



S.A.(MD)No.923 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.01.2026

Pronounced on : 12.02.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.923 of 2014

Thiagarajar Mills Ltd,
Kappalur Madurai
represented by the
General Manager
P.K.Venugopal

... Appellant/
Respondent/
Plaintiff

Vs.

N.Raguraman

... Respondent/
Appellant/
Defendant

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 27.10.2010 made in A.S.No.44 of 2009 on the file of II Additional Subordinate Judge, Madurai (Camp at Thirumangalam) reversing the judgment and decree dated 18.03.2008 made in O.S.No.435 of 2004 on the file of District Munsif, Thirumangalam.



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For Appellant : Mr.VR.Shanmuganathan

For Respondent : Mr.D.Srinivasa Raghavan

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.44 of 2009 dated 27.10.2010 on the file of the Subordinate Court, Thirumangalam (Camp Court), reversing the judgment and decree passed in O.S.No.435 of 2004 dated 18.03.2008 on the file of the Court of District Munsif, Thirumangalam.

2. The appellant is the plaintiff. The plaintiff Company filed a suit for recovery of sum of Rs.92,040/- with interest and costs.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status / ranking in the trial Court.

4. The case of the plaintiff, in short, is as follows:

(a) The plaintiff Company is a duly registered Company under the provisions of the Companies Act and is one of the leading textile mills.

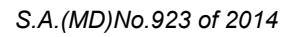
The defendant as network consultant gave quotation on 18.11.1999 to the



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plaintiff for five items and the plaintiff, accepting the quotation, placed purchase order for the network components for the total cost of Rs.1,43,955/-. After supply of items 1 to 5, the fourth item Link Sys Make Uplink Facility 3 switches were not functional and hence, the defendant removed the said switches and expressed his inability to supply the fourth item Link Sys Switches and suggested equivalent product viz., Digital X Switches. The defendant, after visiting the plaintiff Company premises and inspecting the network system of the plaintiff Company, sent quotation / offer letter dated 19.04.2000 that each switch is priced at Rs.30,680/- and three switches will cost Rs.92,040/-. The plaintiff accepted the offer and hence, the defendant installed the said three switches on 09.06.2000. The plaintiff had sent a sum of Rs.92,040/- by cheque dated 11.07.2000 favouring the defendant. One of the important conditions is the warranty condition for the switches for five years and a warranty letter was given by the defendant for a period of five years.

(b) After installation of the switches, the said switches were also not functioning properly and hence, the plaintiff had to often make phone calls for proper required functioning. Thereafter, the switches were at



(c) The defendant sent a letter dated 21.12.2001 accepting the delay and offered three switches at Rs.21,000/- per switch to settle the issue. Since the letter is against the terms of warranty and the defendant has to replace the switches or service the switches, he has no right to demand either service charges or price for new switches. Hence, the plaintiff sent a legal notice dated 04.01.2002 demanding the defendant



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for payment of Rs.92,040/- to the plaintiff with interest at 12% per annum from 18.09.2001 and costs. The defendant, after coming to know about the contents of the notice, has manoeuvred to send back the notice with postal endorsement 'not claimed'. Hence, the plaintiff was constrained to file the above suit for recovery of Rs.96,642/- with interest and costs.

5. The defence of the defendant, in short, is as follows:

The suit filed by the plaintiff is illegal, untenable and unsustainable either in law or on facts. The address of the defendant's business mentioned as NRS Infotech is wrong. This defendant is no way connected with NRS Infotech. The defendant is not a party to the documents between the plaintiff and NRS Infotech. The plaintiff's allegations connecting the defendant with NRS Infotech are all false and untenable. The defendant neither came to the plaintiff's mill nor replaced the switches. The defendant is associated with NRS Associates and NRS Systems alone. The defendant, after inspecting the plaintiff's unit as a service consultant, has suggested that the fault on the switches is only due to lightning attack. The defendant is only a network service



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consultant and is not a manufacturer of Digital X switches. The plaintiff has to work out his claim of warranty with the manufacturer, namely, Digital X switches through their warranty card. The defendant is not liable for any fault of the instrument and is not liable to pay any amount to the plaintiff. The suit filed against the defendant in individual capacity is not maintainable. The cause of action alleged is false. Since the suit is vexatious and frivolous in nature, the same is liable to be dismissed with cost.

6. The learned trial Judge, upon considering the pleadings of both the parties, framed the following issues,

- 1. Whether the plaintiff is entitled to the suit claim?*
- 2. To what other relief, the plaintiff is entitled to?*

7. During trial, the plaintiff examined their System Analyst Thiru.Narayanakumar as P.W.1 and former employee of M/s.NRS Infotech Thiru.Udhayamoorthy as P.W.2 and exhibited 9 documents as Ex.A1 to Ex.A9. The defendant examined himself as D.W.1 and adduced no documentary evidence.



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8. The learned trial Judge, considering the pleadings and the evidence both oral and documentary and on hearing the arguments of both the sides, passed a judgment and decree dated 18.03.2008 directing the defendant to pay Rs.96,642/- with future interest at 6% per annum on the principal amount from the date of plaint till realisation and costs. Aggrieved by the said judgment and decree, the defendant preferred an appeal in A.S.No.44 of 2009 and the learned Subordinate Judge, Thirumangalam, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree dated 27.10.2010 allowing the appeal and thereby setting aside the judgment and decree of the trial Court and consequently dismissed the suit. Challenging the dismissal of the suit by the first appellate Court, the plaintiff has preferred the present Second Appeal.

9. At the time of admission, following Substantial Questions of Law came to be formulated.

- 1. Whether the judgment of the Lower Appellate Court is vitiated for having ignored the admission made by the defendant in his deposition?*
- 2. Whether the Lower Appellate Court was justified in*



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exercising its jurisdiction available under Section 73 of the Indian Evidence Act?

3. *Should not the Lower Appellate Court drawn adverse inference against the defendant for having issued communication in different names, namely, N.R.S. Infotech, N.R.S. Associates and N.R.S. Systems and coming to a conclusion of leaving that it is the defendant who actually represented all the three entities?*
4. *Whether the Lower Appellate Court ought to have held that Ex.A5 letter of warranty will bind the defendant?*
5. *Whether the Lower Appellate Court was justified in rejecting the evidence of D.W.2?*
6. *Whether the Lower Appellate Court ought to have held that the suit is maintainable even without impleading the principal manufacturer since there is no privity of contract between them and the plaintiff?*

10. Heard Mr.VR.Shanmuganathan, learned counsel appearing for the appellant / plaintiff and Mr.D.Srinivasa Raghavan, learned counsel appearing for the respondent / defendant.

11. The learned counsel appearing for the appellant / plaintiff would submit that the defendant, while deposing as D.W.1, has



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categorically admitted that three concerns, namely, NRS Infotech, NRS Associates and NRS Systems, were functioning at Door No.459, Dr. Radhakrishnan Road, Tatabad, Coimbatore and that he was associated with NRS Associates and NRS Systems; that he has also admitted having received the suit summons at the said address; that Ex.A4 invoice dated 09.06.2000 was issued by NRS Associates to the plaintiff Company for the supply of three Digital X switches worth Rs.92,040/-, wherein it is stated that the plaintiff Company had issued a cheque bearing No.822727 dated 11.07.2000 in favour of NRS Associates towards the said transaction; that though the initial contract was between NRS Infotech and the plaintiff as evidenced by Exs.A1 to A3, subsequently, upon replacement of the network link system facilities by Digital X switches and the issuance of Ex.A4 invoice by NRS Associates, the contractual relationship stood shifted between the plaintiff and NRS Associates; and that since the defendant has admitted that he is the proprietor of NRS Associates, the liability to refund the amount claimed would squarely rest with NRS Associates, represented by its proprietor, namely, the defendant.



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12. The learned counsel appearing for the appellant / plaintiff would submit that the evidence of P.W.2, a former employee of NRS Infotech, clearly establishes that NRS Associates was subsequently renamed as NRS Infotech; that the defendant was the owner and controlling authority of both the said concerns; and that the evidence of P.W.2 remained unchallenged and unimpeached in cross-examination. He would further contend that the contractual relationship existed only between the plaintiff and the defendant and that there was no privity of contract between the plaintiff and the manufacturer; and that since the defendant himself issued a five-year warranty under Ex.A5, thereby undertaking contractual obligations, the claim made against the defendant is legally maintainable.

13. The learned counsel appearing for the appellant / plaintiff would contend that the first appellate Court erred in finding fault with the trial Court's reliance on Court summons under Ex.C1 and Ex.C2 and that since the Court summons and acknowledgements form part of the judicial record, they did not require independent proof or formal marking and therefore, the objection raised in this regard is purely technical and



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does not affect the substantive findings. He would further submit that the finding of the first appellate Court that P.W.1 was not competent to depose is erroneous in as much as P.W.1 was an authorised employee having personal knowledge of the transactions and that the observation of the first appellate Court that Ex.A5 warranty letter is not a personal undertaking, is perverse, as a warranty, by its very nature, constitutes an undertaking to rectify defects or make good the loss.

14. The learned counsel appearing for the appellant / plaintiff would finally contend that the first appellate Court reversed the well-reasoned judgment of the trial Court on hyper-technical, legally unsustainable and perverse grounds, ignoring the admissions, documentary evidence and settled legal principles, thereby warranting interference by this Court.

15. The learned counsel appearing for the respondent / defendant would submit that the first appellate Court, after careful consideration of documents and evidence, has come to a conclusion that the plaintiff failed to prove the case against the defendant and that the learned first



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17. At the outset, it is pertinent to note that the plaintiff, in paragraph No.2 of the plaint, while describing the defendant, has specifically stated that the defendant was carrying on business under the name and style of NRS Associates, NRS Systems and NRS Infotech in the field of networking at Door No.459, Dr. Radhakrishnan Road, Tatabad, Coimbatore – 641012. However, in the written statement, the defendant has taken a stand that he is associated only with NRS Associates and NRS Systems and that he has no connection whatsoever with M/s.NRS Infotech. It is evident from the documentary evidence on record that all the three concerns, namely, NRS Infotech, NRS Associates and NRS Systems, were shown to be functioning at Door No.459, Dr. Radhakrishnan Road, Tatabad, Coimbatore. In cross-examination, the defendant as D.W.1 would admit,

“வாதி தாக்கல் செய்த பிராதிற் என்னுடைய முகவரியில் என்.ஆர்.எஸ்.அசோசியேட், என்.ஆர்.எஸ்.சிஸ்டம்ஸ் மற்றும் என்.ஆர்.எஸ்.இன்போடெக் என்ற பெயர்களில் நான் தொழில் நடத்துவதாக சொல்லப்பட்டிருக்கிறது என்று சொன்னால் சரிதான் எ1 கடிதமானது என்.ஆர்.எஸ்.இன்போடெக் நிறுவனத்தால் வாதி மில்லிற்கு அனுப்பப்பட்டது என்று சொன்னால் சரிதான். மேற்படி கடிதத்தில் என்.ஆர்.எஸ்.இன்போடெக் நிறுவனமானது கதவு எண்.459 டாக்டர் ராதாகிருஷ்ணன்



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சாலை, டாடாபேட், கோயம்புத்தூர் என்ற
முகவரியில் இயங்கி வருகிறது என்று
சொல்லப்பட்டிருக்கிறது என்றால் சரிதான்.”

18. It is pertinent to note that the defendant has admitted that he is associated with two other concerns, namely, NRS Associates and NRS Systems and more particularly, that he is the proprietor of NRS Associates.

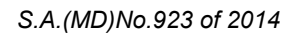
19. It is the specific case of the plaintiff that, upon accepting the quotation issued by the defendant for NRS Infotech, the plaintiff Company placed orders for five items and accordingly, the said items were supplied, including the fourth item, namely, Link Sys Uplink Facility (three in number). Since the said fourth item did not function properly after installation, the defendant removed the same and offered to replace them with Digital X switches by issuing a quotation dated 19.04.2000, which was accepted by the plaintiff. Pursuant thereto, the defendant installed three Digital X switches on 09.06.2000, for which a sum of Rs.92,040/- was paid by the plaintiff Company by cheque. Though the defendant disputed the installation of the original switches



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by him, as already pointed out, the same were supplied and installed by NRS Infotech as evidenced by Exs.A1 to A3. It is also pertinent to note that the defendant has admitted the supply of three Digital X switches through NRS Associates under Ex.A4 and the receipt of payment made by the plaintiff Company by cheque. The correspondence between the plaintiff and the defendant would further reveal that the defendant had admitted the faulty nature of the switches and had visited the plaintiff Company to inspect the same, but opined that the defect was due to a lightning strike.

20. As rightly pointed out by the learned counsel appearing for the appellant / plaintiff, the defendant has admitted the delay in responding to the plaintiff's claim and had addressed a letter dated 12.10.2001 imposing service charges at the rate of Rs.1,500/- per switch and called upon the plaintiff to pay the same for taking further action. It is also not in dispute that the defendant had sent another letter dated 21.12.2001 marked as Ex.A7, admitting the delay and offering to supply three switches at Rs.21,000/- per switch in order to settle the issue. According to the plaintiff, since the demand of service charges at Rs.1,500/- per



21. P.W.2, a former employee of NRS Infotech, has deposed that the concerns, namely, NRS Associates and NRS Infotech, were functioning at the same address at Door No.459, Dr. Radhakrishnan, Tatabad, Coimbatore; that he had signed Ex.A1 on behalf of NRS Infotech; that the defendant was the owner of both the said concerns; and that the defendant was paying his salary. In the course of cross-examination, P.W.2 has further stated that he had originally joined NRS Associates and that he was paid salary from the accounts of both NRS Associates as well as NRS Infotech. As rightly pointed out by the learned counsel appearing for the appellant / plaintiff, the first appellate Court, without any material basis, has discredited the evidence of P.W.2 merely



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on the ground that he had resigned from service and therefore, he could not be expected to depose in favour of NRS Infotech. P.W.2 has, in fact, stated that he left the concern only on account of inadequate salary. Though P.W.2 was subjected to lengthy cross-examination, no suggestion was put to him that he was removed from service or that he had any enmity either with the persons in charge of NRS Infotech or with the defendant. Mere cessation of employment, by itself, cannot be a ground to discard the otherwise cogent testimony of a witness.

22. It is the specific case of the plaintiff that the defendant had issued a five-year warranty under Ex.A5, comprising one year replacement warranty and four years service warranty, and as such, the defendant is liable to rectify the defects that had arisen in the switches supplied.

23. As already pointed out, the defendant has disputed the signature found in Ex.A5. During the cross-examination of the defendant as D.W.1, the served Court summons was shown to him and he has admitted that the signature found therein is his. Taking note of the same,



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the learned trial Judge compared the admitted signatures of the defendant available in the vakalat, written statement, Court summons and postal acknowledgement and observed that the defendant was in the habit of affixing his signature in two different styles. The learned trial Judge has further observed that the signature found in Ex.C1 Court summons is similar to that contained in the written statement and vakalat, whereas the signature found in Ex.C2 acknowledgement due appears to be different and that the said signature tallies with the signature found in Ex.A5.

24. No doubt, as rightly pointed out by the learned first appellate Judge, Ex.C1 and Ex.C2 were not specifically referred to in the deposition or in the note papers nor shown in the annexure to the judgment. It is pertinent to note that suit summons and notices available in the Court records can generally be looked into by the Court without being formally marked as exhibits, as they form part of the judicial record maintained in the course of official duties. However, mere availability of such documents on the Court file does not dispense with the requirement of proving the truth of their contents in the manner known to law. In the case on hand, the said documents were referred to



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only for the limited purpose of identifying the admitted signatures of the defendant for comparison under Section 73 of the Indian Evidence Act. Moreover, there is no requirement or practice of formally marking the documents containing admitted signatures when they are relied upon solely for the purpose of comparison.

25. Though Ex.C1 and Ex.C2 were not formally marked as exhibits, the reference to the signatures of the defendant found in the Court summons, notices and postal acknowledgement card, particularly when the defendant has admitted the signature found therein during his evidence, cannot be faulted. The learned first appellate Judge has, however, taken exception to the course adopted by the learned trial Judge in comparing the disputed signature in Ex.A5 with the admitted signatures available in Ex.C1 and Ex.C2 and has held that such comparison, in the absence of expert opinion, is improper and that the decree cannot be granted on the basis of the said finding. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in ***Murari Lal Vs. State of Madhya Pradesh*** reported in ***AIR 1980 SC 531***, wherein, it was observed,



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“The argument that the court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force. Section 73 of the Evidence Act expressly enables the Court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and two voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the Court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions they will aid the Court. Where there is none, the Court will have to seek guidance from some authoritative textbook and the Court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence.”

26. The above decision is squarely applicable to the case on hand.



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No doubt, an opinion formed under Section 73 of the Indian Evidence Act is a form of opinion evidence, but it is not conclusive proof and cannot alone decide the disputed issue. Such an opinion, even if obtained from an expert, serves as corroborative evidence. The trial Judge's comparison of signatures, in this context, is a necessary exercise of judicial discretion and does not warrant interference. The court's opinion aids evaluation, but ultimate reliance is on overall evidence.

27. The learned counsel appearing for the appellant / plaintiff would point out that the defendant, in the course of his cross-examination, has given evasive replies in an attempt to avoid responsibility. D.W.1 has stated that he does not remember whether the switches supplied by him were not functional and that he does not remember whether he had visited the plaintiff's mill and inspected the faulty switches.

28. The learned trial Judge, on an appreciation of the evidence available on record, has found that the defendant alone was running NRS Infotech; that the switches were initially supplied through NRS Infotech;



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that the faulty switches were subsequently replaced with Digital X switches through NRS Associates; and that the warranty under Ex.A5 was issued by the defendant. Admittedly, the contract was originally between NRS Infotech and the plaintiff and thereafter between the plaintiff and NRS Associates. It is not the case of the defendant that there existed any privity of contract between the plaintiff and the manufacturer of the Digital X switches. In terms of Ex.A5 warranty, the defendant alone had undertaken the obligation and therefore, he cannot evade or shift the liability on to any third party.

29. No doubt, the defendant, in the written statement, has taken a stand that the suit filed against him in his individual capacity is not maintainable. The learned first appellate Judge has observed that the privity of contract existed only between NRS Infotech and the plaintiff and that there was no personal contract between the plaintiff and the defendant; that the defendant was not impleaded in a representative capacity on behalf of NRS Infotech; that the Digital X switches were supplied only by NRS Infotech even according to the plaintiff, but NRS Infotech was not made a party to the suit; and that in the absence of



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privity of contract between the plaintiff and the defendant in his individual name, namely, Raghuraman, the suit filed against the defendant in his individual capacity is not maintainable. As rightly contended by the learned counsel appearing for the appellant / plaintiff, the said finding of the first appellate Court is unsustainable in law and on facts.

30. As already pointed out, though the switches were initially supplied by NRS Infotech, the same were subsequently replaced with Digital X switches through NRS Associates and the said replacement was personally attended to by the defendant. Even according to the defendant, he is the proprietor of NRS Associates. It is pertinent to note that a proprietorship concern is not a separate juristic entity in the eye of law and the proprietor and the proprietorship concern are one and the same. Therefore, the filing of the suit against the defendant, being the proprietor of NRS Associates, is perfectly maintainable and the finding of the first appellate Court to the contrary cannot be legally sustained.

31. The learned first appellate Judge, as rightly pointed out by the



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learned counsel appearing for the respondent / defendant, has also observed that the suit was filed by the General Manager of the plaintiff Company and that he had no authority to adduce evidence on behalf of the plaintiff Mills and therefore, the evidence of P.W.1 is liable to be discarded. Admittedly, the defendant has neither taken such a plea in the written statement nor raised any objection at the time when P.W.1 was examined. It is not the case of the defendant that P.W.1 was not an authorised employee or that he lacked knowledge about the transactions in question.

32. The learned counsel appearing for the appellant / plaintiff would submit that at the time of institution of the suit, the Managing Director had authorised Thiru. P.K. Venugopal, General Manager of the Company, to file the suit against the defendant and the said authorisation was produced along with the plaint. It is further submitted that during trial, the General Manager authorised the System Analyst, who had knowledge of the transactions, to depose on behalf of the Company and accordingly, P.W.1 entered the witness box. In such circumstances, the observation of the learned first appellate Judge that the evidence of P.W.1 is liable to be discarded is legally unsustainable and is liable to be set

33. Considering the evidence of P.W.1 and P.W.2, the admission of the defendant with regard to the supply of Digital X switches under Ex.A4 and the receipt of payment therefor, and taking note of the warranty issued under Ex.A5 and the failure on the part of the defendant to either rectify the defects in the switches or replace the same, the learned trial Judge has rightly come to the conclusion that the plaintiff has proved his claim and has accordingly decreed the suit. However, the learned first appellate Judge, on an erroneous appreciation of the evidence and by ignoring material evidence available on record, has proceeded to reverse the well-considered judgment of the trial Court. The findings so recorded are vitiated by perversity and are contrary to the evidence on record. Hence, this Court has no hesitation in holding that the judgment and decree passed by the first appellate Court are liable to be set aside and that the judgment and decree of the trial Court are to be restored. In view of the above, the Substantial Questions of Law are answered in favour of the appellant / plaintiff. Considering the facts and circumstances of the case, the plaintiff is entitled to costs throughout.



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34. In the result, the Second Appeal is allowed and the judgment and decree dated 27.10.2010 passed in A.S.No.44 of 2009 on the file of the II Additional Subordinate Court, Madurai are set aside and the judgment and decree dated 18.03.2008 passed in O.S.No.435 of 2004 on the file of the District Munsif, Thirumangalam are restored. The appellant / plaintiff is entitled to costs throughout.

12.02.2026

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
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To

1. The Subordinate Judge (Camp), Thirumangalam.
2. The District Munsif, Thirumangalam.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J

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**Pre-Delivery Judgment made in
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Dated : 12.02.2026