

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.06.2015

Pronounced on : 13.07.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

O.S.A.No.178 of 2014

Devaki Thiyagarajan

...Appellant

vs.

1.Ahamed

2.Rani Premkumar

3.P.C.Urian

4.P.C.Victor

5.P.C.Manoharan

6.V.Chandravadanam Charles (Deceased)

7.C.Immanuel Rakshahan Wilfred

8.Lysa

9.Jeshima

...Respondents

[R7 recorded as LR of deceased R6
vide order of this court 17.02.2015,
made in Memo filed filed by the
Appellant order in M.P.No.1 of 2015
memo vide SR No.190/15]

Prayer: Original Side Appeal is filed under Clause 15 of the Letters Patent against the order and decretal order, dated 28.3.2014 and made in Application No.6237 of 2013 against the Application No.107 of 2013 in C.S.No.462 of 1999.

For appellant : Mr.R.Thiyagarajan
For respondents : Mrs.Chitra Sampath
for Mr.N.A.Nissan Ahmed

JUDGMENT

(T.MATHIVANAN, J.)

This memorandum of Original Side Appeal has been directed against the order of the learned Single Judge of this Court, dated 28.3.2014 and made in the Application in A.No.6237 of 2013 setting aside the order of the Master of this Court, dated 11.9.2013 and made in the Application in A.No.107 of 2013 in C.S.No.462 of 99 on the file of this Court.

2. The appellant herein, who is the third party to the suit in C.S.No.462 of 1999 seeks her impleadment as 5th plaintiff.

3. The first respondent herein is the 5th defendant in the suit, whereas the respondents 2 to 5 are the plaintiffs 1 to 4 and the respondents 6 to 9 are the defendants 1 to 4.

4. During the pendency of the appeal, the sixth respondent, viz., the first defendant had passed away and therefore, the seventh respondent, who is the second defendant in the suit has been recognised and recorded as the legal representative of R6/D1.

5. The respondents 2 to 5 being the plaintiffs 1 to 4 have filed the suit in C.S.No.462 of 1999 as against the respondents 6 to 9 as well as the first respondent seeking the relief of declaration, recovery of possession and the consequential relief of permanent injunction.

6. The third defendant alone has been contesting the suit.

7. In the meanwhile, the appellant, who is absolutely a stranger to the suit came forward with an application in A.No.107 of 2013 under Order 1 Rule 10(2) of C.P.C. seeking the relief of her impleadment in the suit as the fifth plaintiff.

8. This was vehemently resisted by the first respondent herein, who is the fifth defendant in the suit.

9. After hearing both sides, the learned Master has proceeded to allow that application on 11.9.2013 permitting the applicant to implead as the fifth plaintiff in the suit.

10. Impugning this order, dated 11.9.2013, the first respondent has filed an application in A.No.6237 of 2013 in the form of an appeal before this Court.

11. The learned Single Judge of this Court (K.K.S.J.) after hearing both sides, has allowed the application on 28.3.2014 after setting aside the order of the learned Master, dated 11.9.2013 and made in A.No.107 of 2013.

12. Having been aggrieved by the order of the learned Single Judge of this Court, present appeal has been preferred by the applicant/third party/proposed fifth plaintiff, after invoking the provisions of Clause 15 of Letters Patent.

13. Heard Mr. R. Thiyagarajan, learned counsel appearing for the appellant and Mrs.Chitra Sampath, learned counsel appearing for Mr.N.A.Nissan Ahmed, who is on record for the respondents.

14. The subject matter of the suit is a house and ground bearing Door No.81 (Old No.44), R.K.Mutt Road, (Previously called as Brodies Road, Robertsonpet), Mylapore, Chennai-4, comprised in R.S.No.4167. This property has been described in two schedules, viz., Schedule 'A' and Schedule 'B' in the plaint.

15. As it appear in the plaint schedule, the property originally comprised in R.S.No.4167 seems to have been sub-divided into two compartments, viz., R.S.No.4167/1 and 4167/2.

16. As afore stated, the total extent of the house site is 2475 sq.ft. After effecting sub-division, an extent of 1210 sq.ft. (South to North 22 feet and East to West 55 feet) comes under R.S.No.4167/1 as it has been described under 'A' Schedule. The remaining extent of 1237 sq.ft. (South to North 23 feet and East to West 55 feet) comes under R.S.No.4167/2 as it has been described under Schedule 'B'.

17. The respondents 2 to 5/plaintiffs 1 to 4 have sought the relief of declaration to declare that they are the absolute owners of the property, viz., house and ground measuring 2475 sq.ft. and also to direct the defendants 4 and 5 to handover the possession of the suit property to them.

18. According to the respondents 2 to 5/plaintiffs 1 to 4, the deceased sixth respondent/D1 had executed a sale deed in respect of 'A' Schedule property in favour of the 9th

respondent/D4.

19. They have also claimed that the deceased sixth respondent/D1 had also executed another sale deed in respect of 'B' Schedule property in favour of the first respondent/D5.

20. On account of this reason, the respondents 2 to 5/plaintiffs 1 to 4 in the prayer portion under 'c' and 'd' of the plaint have sought the relief of declaration to declare the sale deeds executed by the deceased sixth respondent/D1 in favour of the 9th respondent/D4 and the first respondent/D5 as null and void and not binding upon them.

21. But what the appellant/proposed 5th plaintiff would contend is that the respondents 2 to 5/plaintiffs 1 to 4 through their power agent P.C.Urian, who is the second respondent herein/first plaintiff had sold the entire extent of 2475 sq.ft. (Old No.62, New Door No.81 located in R.K.Mutt Road, formerly identified as 44, Brodies Road, Robertsonpet, Mylapore, Chennai-4) in her favour under two registered sale deeds, dated 11.4.2008 and 20.8.2008, which were registered under Doc.No.817 of 2008 and 1288 of 2008 in the office of the Sub Registrar, Mylapore.

22. She has also contended that she had purchased the above said property for a sale consideration of Rs.60.00 lakhs. Obviously, the above said two sales were effected during the pendency of the suit.

23. In this connection, the appellant has stated that she, on her making discreet enquiries with her advocate friends, came to know about the pendency of the proceedings and the dispute inter se between the respondents 2 to 5 on one hand and the respondents 6 to 9 and the first respondent/D1 to D4 and D5 on the other hand and therefore, she had come forward with an application in A.No.107 of 2013 under Order 1 Rule 10(2) of C.P.C., for her impleadment as the fifth plaintiff in the above said suit.

24. The respondents 2 to 5/plaintiffs 1 to 4 have no objection for her impleadment as the fifth plaintiff in the suit.

25. In fact, the third respondent herein/second plaintiff in his counter affidavit has admitted that during the pendency of the proceedings, they had dealt with the property in favour of the appellant/applicant Devaki Thiyagarajan under two sale deeds, dated 11.4.2008 (Doc.No.817 of 2008) and on 20.8.2008 (Doc.No.1288 of 2008) respectively.

26. He has also admitted that he along with other plaintiffs had executed two rectification deeds, dated 29.3.2012 registered as Doc.Nos.1072 and 1073 of 2012 respectively and that by reason of the sale deeds as well as the rectification deeds executed by them, the applicant/appellant/third party Mrs. Devaki Thiyagarajan has become the absolute owner by reason of devolution of interest in their title and hence, she might be brought on record as the 5th plaintiff.

27. On the other hand, the first respondent herein, who is the fifth defendant in the suit has vehemently resisted the application filed by the appellant/third party on the main ground that the sales effected in favour of the applicant/third party are hit by the doctrine of lis pendens.

28. He has claimed that he had purchased the land and house comprised in R.S.No.4167/2 bearing Door No.81 (Old No.44) R.K. Mutt Road, Mylapore, Chennai-4 from the 8th respondent/D3 for a consideration of Rs.20.00 lakhs under a sale deed, dated 16.4.1999 registered as Doc.No.853 of 1999 in the office of the Sub Registrar, Mylapore.

29. He has also stated that after his purchase, he had obtained patta and transferred the same in his name, through the Tahsildar, Mylapore-Triplicane Taluk, Chennai on 18.4.2000 in respect of R.S.No.4167/2 bearing Door No.81/1, R.K.Mutt Road.

30. From his counter statement, it is revealed that he has been tracing his title through the 8th respondent/D3.

31. In this connection, Mrs. Chitra Sampath, learned Counsel for R1/D5 has adverted to that the 8th respondent/D3 had filed a suit in O.S.No.3233 of 1985 on the file of the City Civil Court, Madras, for declaration to declare her title to the said property and for recovery of possession and also for mense profits. That suit was decreed on 3.10.1991 as prayed for. The appeal in A.S.No.148 of 1992 preferred as against the above said judgment, dated 3.10.1991, was also dismissed on 8.4.1994 confirming the judgment and decree. The second appeal filed against the judgment in A.S.No.148 of 1992 was also dismissed by this Court and thereafter the 8th respondent/D3 had filed an execution petition in E.P.No.2872 of 1994 in O.S.No.3233 of 1985 and subsequently, the delivery of possession was also ordered.

32. The defendants in the above said suit in O.S.No.3233 of 1985 appears to have filed a revision in C.R.P.No.2118 of 1996, which was also dismissed by this Court on 12.9.1996 and therefore, Mrs.Chitra Sampath has submitted that in so far as the property measuring 1237 sq.ft. bearing Door No.81/1 comprised in R.S.No.4167/2, R.K. Mutt Road ('B'Schedule) was concerned the first respondent/D5 had become the absolute owner as he had purchased the said property from the 8th respondent/D3.

33. According to the first respondent/D5, after his purchase, he has constructed a new building and got the same assessed to property tax in his name.

34. Mrs.Chitra Sampath, learned Counsel has maintained that in so far as the property described in 'B' Schedule is concerned, the first respondent/D5 alone is the absolute owner and therefore, she has urged to dismiss the appeal.

35. Mrs. Chitra Sampath, while advancing her arguments has also pointed out that the property described in the plaint schedule as well as in the sale deeds purported to have been purchased by the appellant/third party are not the same as they are varied from one another and also in total contrast to the address of the property purchased by R1/D5.

36. She has also submitted that the plaintiffs and the appellant/third party were trying to throw untruthful and wild allegations blatantly to set up a title to the suit property in favour of the appellant/proposed 5th plaintiff.

37. She has also canvassed that the appellant/proposed 5th plaintiff was neither a necessary party nor proper party for the adjudication of the rights of the parties to the suit which by itself a piece of vexatious litigation.

38. She has also submitted that the question of admissibility of impleading the third party/appellant was contingent upon the maintainability of the suit itself and that the suit itself was not maintainable in law due to the fact that it had been filed by interlopers having no semblance of any connection whatsoever and because of the fact, that the issue which is directly and substantially involved in this matter, had already been decided and decreed by the City Civil Court as well as by this Court, the present suit itself is squarely barred by the doctrine of resjudicata.

39. Secondly, in order to add an additional strength to her argument she has made reference to the provisions of Section 52 of the Transfer of Property Act.

40. Section 52 of the T.P. Act enacts as under:-

"52. Transfer of property pending suit relating thereto.-During the [pendency] in any Court having authority [within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by [the Central Government] [* * *] of [any] suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.-For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]

41. What Section 52 of Transfer of Property Act contemplates is that except under the authority of the court and on such terms as it may impose the property, which is the subject matter of a lis cannot be transferred or otherwise dealt with by any party to the suit or proceedings during the pendency of the said lis so as to affect the rights of any other party thereto under any decree or order, which may be made therein.

42. It connotes further that if any party to the suit, during the pendency of a lis in any court wants to transfer their interest or right in favour of any other party, they have to seek prior permission of the court and it is the duty of the court to see as to whether the rights of the opposite party to the suit by such transfer is affected.

43. The doctrine upon which the section is based is that it would plainly be impossible that any action or suit could be brought to a successful termination if alienation pendente lite were permitted to prevail. During a litigation nothing new should be introduced (pendent lite nihil innovetur). The

correct mode of stating the doctrine is that 'pendente lite neither party to the litigation can alienate the property in dispute so as to affect his opponent.

44. This principle has been laid down in *Hiranya Bhusan vs. Gouri Dutt* (AIR 1943 Cal 227 : 76 CLJ 191).

45. Lord Justice Turner speaks about the principle underlying the provisions of Section 52 in his judgment in the case of *Bellamy v. Sabine* 1 DE G&J 566 as under:-

"It is, as I think, a doctrine common to the courts of both law and equity, and rests as I apprehend, upon the foundation - that it would be plainly be impossible that any action should or could be brought to a successful termination, if alienation pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceedings.

46. Admittedly, the respondents 2 to 5/plaintiffs 1 to 4 have not complied with the requirements of Section 52 of T.P.Act as they have not obtained prior permission from the court for their alleged sale in favour of the appellant/proposed 5th plaintiff in respect of the suit property.

47. In this connection, Mrs.Chitra Sampath, learned counsel appearing for the first respondent has placed reliance upon the following decisions:-

a. *Ramesh Hiranand Kundanmal vs. Municipal Corporatio, Greater Bombay* (CDJ 1992 SC 221).

48. In this case, the Hon'ble Mrs. Justice M. Fathima Beevi, while speaking on behalf of the Division Bench of the Apex Court has observed as under:-

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14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought or relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action".

b. Anil Kumar Singh vs. Shivrath Mishra alias Gadasa Guru (CDJ 1994 SC 375).

49. In this case, while penning down the judgment on behalf of the Division Bench of the Apex Court, His Lordship Hon'ble Mr. Justice. K. Ramasamy has made a distinction between the phraseologies, "Necessary party" and "Proper party".

50. He has also observed that Order 1 Rule 10(2) says that necessary parties are persons who ought to have been joined as a party to the suit, a necessity to the constitution of proper suit without whom no relief or order can be passed. In order that a person may be considered a necessary party, defendant to the suit, the conditions precedent must be:-

(1) that there must be a right of some relief against him in respect of the dispute involved in the suit, and

(2) that his presence should be necessary to enable Court to effectually and completely to adjudicate upon and settle all questions involved in the suit.

51. In another decision, in Bibi Zubaida Khatoon vs. Nabi Hassan Saheb and another (AIR 2004 SC 173(1), with reference to the provisions of Section 52 of the Transfer of Property Act, the Apex Court has held that:-

"It would therefore, be clear that the defendants in the suit were prohibited by operation of S.52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the Court. Admittedly, the authority or order of the Court had not been obtained for alienation of those properties. Therefore, the alienation obviously would be hit by the doctrine of lis pendens by operation of S.52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit."

52. Apart from citing the above decisions, Ms.Chitra Sampath, has also cited several other decisions.

53. Since all the other decisions are on the same line, they need not be referred to or reiterated.

54. In so far as the present appeal is concerned, we would like to place it on record that the principle of lis pendens embodied in Section 52 of the T.P.Act being a principle of public policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject matter of the suit. The Section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the Court.

55. On the other hand, Mr.R. Thiyagarajan, learned counsel appearing for the appellant/proposed 5th plaintiff has submitted that the original plaintiffs, who are the original and true owners of the property have been fighting as against the respondents 6 to 9 and R1 (D1 to D5) and have sought for various reliefs as against them.

56. He has also added that by reason of the sale in favour of the appellant/proposed 5th plaintiff as referred to in the two sale deeds, dated 11.4.2008 and 20.8.2008 her vendors, i.e., the respondents 2 to 5/plaintiffs 1 to 4 ceased to have any interest in the subject matter and therefore, naturally, they might not be pursuing the suit vigorously. Since there had been

devolution of interest in favour of the appellant/proposed 5th plaintiff by virtue of the sale made by them, the appellant/proposed 5th plaintiff is having a reasonable apprehension that they would not be seriously interested in pursuing the suit vigorously and diligently.

57. He has submitted that the appellant/proposed 5th plaintiff is proper and necessary party and without her presence there might not be any fair decision and apart from this, the real issue involved in this suit could not be settled in her absence.

58. We have perused the averments of grounds of appeal along with the relevant materials placed before us.

59. We have also considered the submissions made on behalf of both sides.

60. The learned counsel appearing for the respondents 2 to 5/plaintiffs 1 to 4 has submitted that he did not want to say anything as the respondents 2 to 5/plaintiffs 1 to 4 had sold the property in favour of the appellant/proposed 5th plaintiff.

61. In so far as this appeal is concerned, we understand that the real fight is between the appellant/proposed 5th plaintiff and the first respondent/D5.

62. The object of the Order 1 Rule 10(2) C.P.C. to implead a third party to the suit is that the dispute in the suit would be resolved in the presence of all, in order to avoid multiplicity of proceedings.

63. Under Order 1 Rule 10 C.P.C. a party would become necessary party or proper party if he is having any interest over the subject matter of adjudication under the suit and then he can be impleaded.

64. Mr.R. Thiyagrajan, learned counsel appearing for the appellant/proposed fifth plaintiff has placed reliance upon the catena of decisions in order to support his contention, of which, the decision reported in (2013) 5 SCC 397 between Thomson Press (India) Limited vs. Nanak Builders and investors private limited and others, is very much relevant.

65. In this decision, the Division Bench of the Apex Court has spoken through His Lordship M.Y. Eqbal, as under:-

"Section 52 of the Transfer of Property Act speaks about the doctrine of lis pendens. It is well settled that the doctrine of lis pendens is a doctrine based on the ground that it is necessary

for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. The provision of this section does not indeed annul the conveyance or the transfer otherwise, but renders it subservient to the rights of the parties to a litigation."

66. His Lordship has also observed that Order 1 Rule 10 CPC empowers the court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary or proper for effective adjudication of the issue involved in the suit. It is manifest that Order 1 Rule 10(2) CPC gives a wider discretion to the court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party whose presence in the court is essential for effective determination of the issues involved in the suit.

67. On coming to the given case on hand, after filing the application by the appellant/proposed 5th plaintiff seeking for her impleadment, the respondents 2 to 5/plaintiffs 1 to 4 have brought down their volume and apparently have allowed the appellant/proposed 5th plaintiff to speak on their behalf as well as on her behalf.

68. On the other hand, the first respondent/proposed 5th defendant alone has claimed that he had purchased the plaint 'B' Schedule property from the 8th respondent/D3.

69. According to him, the present suit in C.S.No.462 of 1999 is hit by the doctrine of res judicata.

70. We have struck a balance between the submissions made on behalf both sides and ultimately found that as observed by the Division Bench of the Apex Court in the above cited decision, the provisions of Order 1 Rule 10(2) of C.P.C., empowers court to add any person as a party at any stage of the proceedings.

71. As afore stated in the earlier paragraphs, the respondents 2 to 5/plaintiffs 1 to 4 have not alienated the suit property in favour of the appellant/proposed 5th plaintiff with the permission of the court. However, as argued by Mr. R. Thiyagarajan, since the respondents 2 to 5/plaintiffs 1 to 4 have allegedly sold the suit property in favour of the appellant/proposed 5th plaintiff, they might not show much interest or due diligence in conducting the trial of the suit. Even if it is presumed that the appellant/proposed 5th plaintiff is not included as one of the co-plaintiffs to prosecute the suit as against the respondents 6 to 9, she would definitely approach the Court of law with a new suit, which would pave way for the multiplication of proceedings and only for the purpose of avoidance of any other litigation for

the same subject matter, we have, therefore, decided that the appellant/proposed 5th plaintiff could be allowed to be impleaded as the 5th plaintiff.

71a. Further, we do not see any collusiveness between the appellant/proposed 5th plaintiff and the respondents 2 to 5/plaintiffs 1 to 4. Section 52 of T.P.Act is a substantive law, whereas the provisions of Order 1 Rule 10(2) of C.P.C., is a procedural law. Even though the respondents 2 to 5/plaintiffs 1 to 4 have not obtained prior permission to alienate the property, which is directly and substantially in question in the present suit, Order 1 Rule 10(2) of C.P.C., empowers this Court to implead any party at any stage of the proceedings either as plaintiff or defendant upon or without any application of either party, whose presence appears to be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

72. Having regard to the relevant facts and circumstances of the case, we are of the considered view that the presence of the appellant/proposed 5th plaintiff before the court is absolutely necessary for an effective settlement of the issue involved in the suit.

73. Keeping in view of the above fact, we find that the order of the learned Single Judge of this Court, dated 11.9.2013 is liable to be set aside.

74. Accordingly, the appeal filed by the appellant/proposed 5th plaintiff is allowed and the impugned order passed by the learned Single Judge, dated 11.9.2013 and made in the Application in A.No.107 of 2013 is set aside confirming the order of the learned Master. The Registry is directed to carry out necessary amendments wherever necessary. However, there will be no order as to costs.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

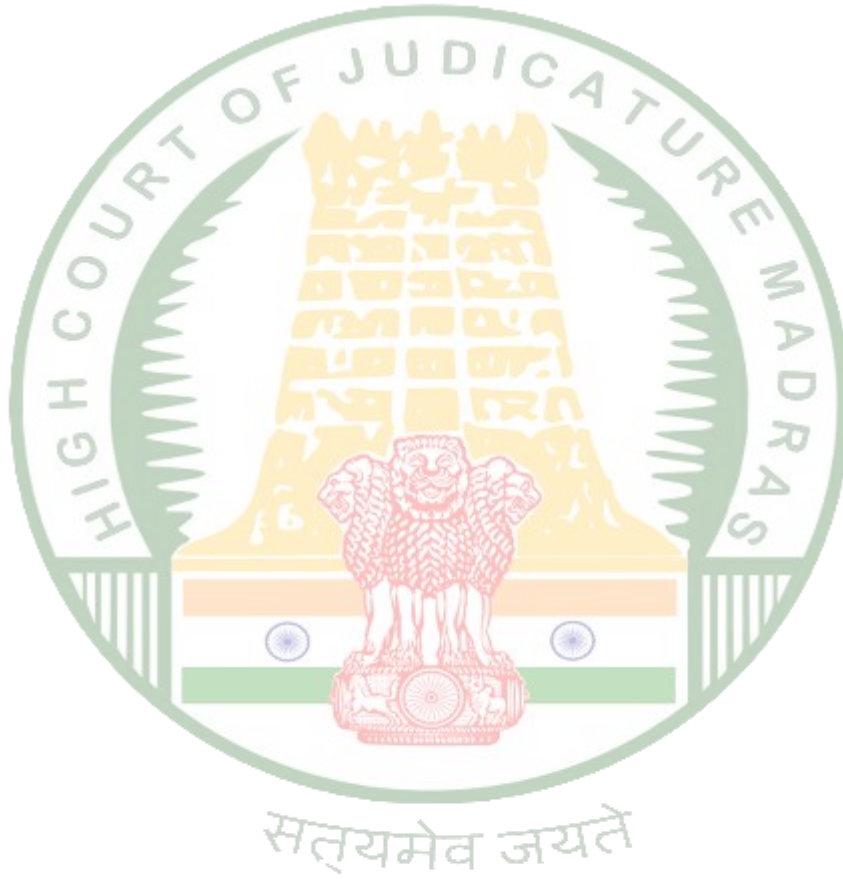
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2 CCs to Mr.R.Thiyagarajan, Advocate SR.No. 35086, 35087

2 CCs to Mr.N.A.Nissan Ahmed, Advocate SR.No. 35324

O.S.A.No.178 OF 2014

CNR (CO)
PSI (27.07.2015)



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