

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.07.2015

Delivered on: 3.08.2015

CORAM

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

A.S.No.217 of 2013
and
M.P.Nos. 1& 2 of 2014
and
M.P.No.1 of 2015

1.G.M.Jagannathan
2.V.Ramesh Babu ... Appellants/Defendants.

Versus

1.H.Indira
2.H.Rekha ... Respondents/Plaintiffs.

Prayer: First Appeal is filed under Section 96 r/w Order 41 Rule 1 of C.P.C. against the Judgment and Decree, dated 12.02.2013 made in O.S.No.44 of 2009 on the file of the learned Principal District Judge at Vellore.

For Appellants : Mr.G.Jayachandran
For Respondents : Mr.S.Kalyanaraman

JUDGMENT

(T. MATHIVANAN, J.)

Challenging the judgment and decree dated 12.02.2013 made in O.S.No.44 of 2009 on the file of the learned Principal District Judge, Vellore, this Memorandum of regular appeal has been preferred by the defendants in the suit. The respondents 1 and 2 herein are the plaintiffs.

2. The respondents 1 & 2 have filed the above suit as against the appellants seeking the following reliefs :

1. To direct the defendants to pay a sum of Rs.46,26,335/- to the plaintiffs with future interest at the rate of 24% per annum till payment is made in full.
2. To direct the defendants to pay the cost of the suit.
3. Granting other reliefs, which may deem fit and proper.

3.The defendants have contested the suit by filing their written statements. However, on appreciation of the evidences, both oral and documentary, available on record, the Trial Court has proceeded to decree the suit, directing the defendants to refund the advance of Rs.30,33,000/- to the plaintiffs with interest at the rate of 18% from the date of sale agreement i.e., 29.01.2007 till the date of filing of suit i.e, 06.04.2009 and thereafter at 6% per annum on the advance amount of Rs.30,33,000/-, till the date of realisation.

4.Having been aggrieved by the judgment of the Trial Court dated 12.02.2013, the defendants stand before this Court with this appeal.

5. For the sake of convenience and easy reference, the respondents herein may hereinafter be referred to as plaintiffs and the appellants be referred to as defendants, wherever the context so requires.

6. The defendants are the real estate owners and doing business in real estate. They used to take the registered agreement of sale in their favour from the owners of the land and offer to sell the same to the third parties, based on the agreement that may be entered into between them.

7. In so far as this case is concerned, when the plaintiffs were looking for lands for the purpose of purchase, the defendants had offered the schedule mentioned property to sell at the rate of Rs.17,000/- per cent. The plaintiffs had agreed to purchase the property at the rate of Rs.17,000 per cent. The extent of the property comes to nearly 10 acres.

8. In accordance with this arrangement, both the plaintiffs and defendants had entered into an agreement of sale on 29.01.2007 and thereby the defendants had agreed to sell the land and get the sale deed, which might be executed by the respective owners and then get it registered in favour of plaintiffs. On the date of agreement of sale, the plaintiffs had paid a sum of Rs.30,33,000/- to the defendants towards advance. It was also decided that the remaining balance of sale consideration should be paid at the time of conveyance, after calculating the exact extent to be sold by the respective owners.

9. It was also agreed between both the parties that the contract of sale shall have to be completed within a period of five months i.e., on or before 29.06.2007.

10. According to the plaintiffs, the time is the essence of contract, but the defendants had been evading and not come forward to execute the sale deed as agreed by them.

11. Thereafter, the plaintiffs were put to understand that after receiving the advance amount of Rs.30,33,000/- from them, the defendants had started acquiring the property in their names and also started creating sale deeds in respect of some portion of the property, specified in the schedule and nearly five acres of land was sold out by them in favour of third parties and not to the plaintiffs.

12. The conduct of the defendants would go to show that they were not willing to get the documents in favour of the plaintiffs. Under this circumstance, the plaintiffs had thought that it was not safe for them to pay the remaining balance of sale consideration and they had therefore decided to get the amount refunded, which was paid as advance to the defendants.

13. Notice were exchanged between the plaintiffs and defendants.

14. Since the defendants had been evading to perform their part of contract as agreed upon by them in the sale agreement dated 29.01.2007, the plaintiffs were constrained to file the above suit for the relief as afore stated.

15. The second defendant had adopted the written statement filed by the first defendant. What they would contend is that, it was true that the agreement of sale was executed by them on 29.01.2007 in the name of the plaintiffs. According to the defendants, the plaintiffs were merely name lenders and had not actually negotiated the sale and paid the amount to the defendants. They have also contended that the plaintiffs were strangers to the agreement of sale and they had not all seen the face of the defendants.

16. It is also the case of the defendants that a sum of Rs.17,000/- per cent was fixed, in respect of the schedule mentioned property and they had also received a sum of Rs.30,33,000/- from one Jeevaraj and Prasanth Chand and not from the plaintiffs. The said Jeevaraj and Prasanth Chand are closely related to each other.

17. The defendants have further contended that Jeevaraj and Prasanth Chand had promised that they would perform their part of contract within five months. However, they had not turned till 19.09.2007. On that day i.e., 19.09.2007, the said Jeevaraj and Prasanth Chand had approached the defendants with real estate agents and explained the circumstances regarding their inability to perform their part of contract and requested them to execute a fresh agreement in the name of Tmt.Lalitha Bai, W/o. Jeevaraj and Tmt.Savithri Bai, W/o.Prasanth Chand and on that day they had also paid an advance of Rs.20,00,000/- and accordingly a new agreement was executed mentioning the previous agreement as well as the advance amount. The real estate agents who came along with Jeevaraj and Prasanth Chand had also signed as witnesses in both the agreements.

18. At the time of executing the fresh agreement on 19.09.2007, Jeevaraj and Prasanth Chand had not brought the previous agreement dated 29.01.2007, which they had promised to hand over within a week.

19. The defendants had also admitted that they had executed sale deeds in favour of three persons, and two of them were relatives of plaintiffs, Jeevaraj and Prasanth Chand and the other one was one Peethambaram, who was their business partner. Then the defendants had agreed to arrange the sale in favour of Jeevaraj and Prasanth Chand or in favour of the persons who might be identified by them.

20. But their business partner Peethambaram had purchased 33 cents of land in the same block for a sum of Rs.23,000/- per cent. Hence the land owners, who had entered into agreements with defendants had refused to sell their land at Rs.17,000/- per cent and demanded Rs.23,000/- per cent. It is also stated that the defendants were able to arrange the sale in favour of the agents as per the terms of two Agreements of Sale, only to the extent of 5.52 acres and having been aggrieved, the said Jeevaraj and Prasanth Chand, who wanted to blackmail these defendants, had filed this suit vexatiously through the plaintiffs.

21. Based on the pleadings of the parties to the suit, the Trial Court has formulated the following four issues :

1. Whether the alleged sale agreement dated 29.01.2007 is true?
2. Whether the plaintiffs are entitled for getting refunded the advance amount as claimed in the plaint?
3. Whether the interest claimed by the plaintiffs are exorbitant?
4. To what other reliefs the plaintiffs are entitled to?

22. In order to substantiate their respective cases, the first plaintiff H.Indira had examined herself as PW1. Besides her evidence, three more witnesses were examined as PW2 to PW4. During the course of their examination Ex.A1 to Ex.A6 were marked and on the other hand, the first defendant G.M.Jagannathan, had examined himself as DW1 and two more witnesses were examined as DW2 and DW3 respectively. During the course of their examination, Ex-B1 to Ex-B6 were marked. Apart from these exhibits, Ex-X.1 and Ex-X.2 were also marked on the side of the Court.

23. On appreciation of the evidences, both oral and documentary, the Trial Court had accepted the case of the plaintiff and therefore decreed the suit, directing the defendants to refund the advance amount.

24. Heard Mr.G.Jayachandran, learned counsel appearing for the appellants/defendants and Mr.S.Kalyanaraman, learned counsel appearing for the respondents/plaintiffs.

25. We have perused the averments of the plaint as well as the written statements along with the evidences available on record. Based on this, the following two points are arisen for our consideration:

1. Whether the Trial Court is right in decreeing the suit, directing the defendants to pay the advance amount of Rs.30,33,000/-.
- 2.
3. Whether the interest at the rate of 18% p.a. directed to be paid by the defendants is exorbitant.

26. In so far as, Point No.1 is concerned, Mr.G.Jayachandran, learned counsel appearing for the appellants/defendants, has submitted that the institution of the money suit for recovery of Rs.30,33,000/-, based on the sale agreement dated 29.01.2007(EX.A1), is a sheer abuse of process of Court. In view of specific agreement dated 19.09.2007, viz., Ex-B3, in respect of the very same property, which was agreed to be sold under Ex-A1, wherein the payment of advance amount of Rs.30,33,000/- was taken into account and confirmed by Ex-B1, the sale agreement under EX.A1 had become superseded.

27. The learned counsel appearing for the appellants/defendants has also argued that it was to be understood that since the appellants/defendants 1&2 had executed the sale deeds in favour of the nominees of the respondents/plaintiffs under Ex.B4, B5 and B6, they were unable to sell the balance extent of land, after the execution of the above said sale deeds, that too after the lapse of 18 months in total breach of the terms stipulated in Ex-A1.

28. The learned counsel has further submitted that since the remaining extent of land was executed for Rs.23,000/- per cent, the land owners had refused to convey the balance extent of the land for the same price i.e., at the rate of Rs.17,000/- per cent.

29. Mr.G. Jayachandran has also adverted to that the trial Court ought to have analysed the evidences and found that the respondents/plaintiffs had come to the court with unclean hands to achieve their hidden agenda of getting their sale deed executed in their favour in respect of the remaining extent of land under Ex.A1 for the agreed sale consideration of Rs.17,000/- per cent.

30. He has also pointed out that the joint business agreement, dated 12.10.2007, which was marked as Ex.B.1, entered into between one S., Peethambaram of Vellore on one hand and Savithiri Bai and six others on the other hand, in respect of the dealings of the properties which are the subject matter of Ex.A.1 and the mode of payments by the parties were referred to and particularly in respect of the payment made by the first

respondent/plaintiff Mrs. H. Indira. He would further submit that there was an understanding between the respondents/plaintiffs and the appellants/defendants with regard to their business dealings in respect of the subject matter of the suit, which was one and the same matter under Ex.A.1, Ex.B.1 and Ex.B.3 and conveyed only an extent of 5.5.2 ½ acres of the property under Ex.B.4, Ex.B.5 and Ex.B.6.

31. He has made emphasis on the point that the trial Court ought to have read the documents under Ex.A.1, Ex.B.1 and Exs.B.3 to B.6 together and ought to have held that a sum of Rs.30,33,000/- which was paid to the appellants/defendants under Ex.A.1 was taken into account under Ex.B.3 and Ex.B.1, and subsequently, as per the desire of the respondents/plaintiffs, the sale deeds vide Ex.B.4, Ex.B.5 and Ex.B.6 were executed in favour of the nominees of the parties under Ex.B.1.

32. He has also added that the sale consideration specified under Exs.B.4 to B.6 was very meagre on the basis of false statement since the market value and cost of the land agreed by the parties under Ex.A.1, Ex.B.3 and Ex.B.1 was Rs.17,000/- per cent and he has urged that the Sub Registrar, Katpadi, Vellore District, ought to have been suo motto impleaded by the trial Court to take appropriate action under the Indian Registration Act and Indian Stamp Act against the parties concerned.

33. In support of his contention, he has placed reliance upon the following decisions:-

1. S.P. Chengalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead) by LRs. and others (1994-I-L.W.21).
2. Hari Singh vs. Kanhaiya Lal (AIR 1999 SC 3325(1)).
3. A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others ((2012) 6 SCC 430).
4. Arumugham (dead) by L.Rs. and others vs. Sundarambal and another (AIR 1999 SC 2216).
5. Chinnasamy vs. Perumal (2000(I) CTC 148).
6. Rameshkumar Agarwal vs. Rajmala Exports Private Limited and others ((2012) 5 SCC 337).
7. Maria Margarida Sequeira Fernandes and others vs. Erasmo Jack De Sequeira (dead) through L.Rs. ((2012) 5 SCC 370).

34. In S.P.Chengalvaraya Naidu's case, cited first supra, the Apex Court has held that, "a person whose case is based on falsehood has no right to approach the Court and he can be summarily thrown out at any stage of the litigation."

35. It has also been observed that, "fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception to gain by another's loss. It is a cheating intended to get an advantage."

36. In Shanmugam's case, cited third supra, the Apex Court has observed that, "it is the bounden duty of the court to uphold the truth and do justice. The entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of the justice delivery system. It is imperative that pleadings and all other presentations before the court should be truthful."

37. Further, the Apex Court has observed that, "every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts. The pleadings must set forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the court must carefully look into it while deciding a case and insist that those who approach the court must approach it with clean hands."

38. In Rameshkumar Agarwal's case, cited 6th supra, a Division Bench of the Apex Court while explaining the scope and application of Order 6 Rule 2 of C.P.C., has held that the above provisions make it clear that every pleading shall contain only a statement of concise form of the material facts on which the party pleadings relies for his claim or defence but not the evidence by which they are to be proved. Sub rule (2) of Rule 2 makes it clear that every pleading shall be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph. Sub-rule (3) of Rule 2 mandates that dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

39. In Maria Margarida's case, cited 7th supra, the Apex Court has laid down the following proposition:-

"Detailed, particularised and specific pleadings are needed. Pleadings must raise sufficient cause of action."

40. Obviously, Mr.G.Jayachandran, the learned counsel appearing for the appellants/defendants has mainly questioned Ex-B3 sale deed.

41. It is apparent from the averments of the written statement filed by the appellants/defendants that they have admitted the execution of sale agreement on 29.01.2007 under EX.A1, but it is the specific case of the appellants/defendants that the respondents/plaintiffs were only name lenders and that they had not actually negotiated the sale and paid any amount to them. However, while admitting the receipt of Rs.30,33,000/- from one Jeevaraj and Prasanth Chand, they have denied the allegation that they had

received the above said amount from the hands of respondents/plaintiffs on 29.01.2007.

42. Ex-A1 Sale Agreement dated 29.01.2007 seems to have been executed between H.Indira (1st Respondent/1st Plaintiff) and H.Reka(2nd Respondent/2nd Plaintiff) on one part and G.M.Jagannathan(1st Appellant/1st Defendant) and V.Ramesh Babu (2nd Appellant/2nd Defendant) on the other part. In this agreement, the appellants 1 and 2 have stated that the schedule mentioned property, approximately measuring 10 acres was under their maintenance and therefore for meeting out their family expenses and for doing business, they are willing to sell that property in favour of the respondents/plaintiffs, for the sale price of Rs.17,000/- per cent, which was also agreed by the respondents/plaintiffs and therefore a sum of Rs.30,33,000/- was paid to the appellants/defendants by the respondents/plaintiffs on the above said date.

43. In Ex.A1 agreement of sale, five months time has been stipulated to complete the contract of sale and to pay the remaining balance of sale consideration, that may be determined in accordance with the total extent of land, after measurement.

44. It was agreed by the appellants/defendants that the remaining balance shall have to be paid on or before 29.06.2009 by cash.

45. Ex-B3 seems to have been executed on 19.09.2007. On perusal of this document, it is revealed that if it has been executed between one Lalitha Bai, W/o.Jeevaraj and Savithri Bai, W/o.Prasanth Chand on one part and G.M.Jagannathan, who is the first appellant/first defendant and V.Ramesh Babu, the second appellant/second defendant on the other part. This agreement was executed in respect of the very same property described in Ex.A1 sale agreement. Ex.A1 and the payment of the advance amount of Rs.30,33,000/- have also been referred to in Ex.B3, which came into existence subsequent to Ex.A1.

46. It is significant to note that besides Rs.30,33,000/-, another amount of Rs.20,00,000/- i.e., in addition to Rs.30,33,000/- was received by the appellants/defendants towards the advance amount. It is also covenanted that apart from the advance amount received already including another amount of Rs.20,00,000/-, a further amount of Rs.30,00,000/- shall have to be paid by the respondents/plaintiffs on or before 30.09.2007 and get it endorsed on the agreement of sale and the appellants/defendants have also agreed to execute the sale deed in terms of agreement, subject to the payment of remaining balance on or before 29.11.2007.

47. With regard to Ex.B3, the appellants/defendants have contended that the said Jeevaraj and Prasanth Chand who are the husbands of Lalitha Bai and Savithri Bai,(first parties of the contract of sale dated 19.09.2007) had approached them and explained the circumstances regarding their inability to perform their part of

contract and requested them to execute a fresh agreement in the name of Lalitha Bai and Savithri Bai, W/o.Jeevaraj and Prasanth Chand respectively and paid an advance of Rs.20,00,000/- and only under this circumstance, a new agreement of sale (Ex.B3) on the very same date i.e., on 19.09.2007 happened to be executed.

48. From the above context, we are able to find that by the execution of Ex.B3, the earlier agreement under Ex.A1 has been superseded and no longer the best available.

49. On perusal of the evidence of DW.1, he has specifically admitted the execution of EX.A1 as well as the receipt of Rs.30,33,000/- as stated in the aforementioned paragraphs. It is the specific case of the appellants/defendants that they did not see the respondents/plaintiffs at the time of execution of Ex.A1 and in fact one Jeevaraj and Prasanth Chand alone had negotiated with them and they had only paid Rs.30,33,000/- and since the first defendant (DW.1) has specifically admitted the receipt of Rs.30,33,000/-, their other contention has become pale into insignificance.

50. As rightly observed by the learned Trial Judge, no oral evidence is necessary to prove the admitted facts. Under such circumstance, we would like to place it on record that the appellants/defendants being one of the parties to the agreement of sale (Ex.A1) and admitted the execution of sale agreement, as well as the receipt of advance amount, now they cannot take a "U" turn and say that the said agreement was not executed by the respondents/plaintiffs.

51. Further, we would like to point out that the catena of decisions cited by Mr.G.Jayachandran, are not applicable to the facts and circumstances of the given case on hand.

52. Keeping in view of the above facts, we are of considered view that the Trial Court is absolutely right in decreeing the suit as prayed for.

53. In so far as Point No.2 is concerned, it necessitates for us to extract the provisions of Sub-section (1) of Section 34, which reads as under:-

"34. Interest

(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, ²[with further interest at such rate not

exceeding six per cent, per annum as the Court deems reasonable on such principal sum from] the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions."

54. In so far as Sub-section (1) to Section 34 is concerned, it is the discretion of the court to add interest in case of passing of money decree. It is specifically emphasised that the court may order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, (with further interest not exceeding six per cent, per annum on such principal sum).

55. What the proviso to sub-section (1) of Section 34 says is that where the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

56. In so far as the present case on hand is concerned, it is not a commercial transaction and no agreed rate of interest has been specified by the respondents/plaintiffs, which the appellants/defendants had agreed to add to the principal sum.

57. However, Mr.S.Kalyanaraman, learned counsel appearing for the respondents/plaintiffs in order to fortify his contention with regard to interest has placed reliance upon the following decisions:-

a. Videocon Properties Ltd., vs. Dr.Bhalchandra Laboratories and others ((2004) 3 SCC 711).

58. In this case, with reference to Section 55(6)(b) of the Transfer of Property Act, 1882, the Apex Court has held that such a charge would extend and enure in respect of purchase or earnest money paid before title passes and the property has been delivered by the seller to buyer on the seller's interest in the property including in respect of interest on purchase money and costs awarded to buyer.

59. It has also been held that on facts that the so-called "deposit or earnest money" was actually part payment of the purchase price only and therefore the amount so deposited by the buyers became refundable to them as the prepaid purchase price deposited with the sellers and the sellers necessarily became liable to refund the same with interest due thereon. This attracted the first limb of Section 55(6)(b) and thus attracted the statutory charge envisaged therein, which encompassed the whole of the sum deposited and the interest due thereon.

60. In an another case, in Delhi Development Authority vs. Skipper Construction Co.(P) Ltd., and others ((2000) 10 SCC 130), a Division Bench of the Apex Court has held that the purchaser also entitled to interest on the amount of purchase money paid.

61. We have gone cautiously gone through the above cited decisions.

62. What the Apex Court has observed in the above cited decisions is that in case the advance amount is to be refunded to the purchaser by the seller, then the purchaser is entitled to get interest. No particular rate of interest is specified under Sub-section (1) to Section 34. It has been specified that it is the discretion of the Court to add interest, which need not be exceeded 6% p.a. unless, as per the proviso to sub-section (1), any contractual rate of interest is agreed to be paid.

63. Under these circumstances, we find that the rate of interest at 18% p.a. ordered by the trial Court seems to be exorbitant and this has not been agreed upon by the respondents/defendants. Since the interest at the rate of 18% per annum is not a contractual rate, we find that the interest at the rate of 6% p.a. would be very much reasonable. Therefore, the appellants/defendants are directed to refund the advance amount of Rs.30,33,000/- to the respondents/plaintiffs with interest at the rate of 6% p.a. from the date of the plaint till the date of realisation.

64. With the above direction, the appeal preferred by the appellants/defendants is partly allowed in respect of interest portion alone. No costs. Connected miscellaneous petitions are also dismissed.

(Sd)
Assistant Registrar (CO)

True Copy

Sub Assistant Registrar.

To

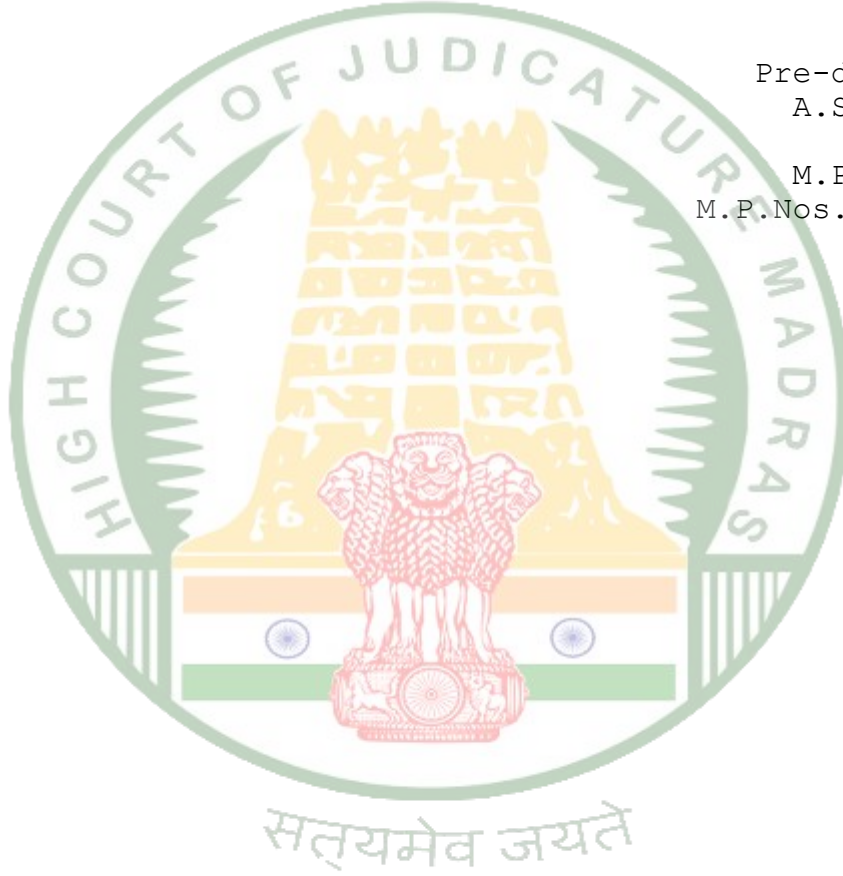
1. The Principal District Judge,
Vellore.

2. The Section Officer,
V.R.Section, High Court,
Madras.

+ 1 cc to Mr.S.kalyanaraman, Advocate SR 39880

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Pre-delivery order in
A.S.NO.217 Of 2013
and
M.P.Nos.1 of 2013,
M.P.Nos.1 to 3 of 2014 &
M.P.No.1 of 2015



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