampalayam and Punjai

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Thalavaipalayam Villages which were divided between the father and

their brothers In the said partition, the 1st item of the suit properties were allotted to K.P.Ayyasamy/father of the plaintiff. Out of joint family nucleus, they started hotel and from and out of the proceeds, all the properties have been purchased in name of the plaintiff's father and defendants 1 to 3. Whereas, it is the specific case of the mother namely the first defendant that she married her husband at the age of 13 years. Her husband and family members were doing coolie work, after marriage, she and her husband worked at hotel run by her father. Only thereafter, they developed and out of the income from the hotel, they purchased several properties. Hence, it is the contention that there is no joint family nucleus available to the family to purchase the properties.

13. It is well established principle of law that where a party claims that there was a joint family nucleus which yielded sufficient nucleus, the burden of proving that it is so rests on the party asserting it . In *Mudi Gowda Gowdappa Sank vs. Ram Chandra Ravagowda Sankh*, (1969) 1 SC 386, the Hon'ble Supreme Court reiterated that the burden of proving that any particular property is joint family property in the first instance is upon the person who claims it to be so. It is also repeatedly pointed out by Courts that unless it is proved that the family had sufficient properties

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which is normally referred to as the nucleus and the said nucleus is shown to be capable of generating a large income leaving a surplus in the hands of the family to enable it to acquire other properties and the properties that stand in the name of individual members cannot be treated as joint family properties.

14. Adverting to the case on hand, it is the specific contention of the plaintiff that the ancestors left the joint family properties, but, absolutely there is no evidence whatsoever filed by him to show what are the nature of the properties which are the ancestral properties that came into his father's name. Exs.A1, patta extract stands in the name of Palanigounder and others, no other documents whatsoever filed. It is the specific case of the plaintiff that his grandfather's name is Chinna Palaniyappa Pillai and his father is also known as Karuppandi @ Karuppanna Pillai. Whereas, Ex.A1 relates to some other person namely Palanigounder. Therefore, when the document under under Ex.A1, wherein, nowhere it indicates that the property belong to the plaintiff's family and the same cannot be given much importance. Similarly, Ex.A2/A-Register relates to some other person namely Palanikounder and others. Though Ex.A4, patta includes the name of the plaintiff with his brothers and mother, but the fact remains that some of the properties

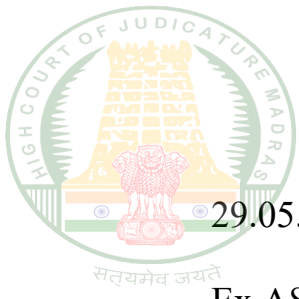
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were already transferred in their name, therefore, it is natural to have their name mutated in the revenue records and that will not be a determinative factor to decide the character of the property. The entire evidence of PW1, when carefully seen, he has admitted that he has not filed any documents to prove that his grandfather had a property and he did not know the extent of property left by his grandfather. He does not know the survey number and he also admitted that he never pleaded that his grandfather's name is Palanigounder, therefore, when the plaintiff himself has admitted that there was no documents to show that the family possessed sufficient property, the contention that all the properties were purchased out of the income of the joint family property cannot be countenanced.

15. It is the specific contention of the DW1/mother and other defendant that family had no income at all. After her marriage with the plaintiff's husband, the first defendant's father had permitted the plaintiff's father and first defendant to work under his hotel and thereafter, they set up the hotel business out of their hard work. Therefore, in the absence of any evidence to prove the joint family property and sufficient nucleus, it has to be presumed that the property purchased are self acquired property. Item No.3 was purchased by the plaintiff's father under Ex.A11 on 13/20



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29.05.1968. Item No.2 was purchased by the plaintiff's father under Ex.A8 on 01.05.1957. Item No.4 were purchased by the plaintiff's father under Exs.A6 & A5 on 25.06.1956. Item No.5 was purchased by the plaintiff's father under Ex.A9 on 17.06.1957. Item No.6 was purchased by the plaintiff's father under Ex.A12 on 19.08.1969. Item No.8 was purchased by the father defendant under Ex.A10 on 20.06.1964. Item No.9 were purchased by the father defendant under Exs.A14 to A16 on 07.11.1958 and a portion of Item No.9 was also purchased by the plaintiff's father on 07.09.1977 under Ex.A19. Item No.10 was purchased by the plaintiff's father on 17.04.1975 under Ex.A13. Later, father of the plaintiff executed settlement deeds in favour of the plaintiff under Exs.B3 & B4. The second defendant has purchased the properties under Exs.B7 & B9 vide sale deeds dated 14.09.1985 and 20.11.1985 respectively. The third defendant has purchased the properties under Ex.B8 vide sale deed dated 14.09.1985. With respect to Item No.9, settlement deeds were executed on 02.12.1994, 08.12.1994 & 14.12.1994 in favour of the second defendant. These documents clearly show that plaintiff was also given properties by way of settlement. Therefore, once, the plaintiff has failed to establish the properties are joint family property, merely, on the basis of some passing admission in online by the witnesses, the same ought not have been given much importance by the Trial Court. When the

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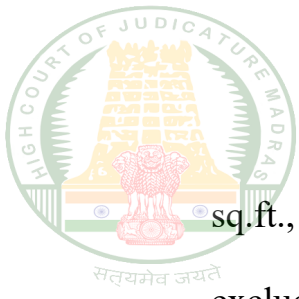
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plaintiff himself is not in a position to prove the nature of the property,

merely, because sons and daughter were residing in the same house, it cannot be said that the entire property has been purchased out of the joint family nucleus, particularly, when the very existence of the joint family nucleus has not been established. Under these circumstances, for failure to lead evidence, the plaintiff's claim that the suit properties are joint family properties would have to necessarily fail.

16. Therefore, we are of the view that the Trial Court holding that the entire property is purchased out of joint family nucleus cannot be countenanced. The learned senior counsel for the first respondent also fairly submitted that there is no sufficient evidence to prove the joint family nucleus. In such view of the matter, the Trial Court holding that the entire properties are joint family property and the share determined by the Trial Court is not proper. Now, it is fairly submitted by both sides that except the properties already settled and dealt with by the parents and purchases made in the name of the defendants in their name, the other remaining properties are available and they may be partitioned according to their rights. Admittedly, the mother has died during the pendency of the appeal. It is admitted by both sides that that mother has left the Will in favour of the second defendant of an house to an extent around 1300

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sq.ft., The respondents has not seriously disputed and submitted that excluding that, remaining property may be partitioned.

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17. In such view of the matter, as admitted by both sides, Item No.1 is available for partition and certainly, the plaintiff is certainly entitled to 1/3rd share of the Item No.1. Similarly, Item Nos.2 to 6 purchased by the parents are also available for partition and the plaintiff is entitled to 1/3rd share. Item No.7 properties were purchased by the defendants 2 and 3 under Exs.B7 to B9. Therefore, as this Court has already held that they are the separate property of them, the plaintiff cannot claim any share in the property.

18. As far as the plot purchased by the mother/DW1 under Ex.A10, the same has been now willed away during the pendency of the case in favour of the second defendant. Though Will has not been exhibited and proved, since, the extent comes around 1300 sq.ft., both sides admitted that the plaintiff is not claiming Item No.10. Therefore, Item No.8 shall be allotted only to the second defendant.

19. Item No.9 was purchased by DW1 under Exs.A14 to A16, out of total extent of 53 cents, only half share is settled in favour of the

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second defendant under Exs.B10 to B12 and now, it is submitted that certain extent is also sold. Therefore, the plaintiff is entitled to 1/3rd share in respect of the remaining extent available for partition.

20. Item No.10 was already settled in favour of the 6th defendant. Though the document is sought to be marked as additional documents, since, it is not disputed by both sides, in respect of Item No.10, the plaintiff is not entitled to any share. Item No.11 is available for partition in which the plaintiff is entitled to 1/3rd share. In respect of Item Nos.16 & 17 under Exs.B3 to B5, the first defendant has already settled in favour of the plaintiff. Therefore, the plaintiff is the absolute owner of those properties. Similarly, Item Nos.16 & 17 are the absolute property of the plaintiff.

21. In respect of Item Nos.14 & 15, we are of the view that in the written statement filed by the defendants itself clearly shows that the amount has already been disbursed on the basis of No objection given by the sons to the mother. Such being the position, mother is also now not alive and as a nominee, she has already received money, hence, no objection is given by the sons, at this stage, again claiming partition for the amount already received during her lifetime and spent by her cannot be partitioned at this stage that too after their mother has already died. As

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far as the Item No.13 is concerned, there is no evidence available on record to show that the family possessed 170 sovereigns of gold.

Similarly, Item No.12, it is admitted by both sides that car was purchased in the year 1972 and the same is in diminished condition.

22. Accordingly, the preliminary decree is passed dividing the suit property into three equal shares in respect of Item Nos.1 to 6 & 11 and the remaining available properties in Item No.9 (after excluding the properties settled under Exs.B10 to B12 and certain properties already dealt by the mother) and the suit is dismissed in respect of Item Nos.12,13,14,15 and also dismissed in respect of Item No.8 since the mother has willed away and the parties have not disputed to the same.

23. In the result, the present appeal suit is partly allowed modifying the judgment and decree of the Trial Court dated 30.10.2009 in O.S.No.18 of 2007 as indicated above. No costs.

24. The respondents herein have filed a petition numbered as C.M.P.No.13001 of 2026 under Order XLI Rule 27 of the Code of Civil Procedure, 1908 to receive certain documents as additional documents to prove the Will and other aspects, since the parties have arrived at consensus for allotment in respect of the separate property, there is no

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need for receiving the additional documents to dispose of the appeal suit.

Accordingly, this miscellaneous petition stands closed.

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(N.S.K., J.) (M.J.R., J.)
15.07.2026

dhk

Index : Yes / No

Speaking Order /Non speaking order

Neutral Citation : Yes/No

To

1.I Additional District Judge

I Additional District Court, Erode

2.The Section Officer,

VR Section,

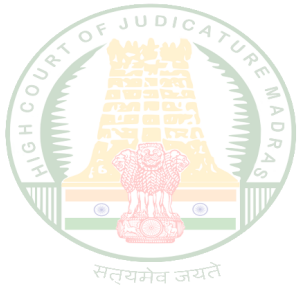
Madras High Court,

Chennai.

N.SATHISH KUMAR, J.
and
M.JOTHIRAMAN, J.

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