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A.S.No. 79 of 2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 28.07.2026**

**CORAM**

**THE HONOURABLE MR JUSTICE N. SATHISH KUMAR  
AND  
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

A.S.No.79 of 2018  
CMP.Nos.3673 of 2022 & 20333 of 2021

K.Shafeega Begum

.. Appellant

-Versus-

1.Syed Farooq  
2.Shakeeer Ahmed

.. Respondents

Prayer: Appeal filed under Section 96 read with Order 41 Rule 1 of Code of Civil Procedure, against the judgment and decree dated 30.10.2017 in O.S.No.27 of 2012 on the file of the learned III Additional District Judge, Vellore at Tirupattur (Principal District Court, Vellore, O.S.No.14 of 2012).

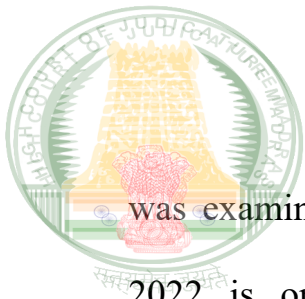
Appellant : Mrs.Chithra Sampath, Senior Counsel  
for Mr.K.Thiruvengadam and Mr.S.Gopinath

Respondents : Mr.S.Parthasarathy, Senior Counsel  
for Mrs.P.Veena Suresh

**JUDGEMENT**

Challenging the decree and judgment of the Trial Court decreeing the suit for specific performance, the unsuccessful defendant has filed the instant appeal suit.

2. Ms.Subha, Scientific Officer in the Forensic Sciences Department, Chennai



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was examined as CW1 and Ex.C1 series was marked through her. CMP.No.3673 of 2022 is ordered and the original document of sale deed dated 18.02.2010 in Doc.No.1099 of 2010 registered with the SRO, Vaniyambadi is marked as Ex.B7.

3. The parties are arrayed to as per their own ranking before the Trial Court.

4. Brief background in filing this appeal are as follows:-

4.a. It is the case of the plaintiff that on 04.10.2011, the defendant and her sister A.Athika Firdos jointly executed an agreement of sale of properties belonging to them in schedule A and B in favour of the plaintiffs agreeing to sell the said property at the rate of Rs.1350/- per sq.ft., for a total sum of Rs.54,02,700/-. On the date of sale agreement, the defendant and her sister received an advance of Rs. 25,80,000/- from the plaintiffs towards the sale transaction of property of the defendant and her sister. Again on 12.10.2011, the defendant and her sister received further amount of Rs.1,00,000/- from the plaintiffs towards the said sale consideration and they had delivered possession of schedule mentioned property belonging to the defendant and her sister. The plaintiffs accepted the possession of said properties as part performance of agreement of sale. Further, the defendant and her sister extended the time for the said agreement till 31.01.2012. Subsequently, the defendant's sister K.Athika Firdoz sold her property in schedule "A" on 3.01.2012 in favour of the 2nd plaintiff as per the sale agreement. So far as the defendant's sister is concerned, she performed her part of contract fully in



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respect of her property in schedule “A”. Regarding the property of “B” schedule belonging to the defendant, the plaintiffs from the date of sale agreement and still are ready and willing to perform their part of contract and the plaintiffs on many occasions approached the defendant for payment of the agreed amount, but the defendant has been neglecting to perform her part of contract. The plaintiff issued legal notice to the defendant and hence, the suit.

4.b. The defendant filed a written statement denying the entire agreement. It was denied that defendant and her sister entered the agreement on 04.10.2011 and also receipt of the advance sale consideration. It was denied that the plaintiff was always ready and willing to perform the contract. According to the defendant, an agreement was forged to knock out the properties. The defendant had already filed a suit on 18.01.2012 in O.S.No.13 of 2012 as against the plaintiff and it was contended that the signature of the defendant is forged. It was also denied about the handing over of the possession to the plaintiff. Hence, disputed the suit.

4.c. Based on the above pleadings, the Trial Court framed the following issues for consideration:-

- 1) Whether the defendant and her sister K.Athika Fridos had jointly executed the suit sale agreement dated 04.10.2011 in favour of plaintiffs for their A and B schedule properties at the rate of Rs.1350/-Sq.ft.,for total



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from Rs. 54,02,700/-?

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- 2) Whether the defendant and her sister K.Athika Fridos received sale advance of Rs.25,80,000/- on 4.10.2011 and Rs.1,00,000/- on 12.10.2011 respectively from plaintiffs?
- 3) Whether the plaintiff were put on possession of suit A and B schedule property on 12.10.2011 towards the part performance of contract of sale agreement?
- 4) Whether the suit sale agreement was forged one as alleged by the defendant?
- 5) Whether the defendant's sister K.Athika Fridos sold her property of A schedule property on 13.1.2012 to the plaintiff as per sale agreement price of Rs.1350/- Sq.ft., in accordance with law or it was forcefully obtained from her by the plaintiff?
- 6) Whether the plaintiffs were always ready and willing to perform their part of contract as per sale agreement ?
- 7) Whether the plaintiffs are entitled the relief of Specific performance of contract as per sale agreement?
- 8) Whether the defendant interfered the plaintiffs possession of running SSB cycle stand in the suit properties?



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9) Whether the plaintiffs are entitled to relief of permanent injunction against the defendant?

10) To what other reliefs?

4.d. On the side of the plaintiffs, PW1 to PW5 were examined and Exs.A1 to A8 and Exs.X1 and Ex.X2 were marked. On the side of the defendant, DW1 to DW5 were examined. Ex.B1 to B6 were marked and Ex.X3 to Ex.X6 were also marked.

4.e. Based on the oral and documentary evidences, the Trial Court decreed the suit in favour of the plaintiff. Challenging the same, the present appeal is filed by the defendant.

5. The learned senior counsel for the appellant/defendant submitted that the entire agreement is a forged one and in fact, the very sale in favour of 2<sup>nd</sup> plaintiff by the sister of the defendant as pleaded in the plaint is also challenged in another suit by the sister of the defendant. Only after the alleged sale of the suit property, the suit agreement is projected by the plaintiff to knock out the defendant's property since it is a contiguous one. The appellant is a Pardanashin lady and the entire burden lies on the plaintiff to prove the genuineness of the document. It is the specific case of the defendant that the agreement is forged one, despite series of requests made by the defendant to furnish the copy of the document by way of reply notice and rejoinder, copy of the agreement has not been furnished. The conduct of the plaintiffs clearly shows that the plaintiff has



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forged the sale agreement later, this has been further fortified by the evidence of CW1 and Ex.C1 filed before this Court. The evidence of the handwriting expert/CW1 clearly shows that the signature found in the sale agreement is a forged one. PW2 and PW3 are land brokers who have deposed on behalf of the plaintiff, the evidence of PW2 and PW3 with regard to the very execution of the document by the defendant is highly improbable and there are series of contradictions. According to PW1, the entire agreement is prepared in the house of the sister of the defendant, whereas, PW2, in his evidence, he has submitted that the document has been prepared in the office of Gajendran/scribe. Similarly, PW3 in his evidence also stated the document was prepared only in the house of the Scribe. PW3 never stated that he visited the house of the defendant's sister. All these facts clearly show that their evidence is highly improbable and creates serious doubt about the genuineness of the document. Further, with regard to the payment of amounts, their evidence is also highly contradictory. The very nature of the document which is found to be created at the later point of time cannot be enforced merely on the basis of the interested witness. Hence, seeks for allowing this appeal suit.

6. Whereas, the learned senior counsel for the respondents/plaintiffs submitted that PW2 and PW3 who are the attesting witness to the document have clearly spoken about the execution of the document. PW4 and PW5 have supported the case of the plaintiffs. 'A' schedule property is already sold by the sister of the defendant under



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Ex.B1, therefore, the plaintiff has not filed any suit in respect of 'A' schedule property, whereas, in respect of 'B' schedule property, the plaintiff after adjusting Rs.25 lakhs has to pay only Rs.12 lakhs, therefore, the suit has been filed. The opinion of the handwriting expert is not based on exact science and is not a conclusive proof and therefore, the evidence of PW2 and PW3 attesting witnesses cannot be ignored altogether. Hence, seeks for dismissal of the appeal suit.

7. In light of the above, now, the following points arise for consideration:-

- (i) Whether the Ex.A1 dated 04.10.2011 is a result of forgery?
- (ii) Whether the plaintiff has proved the execution of the suit agreement? If so, whether the plaintiff was ready and willing to perform the part of the contract?
- (iii) To what other reliefs, the parties are entitled to?

Points (i) to (iii)

8. The suit has been laid to enforce the agreement with regard to the part of the suit property. Though the agreement is said to have been executed for 'A' and 'B' schedule properties by the defendant and her sister, the suit has been laid only in respect of 'B' schedule property in the plaint. According to them, with regard to the remaining part, sale deed was executed under Ex.B1. On careful perusal of the entire agreement



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regarding how the property has been distributed among the defendant and her sister, absolutely, there is no reference, whereas, for the first time in the plaint, it is stated as if the defendant's sister, having entered an agreement, sold the property viz., 'B' schedule property in the plaint. Though, Ex.B1 is filed by the defendant to show that some sale deed has been executed in favour of the second plaintiff on 03.01.2012, the very consideration shown in sale deed indicate that the sale price is only Rs.5 lakh, whereas, agreement show that the total value of the property is more than Rs.54 lakhs in which Rs.25 lakhs is said to have been paid as advance. The very sale deed registered later show that the value of the proerty is only Rs.5 lakhs, this fact creates serious doubt about the genuineness of the document. According to the plaintiff, defendant's sister one A.Athika Firdos has also executed a document, in such case, there was no reason as to why she was not made as a party to the suit. Though an explanation is offered that since she has already executed a sale deed she was not made as a party, but, whereas, it is the specific stand of the defendant that she has never executed the sale agreement under Ex.A1. On careful perusal of the suit document under Ex.A1, we entertained serious doubt about the genuineness of the document, though PW2 and PW3 were examined to prove the so-called execution by the defendant. Admittedly, the defendant is a Pardanashin lady. Such being the position, the burden of proof shall always rest upon the person who seeks to sustain a transaction entered into with a Pardanashin lady to



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establish that the said document was executed by her after clearly understanding the nature of the transaction. In this regard, it is relevant to note that this Court in the case of

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*Chidambaram Pillai and 3 others vs. Muthammal and another* reported in 1992 SCC

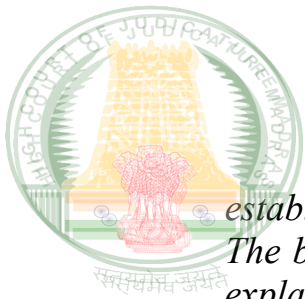
OnLine Mad 306 has held as follows:-

*"15. A section of womenfolk in view of the social conditions of the times are presumed to have imperfect knowledge of the world, as the Supreme Court has said in the case of Mst. Kharbuja Kher AIR 1963 S.C. 1203. They are presumed to have imperfect knowledge of the world, as, by the pardah system, they are practically excluded from social intercourse and communion with the outside world. The origin is traced to the Indian social usages and the general rules of English Law which protect persons whose disabilities make them dependent upon or subject them to the influence of others, even though nothing in the nature of deception or coercion may have occurred, applicable to such section of women. In the words of Lord Sumner, which have been quoted with approval by the Supreme Court in the case of Mst. Kharbuja Kher (supra):—*

*"This is part of the law relating to personal capacity to make binding transfers or settlements of property of any kind."*

*It is this imperfection of the knowledge of the world that the law throws round such women a special cloak of protection which demands that the burden of proof shall in such a case rest, not with those who attack, but with those who found upon the deed, and the proof must go so far as to show affirmatively and conclusively that the deed was not only executed by, but was explained to, and was really understood by the grantor. In such case, it must also, of course, be established that the deed was not signed under duress, but arose from the free and independent will of the grantor. That is what the Privy Council said first in its judgment in the case of Farid-Un-Nisa v. Mukhtar Ahmad and in the case of Hem Chandra v. Suradhani Debva<sup>2</sup> and summed up by the Supreme Court in the case of Mst. Kharbuja Kher (supra) in the following words:*

*"Shortly it maybe stated thus: The burden of proof shall always rest upon the person who seeks to sustain a transaction entered into with a Pardanashin lady to establish that the said document was executed by her after clearly understanding the nature of the transaction. It should be*



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*established that it was not only her physical act but also her mental act. The burden can be discharged not only by proving that the document was explained to her and that she understood it, but also by other evidence, direct and circumstantial.”*

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9. In light of the above settled position, the evidence of PW1 to PW3 when carefully scanned, PW1, in his evidence has stated that the entire agreement is prepared in the house of the sister of the defendant, whereas, PW2, in his evidence has submitted that the document has been prepared in the office of Gajendran/scribe. Similarly, PW3 in his evidence also stated the document was prepared only in the house of the Scribe. PW3 stated that he never visited the house of the defendant's sister house at any point of time. PW1 has stated that he has carried the cash in yellow bag, whereas, PW2 stated that money was carried in a plastic bag. PW2 in his evidence also stated that though the property is said to have been purchased under Ex.B1, he is not in possession of the suit property till now. PW1 in his evidence stated that since he had no income to pay the income tax and he is not paying income tax, however, he would submit that he has paid a huge amount from his income. PW2 in his evidence has stated as if out of advance amount, he has paid Rs.13 lakhs and he has also paid his share. Though PW2 and PW3 would submit that the document has been prepared in the Scribe house, PW4/scribe in his evidence stated that he does not remember where the stamp paper was purchased and from whom the stamp paper was purchased. PW3 admitted that he has not signed any of the stamp paper. PW2 would submit that he does not remember if he had made any



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corrections by using the whitener in the agreement and also admitted that the writings were made in narrow manner. Further, his evidence indicates that he does not know the defendant and her sister and he has received a sum of Rs.25,000/- as commission and he never visited the house of the defendant or her sister's house. Only the plaintiff took them to the lawyers house and his evidence clearly indicates that the document was created in some other place with the help of Scribe, whereas, the evidence of PW1 is that Ex.A1 came into existence in the house of the defendant's sister. These evidences of PW1 to PW3 clearly show that execution of the document is highly doubtful.

10. Further, it is relevant to note that the defendant was repeatedly requesting the plaintiff to furnish the so-called document after receipt of the legal notice from the plaintiff under Ex.A3 dated 20.01.2012; by way of reply for the legal notice under Ex.B5 dated 31.01.2012 and reply for rejoinder legal notice under Ex.B6 dated 18.02.2012, the very conduct of the plaintiffs in not furnishing the copy of the Ex.A1 creates serious doubt. If the agreement is genuine and entered into between the parties, when a party to the dispute immediately after the receipt of legal notice sought for a copy of such agreement, normal prudence would demand that the copy would be furnished to the other side, however, despite repeated requests made by way of Exs.B5 and B6, the so-called agreement said to have been executed by the defendant has not been furnished for the reasons best known to the plaintiffs.



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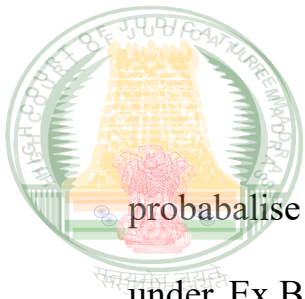
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11. It is further to be noted that though the other vendor namely Athia Firdos who is said to be the sister of the defendant is also signatory to the document under Ex.A1. It is the admitted case of the plaintiff that after the sale agreement, the sister of the defendant has executed the sale deed under Ex.B1 dated 03.01.2012. Though the signature of the defendant is not tested since she was not made as a party in the suit, when we compare the so-called signature of the defendant's sister between Ex.A1 and another document namely Ex.B1, on bare eyes, even a common man can find a lot of difference between two signatures. For easy reference, both the signatures are scanned and annexed below:-

Signature of defendant's sister in Ex.A1 agreement dated 04.10.2011:-

Admitted Signature in registered sale document/Ex.B1 dated 03.01.2012:-

12. The manner in which the letter a,t,h,e,q,a and firdouse signed in the admitted document namely the registered document is totally different than the manner of style, writing, character etc., in the signature found in Ex.A1. These facts clearly creates serious doubt about the genuineness of the document under Ex.A1. This in fact



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probabalise one fact, that is, Ex.A1 is created after the sale said to have been executed under Ex.B1 to compel the defendant to execute the sale in respect of the remaining property.

13. It is relevant to note that both the 'A' and 'B' schedule are contiguous land. This fact is not in dispute, therefore, the very genuineness of the document has not been established and the very execution itself is doubtful and the evidence of PW2, PW3 and PW4 are all interested. PW2 and PW3 are real estate brokers and their evidence also indicate that they also parted with some amounts and therefore, their evidence alone is not determinative factor to conclude that Ex.A1 is a genuine one.

14. PW2 evidence, when carefully seen, he is a real estate man, his evidence indicate that they have given only instructions to the document writer to write the document. According to the PW2, parent document is available with him. If parent document was available with the PW2 and he also claims to have paid certain amount, there was no reason as to why those document were not produced before the Court. His evidence also clearly shows that he and PW2 is also partner in the real estate business.

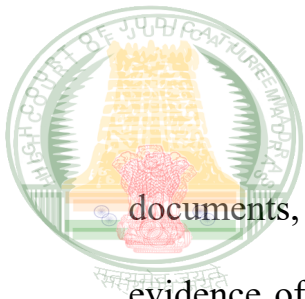
15. Further, the plea of part performace in handing over possession cannot have legal force to claim any part performance. The very agreement should have been registered as per Section 53A of the Transfer of Property Act. Similarly, DW4/SRO, Vaniyambadi in his evidence has stated that the stamp paper containing S.No.4715 was



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issued to one Sivalingam on 04.10.2011, whereas, in the same stamp paper, the first plaintiff name is found place. These facts also creates serious doubt about the genuineness of the very document under Ex.A1.

16. It is further to be noted that this Court directed the Forensic Sciences Department, Chennai for deputing a Handwriting Expert to compare the signature found in the Ex.A1/sale agreement and that of the admitted signature found in the registered sale deed dated 18.02.2010/Ex.B7 entered into between the defendant, defendant's sister with one S.Devaki on the file of the SRO, Vaniyambadi. This sale is also executed within a period of three years, therefore, the expert has compared both the admitted and disputed signatures and found the disputed signature which is marked as Q1 to Q5 in the agreement is not signed by the person who has signed the admitted signature found in the registered sale deed. The report of the expert is also marked as Ex.C1 with annexures and the expert is also examined before this Court as CW1. She has withstood the elaborate cross examination and she has also given reasoning for her conclusion and her evidence clearly indicate that disputed signature was not written by the person who has signed the admitted signature. Though she was elaborately cross examined, her evidence could not be shaken by any other materials. Though normally, Handwriting expert report is not a conclusive proof since it is not based on exact science, considering the various other circumstances, the signature of defendant's sister is completely different in two



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documents, one in admitted document and another in the disputed document and the evidence of PW2 and PW3 who are none other than the land brokers, they are highly interested and witnesses have made interpolations in the document by using whiteners, all these facts coupled with the evidence of CW1, we are of the view that the document has not been established and the genuineness of the document itself creates serious doubt.

17. It is also relevant to note that if really Ex.A1 came into existence on 04.10.2011 prior to the sale deed under Ex.B1, there was no reason as to why the reference was not made with regard to the Ex.A1 in a subsequent registered agreement. This also creates serious doubt about the genuineness of Ex.A1. If really, such huge amount is paid as advance, even assuming that such amount has not been shown to avoid stamp duty, common sense demands if there is an existence of the agreement, the same should have been referred in the subsequent sale deed also. It is also one of the reasons which gives a strong inference to doubt the genuineness of the Ex.A1. If really the agreement was not genuine, normal conduct of the plaintiff would be atleast to get another endorsement indicating that one part is already sold by her sister and remaining part will be executed by the defendant alone which has not been done so. This also creates doubt. That apart, the evidence of PW1 also shows that he has no document to prove that he has already parted a sum of Rs.13,40,000/-. Furthermore, the claim of the



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PW1 that he paid the remaining consideration of Rs.13,40,000/- to the sister of the defendant on the date of Ex.B1 is highly improbable since Ex.B1 reflects only Rs.5 lakhs sale consideration for entire property. There is no reference about the earlier agreement in the document under Ex.B1 also creates serious doubt.

18. The evidence of Handwriting Expert clinchingly establishes the fact that Ex.A1 has not been signed by the defendant. Further, as already stated the very signature of sister of the defendant is also doubtful. There are series of dissimilarities in the signatures contained in Exs.A1 as well as Ex.B1 as indicated above.

19. Therefore, we are of the view that Ex.A1 is a result of rank forgery only in order to knock out the valuable properties. It is also not disputed before this Court that as against the Ex.B1, a civil suit is already pending challenging the sale by the sister of the defendant. Therefore, when a person comes to the Court to enforce the contract, particularly, for a specific performance being the discretionary remedy, has to come with clean hands. Even a slightest doubt is entertained to the document, the Court will not extend discretion to grant relief to such person. When the conduct of the plaintiff and the witnesses goes against normal human behavior, and their testimony consists of parrot-like repetitions that make their evidence appear artificial, it is unsafe to rely upon those testimonies to give credence to the documents.

20. Further, there is no evidence to show that the plaintiff had capacity to



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mobilise the sale consideration, therefore, merely, because some IT statements are filed, when the suit document itself is found to be forged, the plaintiff is certainly not entitled to any relief. In fine, we are of the view that the Trial Court has not properly appreciated the facts and mechanically granted a decree by relying on the evidence of some interested witnesses. Accordingly, these points are answered.

21. Accordingly, the judgment and decree of the Trial Court is liable to be set aside and the same is hereby set aside. In the result, this appeal suit stands allowed with costs and the suit in O.S.No.27 of 2012 dated 30.10.2017 stands dismissed. Consequently, connected miscellaneous petition stands closed.

[N.S.K.J] [M.J.R.J]  
28.07.2026

Neutral Citation : yes / no

dhk

Plaintiffs and defendant side additional witness

Nil

Court Witness

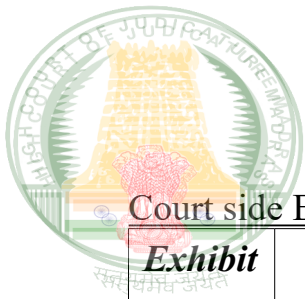
CW1 Ms.Subha

Additional Document on the side of the plaintiffs:-

Nil

Additional Document on the side of the defendant :-

| <b><i>Exhibit</i></b> | <b><i>Date</i></b> | <b><i>Particulars</i></b>                                                                    |
|-----------------------|--------------------|----------------------------------------------------------------------------------------------|
| Ex.B7                 | 18.02.2010         | Original of sale deed dated 18.02.2010 (Doc.No.1099 of 2010) on the file of SRO, Vaniyambadi |



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**Court side Exhibits**

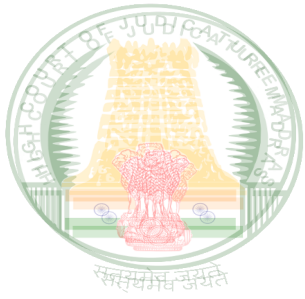
| <b><i>Exhibit</i></b> | <b><i>Date</i></b> | <b><i>Particulars</i></b>  |
|-----------------------|--------------------|----------------------------|
| Ex.C1                 | 10.06.2026         | Handwriting Expert Opinion |

**[N.S.K.J]**                      **[M.J.R.J]**  
28.07.2026

To

1. The Additional District Judge  
Vellore at Tirputthur

2.The Section Officer  
VR Section  
Madras High Court



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

dhk

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