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A.S. No. 69 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2026

PRONOUNCED ON : 28.07.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A.S. No. 69 of 2018

Deenadayalan
s/o. Late Shanmugam, Plot No.1 Vps Nagar,
Pipdic Main Road, Mettupalayam, Puducherry.

..Appellant(s)

Versus

Indirani
W/o. V. Ramamurthy, No.25/A, Mariamman Koil,
Kathirkamam, Puducherry 605 009.

..Respondent(s)

PRAYER: Appeal Suit filed praying to set aside the judgment and decree passed in O.S. No. 64 of 2011 dated 31.07.2017 on the file of the II Additional District Judge, Puducherry.

For Appellants : Mr.Thilageswaran for
M/s.Waraon And Sai Rams

For Respondent : M/s.V.Srimathi For Sole Respondent



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J U D G M E N T

WEB COPY This Appeal Suit is filed by the defendant in O.S. No. 64 of 2011, challenging the judgment and decree dated 31.07.2017 passed by the II Additional District Judge, Puducherry. By that judgment, the trial court decreed the suit filed by the respondent/plaintiff for declaration of title and recovery of possession, with costs, and directed the defendant to vacate and hand over possession of the suit property within one month.

2. For convenience, the parties are referred to as they were before the trial Court.

3. The plaintiff claims to be the absolute owner of the suit schedule property, having purchased it under a registered sale deed dated 26.08.2005, executed by the power agent, Clement Joseph Catchirayar, and registered as Document No.4489 of 2005 with the Sub-Registrar, Oulgaret. According to the plaintiff, the defendant was originally inducted as a tenant under the power agent of her vendor. Immediately after purchasing the property, the plaintiff informed the defendant of the purchase and called upon him to vacate and hand over possession, as she required the property for her own



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occupation. The defendant sought three months and assured that he would thereafter pay the rent directly to the plaintiff. However, he neither vacated the property nor paid any rent to her. It is further alleged that the defendant had been a chronic defaulter even before the plaintiff's purchase.

4. The plaintiff would further state that her vendor was acting as the original owners' power of attorney and that a further power of attorney had been executed in favour of her father, Muthusamy. Based on the same, the plaintiff intended to purchase the property and hence the plaintiff invested substantial amounts to carry out construction on the suit property and thereafter obtained the registered sale deed from the original power of attorney. The defendant is the husband of the plaintiff's sister. According to the plaintiff, the defendant was permitted to occupy the property, even before the execution of the sale deed in her favour, solely to assist his wife's (the plaintiff's sister's) family. Taking advantage of the relationship, the defendant subsequently asserted a claim to partition on behalf of his wife, as though the property belonged to the plaintiff's father, Muthusamy.



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5. The plaintiff issued a legal notice dated 25.01.2006, calling upon the defendant to vacate and hand over possession. The defendant replied dated 11.05.2006, disputing the plaintiff's title and claiming that he had erected the superstructure on the suit property. The defendant also instituted O.S.No.65 of 2006 before the II Additional District Munsif, Puducherry, against Muthusamy and Ramamurthy, alias Bhaskar, the father and husband of the plaintiff, respectively, without impleading the plaintiff as a party. The plaintiff alleges that these proceedings were initiated with the dishonest intention of grabbing the property and that the defendant also threatened her with serious consequences.

6. It is further pleaded that, during the pendency of the dispute, the defendant approached the plaintiff for an amicable settlement, and the plaintiff expressed her willingness to resolve the matter. However, the defendant continued to refuse to vacate the premises. The plaintiff therefore issued further notices dated 16.01.2010 and 24.03.2011. Although the earlier notice dated 25.01.2006 was replied to, disputing her title, no reply was sent to the final notice dated 24.03.2011. The plaintiff states that, despite her

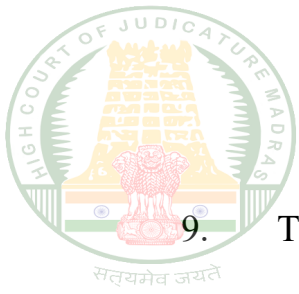


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prolonged efforts to settle the dispute amicably, the defendant failed either to vacate the property or to recognise her title, compelling her to institute the present suit.

7. On the above averments, the plaintiff has sought a declaration that she is the absolute owner of the suit schedule property, a consequential direction for the defendant to vacate and deliver vacant possession thereof, and the costs of the suit.

8. The defendant denied the plaintiff's title under the sale deed dated 26.08.2005, and further denied that he had ever been inducted as a tenant, had agreed to pay rent, sought time to vacate, or committed a default. He also denied that the plaintiff had invested money for construction or had claimed the property through partition on behalf of his wife. According to him, the plaintiff's title was based on an invalid and fraudulent transaction involving successive powers of attorney, and the sale deed executed by Clement Joseph Catchirayar was nominal, unsupported by consideration, and created at the instigation of the plaintiff's father.



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9. The defendant further contended that, if the plaintiff's case of a landlord-tenant relationship was accepted, the remedy lay only with the Rent Controller, not with the Civil Court. On the merits, he pleaded that the property, originally comprising unapproved plots, had been handed over in 1997 by the plaintiff's father to the defendant and his brother, S. Natarajan, for running a business, with an assurance that it was being given to the defendant's wife. After Natarajan died in an accident, the defendant changed the business and the relevant licences into his name. When he offered to pay lease rent, his father-in-law allegedly refused and declared before the family members that the property had been donated to his daughter, namely, the defendant's wife. The defendant claimed continuous possession and enjoyment for more than 14 years and asserted that he and his wife had perfected title by adverse possession. He alleged that the present suit was the result of subsequent family misunderstandings and an attempt by the plaintiff and her father to dispossess him and his wife.

10. The defendant further pointed out that the plaintiff had claimed 3,600 sq. ft. in the notices dated 25.01.2006 and 16.01.2010, but had restricted the claim to 1,200 sq. ft. in the notice dated 24.03.2011. He contended that S. Sekar, who had invested in the business, was a necessary party and that the



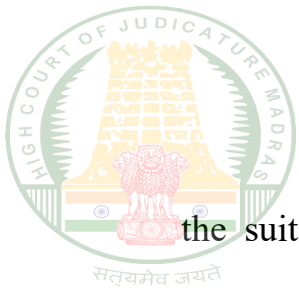
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suit was bad for non-joinder. He also challenged the valuation, court fee, extent of the property, and cause of action, and prayed for dismissal of the suit with exemplary costs.

11. The trial Court framed the following issues:

- 1) Whether a declaration that the plaintiff is the absolute owner of the suit property is possible?
- 2) Whether it is possible to direct the defendant to vacate and hand over possession of the suit property to the plaintiff?
- 3) Whether the suit is bad for non-joinder of necessary parties?
- 4) Whether the suit is maintainable?
- 5) What are the other reliefs the plaintiff is entitled to?

12. On the plaintiff's side, the plaintiff examined herself as P.W.1, and her father, Muthusamy, was examined as P.W.2. Exs.A1 to A10 were marked. Ex.A1 is the sale deed dated 26.08.2005, executed by D.W.3 / Clement Joseph Catchirayar in favour of the plaintiff, Indirani, in respect of the suit property. Ex.A2 is the encumbrance certificate dated 14.07.2010 relating to



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the suit property and standing in the name of the plaintiff. Ex.A3 is the valuation certificate dated 02.09.2010, issued by the Tahsildar in respect of the suit property. Ex.A4 is the copy of the legal notice dated 25.01.2006, issued by the plaintiff's counsel to the defendant, and Ex.A5 is the acknowledgement card dated 28.01.2006. Ex.A6 is the reply notice dated 11.05.2006, issued by the defendant's counsel to the plaintiff's counsel. Ex.A7 is the copy of the legal notice dated 16.01.2010, issued by the plaintiff's counsel to the defendant, calling upon him to vacate the property. Ex.A8 is the copy of the legal notice dated 24.03.2011, issued to the defendant, calling for amicable settlement. Ex.A9 is the copy of the plaint dated 17.01.2006, filed in O.S.No.65 of 2006 before the II Additional District Judge, Puducherry, by the defendant against the father and husband of the plaintiff. Ex.A10 series are the property tax payment receipts issued by the Oulgaret Municipality for the period from 2005 to 2015.

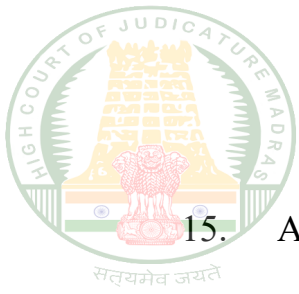
13. On the defendant's side, the defendant examined himself as D.W.1. Sekar was examined as D.W.2. Clement Joseph Catchirayar, the power agent/vendor who executed the sale deed in favour of the plaintiff, was examined as D.W.3. Exs.B1 to B5 were marked. Ex.B1 is an electricity payment receipt dated 05.11.2015. Ex.B2 consists of photographs with a CD



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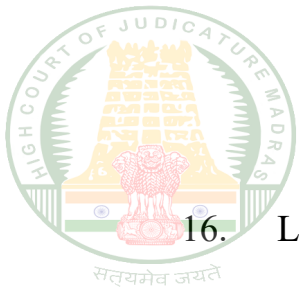
relating to the suit property. Ex.B3 is the certified copy of the general power of attorney dated 17.06.1987, executed in favour of D.W.3. Ex.B4 is the certified copy of the power of attorney dated 16.11.1990, executed by D.W.3 in favour of Muthusamy. Ex.B5 is the cancellation deed dated 26.08.2005, cancelling the earlier power given to Muthusamy, dated the same day on which D.W.3 executed Ex.A1 directly in the plaintiff's favour.

14. The trial Court held that the sale deed marked Ex.A1 had been duly proved, particularly in light of the evidence of D.W.3, who admitted the execution of the said sale deed in favour of the plaintiff. It further found that the defendant had failed to establish the plea of adverse possession. The objection to maintainability was rejected on the ground that there was no admitted landlord-tenant relationship between the plaintiff and the defendant, and therefore the plaintiff was not required to invoke the provisions of the Rent Control Act. The plea of non-joinder of necessary parties was also negatived. Accordingly, the suit was decreed with costs, declaring the plaintiff's title and directing the defendant to vacate and hand over possession of the suit property within one month of the date of the judgment.



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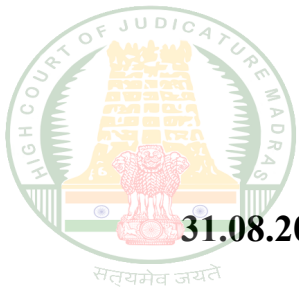
15. Aggrieved by the judgment and decree, the defendant preferred the appeal. In the grounds of appeal, the appellant/defendant contended that the trial Court failed to appreciate that his brother had established the business “Shanmugas” in the suit property in 1996-1997, and that after his brother's death he continued the business, carried out further construction, and remained in uninterrupted possession without interference. He denied any landlord-tenant relationship or payment of rent, and disputed the finding that the plaintiff had constructed the superstructure. According to him, the plaintiff acquired title only under Ex.A1 dated 26.08.2005, whereas the defendant had been in open, continuous and uninterrupted possession from 1997. Hence, according to him, his possession was independent and adverse to the true owner, and the suit instituted in 2011 was barred by adverse possession. The appellant/defendant also contended that Exs.A9 and A10, being property-tax receipts obtained after the plaintiff's purchase, did not disprove his prior possession, and that the notices exchanged between the parties established that his occupation was never permissive. On these grounds, he sought setting aside of the decree for declaration and recovery of possession.



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16. Learned counsel for the appellant/defendant submitted that the suit is barred by limitation, as the respondent/plaintiff issued the first notice on 25.01.2006, and that, by reply dated 11.05.2006, the appellant expressly denied her title and claimed the superstructure. However, the suit for declaration was instituted only on 31.03.2011, more than three years after the first unequivocal denial of title. Reliance was placed on **S. Shivraj Reddy (Died) through LRs and others v. S. Raghuraj Reddy and others, reported in MANU/SC/0443/2024, Civil Appeal No.6459 of 2024, decided on 16.05.2024**, to contend that Section 3 of the Limitation Act imposes a duty on the Court to dismiss an ex facie time-barred suit even when limitation has not been specifically pleaded.

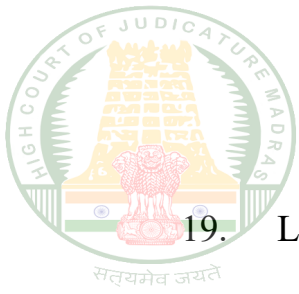
17. Learned counsel further questioned the Ex.A1 sale deed dated 26.08.2005, contending that the respondent/plaintiff had not proved payment or the source of the sale consideration, that her father had no valid title, and that the cancellation of the power of attorney in his favour had been suppressed. It was alleged that the sale deed was nominally executed in the plaintiff's name at her father's instance. To support this proposition, reliance was placed on **Valliammal (D) by LRs v. Subramaniam and others, MANU/SC/0699/2004 (Civil Appeal No.5142 of 1998, decided on 11/22**



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31.08.2004), to contend that although the person in whose name a property is purchased is presumed to be its owner, the source of the purchase money and the motive for the purchase are material considerations in determining whether the transaction is benami.

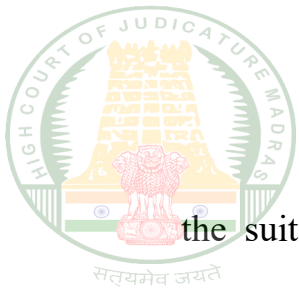
18. Learned counsel also invoked the doctrine of estoppel, contending that the plaintiff's father, after permitting the appellant/defendant and his wife to occupy the property, establish the business, and invest substantial amounts on the representation that the property had been given to his daughter, could not subsequently resile from that representation and create a sale deed in favour of another daughter. Section 115 of the Evidence Act, 1872) was cited (corresponding to Section 121 of the Bharatiya Sakshya Adhiniyam, 2023) for the principle that a person who intentionally causes another to believe a fact and act upon that belief cannot thereafter deny that fact. On these grounds, together with the contention that the suit ought to have been filed before the Rent Controller if the respondent's case was truly one of landlord and tenant, the appellant/defendant sought to allow the appeal.



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19. Learned counsel for the respondent/plaintiff submitted that D.W.3, the original power agent of the plaintiff's vendors, clearly supported the plaintiff's title. D.W.3 deposed that his mother and sisters had executed Ex.B3, a power of attorney in his favour; that he thereafter executed Ex.B4, a power of attorney in favour of the plaintiff's father, Muthusamy; that the said power was subsequently cancelled under Ex.B5; and that he thereafter executed the registered sale deed, Ex.A1, dated 26.08.2005, in favour of the plaintiff. He also admitted that Muthusamy had paid the advance sale consideration and expressly confirmed the execution and registration of Ex.A1 before the Sub-Registrar. Thus, the plaintiff's title was proved through D.W.3. It was also contended that the defendant had entered the property only as a tenant and, once such tenancy was established, he could not set up an inconsistent plea of adverse possession.

20. It was further submitted that in cross-examination, D.W.2 admitted that neither the defendant nor his wife had purchased the suit property; that he did not know from whom the plaintiff purchased it; and that he learnt of the plaintiff's purchase only through the legal notice issued by her. He further admitted that he did not know the extent of the suit property, that he was carrying on business two streets away, and that he was neither connected with



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the suit property nor with the business carried on therein. It was further submitted that the appellant/defendant had not produced any document to substantiate the plea of estoppel. As regards limitation, learned counsel referred to the notices exchanged between the parties and contended that the suit had been filed within the prescribed period. The findings and conclusions of the trial court were reiterated, and dismissal of the appeal was sought, confirming the trial court judgment.

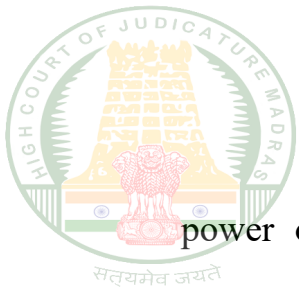
21. On the pleadings, evidence and submissions, the following points arise for determination on this appeal:

1. Whether the plaintiff has established title to the suit property?
2. Whether the defendant has established title by adverse possession or by oral gift?
3. Whether the suit is barred by limitation?
4. Whether the judgment of the trial Court warrants interference?

Point No.1:

22. The plaintiff claims title to the suit property under a registered sale deed dated 26.08.2005 (Ex. A1), executed by Clement Joseph Catchirayar, the

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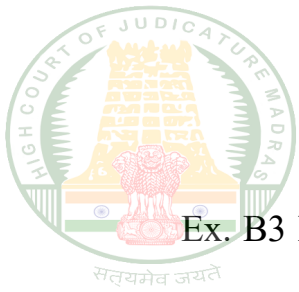
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power of attorney holder of the original owners. According to her, the defendant was permitted to occupy the property and later denied her title in a reply notice dated 11.05.2006. Alleging unlawful possession, she instituted the present suit for a declaration and recovery of possession.

23. The defendant disputed the plaintiff's title and contended that the sale deed was invalid because the plaintiff's father had previously acted as a power of attorney agent under another deed of power of attorney. He further pleaded oral gift, adverse possession, estoppel, non-joinder of necessary parties and want of jurisdiction.

24. The trial court negated all the defences, declared the plaintiff's title, and directed the recovery of possession; hence this appeal.

25. The plaintiff's title rests upon Ex. A1, the registered sale deed dated 26.08.2005. The execution of Ex. A1 is not disputed by D.W.3, namely Clement Joseph Catchirayar, who executed the document in favour of the plaintiff. His evidence clearly establishes that the original owners executed



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Ex. B3 Power of Attorney in his favour; subsequently he executed Ex. B4 in favour of P.W.2; thereafter Ex. B4 was cancelled under Ex. B5; and finally he executed Ex. A1 sale deed in favour of the plaintiff.

26. The defendant's contention that Ex. A1 is invalid because D.W.3 had earlier delegated his authority to P.W.2 cannot be accepted. Even assuming that Ex. B4 was contrary to Section 190 of the Indian Contract Act, the alleged sub-agent, namely P.W. 2, did not execute A1. It was executed by D.W.3 himself after the cancellation of Ex. B4. Therefore, the validity of Ex. A1 remains unaffected. The doctrine *delegatus non potest delegare* has no application to invalidate Ex. A1.

27. The further contention that Ex. A1 is unsupported by consideration is equally untenable. The defendant is a stranger to the transaction and cannot challenge the adequacy or passing of consideration in the absence of any plea from the executant. D.W.3 has admitted the execution of the sale deed and has not disputed the transaction.



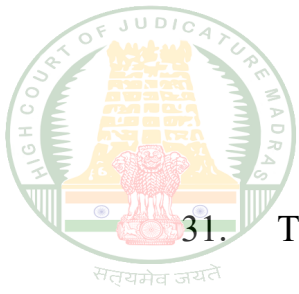
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28. Accordingly, this Court holds that the plaintiff has satisfactorily established her title under Ex. A1. Thus, Point No. 1 is decided against the appellant/defendant.

Point No.2

29. The defendant primarily claims title by adverse possession. The plea of adverse possession necessarily proceeds on the acknowledgement of the true owner's title. In the present case, the defendant has throughout denied the plaintiff's title and, at the same time, pleaded that the property was orally gifted to his wife by P.W.2. These inconsistent pleas are mutually destructive.

30. Apart from the inconsistency, the defendant has neither pleaded nor proved the precise date on which his possession became hostile to the true owner. There is no evidence of continuous, open and hostile possession for the statutory period. Mere long possession does not mature into title by adverse possession.



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31. The plea of an oral gift is equally devoid of merit. Under Section 123 of the Transfer of Property Act, a gift of immovable property can be effected only by a registered instrument signed by, or on behalf of, the donor and attested by two witnesses. The alleged oral gift pleaded by the defendant is therefore unenforceable. Moreover, P.W.2 himself had no title to the property and was incompetent to gift it.

32. Hence, the defendant has failed to establish title by adverse possession or by gift. Thus, Point No. 2 is answered against the appellant/defendant.

Point No.3:

33. The appellant/defendant contends that the suit is barred by limitation because the plaintiff's title was expressly denied in the Ex. A6 reply notice dated 11.05.2006, whereas the suit was instituted only on 31.03.2011. This contention cannot be accepted.

34. The present suit is not merely for a declaration of title. The plaintiff has sought both a declaration of title and the recovery of possession of the

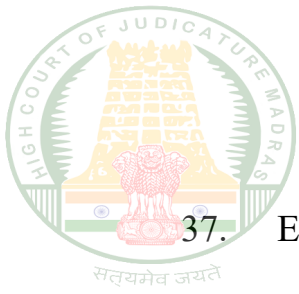


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immovable property from the defendant, who is admittedly in possession. In such a suit, the substantive relief is the recovery of possession on the strength of title. Accordingly, the applicable provision is Article 65 of the Limitation Act, 1963, which prescribes a period of twelve years commencing from the date on which the defendant's possession becomes adverse to the plaintiff.

35. Once the plaintiff establishes title to the property in question, the burden shifts to the defendant to show that his possession became hostile and adverse to the plaintiff or her predecessor-in-title, and that such adverse possession continued uninterruptedly for the full statutory period of twelve years.

36. As already found, the defendant has neither pleaded nor proved the precise date when his possession became adverse, the manner in which such hostile possession was asserted, nor its continuous and uninterrupted character for the statutory period. Mere denial of the plaintiff's title in a reply notice does not, by itself, establish that twelve years of adverse possession have been completed.



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37. Ex.A4 notice was issued on 25.01.2006. The defendant denied the plaintiff's title in the Ex.A6 reply dated 11.05.2006. Thereafter, Ex.A8 notice dated 24.03.2011 was issued, clarifying the correct extent of the suit property as 1,200 sq. ft., and the suit was presented on 31.03.2011. Thus, even if 11.05.2006 is taken as the date on which the defendant openly denied the plaintiff's title, the suit instituted in 2011 was well within the twelve-year period prescribed under Article 65 of the Limitation Act, 1963.

38. The appellant's/defendant's reliance on Section 3 of the Limitation Act, 1963 is unobjectionable as a general proposition, since every Court is bound to dismiss a proceeding instituted beyond the prescribed period. However, the said provision does not advance the appellant's case because the suit is not barred by limitation. The plea of limitation in the present case is inseparably connected with the plea of adverse possession. Since the defendant has failed to establish adverse possession for the statutory period, the suit cannot be dismissed as time-barred.

39. Accordingly, the point relating to limitation is decided against the appellant/defendant and in favour of the plaintiff.



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Point No: 4

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40. In the result, the Appeal Suit is dismissed. The judgment and decree dated 31.07.2017, passed in O.S.No.64 of 2011 on the file of the II Additional District Judge, Puducherry, are confirmed. The respondent/plaintiff is entitled to a declaration of title and to the recovery of possession of the suit property, as decreed by the trial Court. The appellant/defendant shall vacate and hand over vacant possession of the suit property to the respondent/plaintiff within two months from the date of this order, if possession has not already been delivered. In the circumstances of the case and having regard to the relationship between the parties, no order as to costs is made in this appeal. Consequently, any connected miscellaneous petitions are closed.

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Index: Yes / No

Speaking order/Non-Speaking order

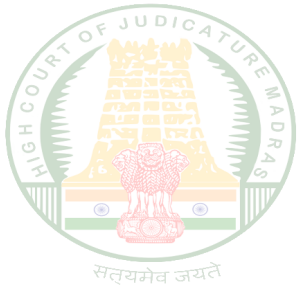
Neutral Citation: Yes / No

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To

- 1.The II Additional District Judge, Puducherry.
2. The Section Officer, V.R. Section, High Court, Madras.

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DR. A.D. MARIA CLETE, J

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PRE-DELIVERY JUDGMENT MADE IN
A.S. No. 69 of 2018

28.07.2026