

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2015

CORAM

THE HON'BLE MS. JUSTICE R. MALA

S.A.No.629 of 2001

Date of Reserving the Judgment 17.06.2015	Date of Pronouncing the Judgment 26.06.2015
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P.R.Manjunatha Chetty
S/o.Ramiah Chetty ...Appellant/Appellant/2nd Defendant

Vs

1. Varalakshmi (Deceased)
W/o.Durairaja

2. Rajanna Power Agent
represents Durairaja

3. S.R.B.Manjuraj
S/o.Basavaraj ...Respondents/Respondents/Plaintiff

(R3 brought on record as LR of
the deceased R1 vide order of
the Court dated 14.08.2013 made in
C.M.P.Nos.1207 to 1209 of 2011
in S.A.No.629 of 2001)

Prayer:

Second appeal filed under Section 100 of CPC against the
judgment and decree dated 22.02.2001 made in A.S.No.102 of 1996 on
the file of the Subordinate Court, Hosur, confirming the judgment and
decree dated 30.11.1994 passed in O.S.No.431 of 1984 on the file of
the District Munsif Court, Hosur.

For Appellant : Mr.V.Raghavachari
For Respondent : Mr. R.Subramanian, for R3
R1 - Died
R2 - No Appearance

J U D G M E N T

The second appeal arises out of the judgment and decree dated 22.02.2001 made in A.S.No.102 of 1996 on the file of the Subordinate Court, Hosur, confirming the judgment and decree dated 30.11.1994 passed in O.S.No.431 of 1984 on the file of the District Munsif Court, Hosur.

2. The averments made in the plaint are as follows:-

(a) One Durairaja as plaintiff has filed the suit for declaration and recovery of possession stating that the suit properties originally belong to one Krishna Setty son of Venkatakrishna Setty. While so, when the 1st defendant attempted to interfere with the possession and enjoyment of Krishna Setty and tried to put up illegal construction, Krishna Setty filed a suit in O.S.No.295 of 1974 on the file of the District Munsif, Hosur for declaration and for mandatory injunction. The said suit was decreed on 31.10.1977. Even during the pendency of the suit, Krishna Setty offered to sell the suit properties to the plaintiff and took an advance amount of Rs.1500/- and executed an agreement of sale on 17.06.1977. After the suit was decreed, the plaintiff took a sale deed from Krishna Setty for which Krishna Setty purchased the stamp papers for the sale deed from one Krishnappa on 16.12.1977. On the same date, the plaintiff paid the entire sale consideration but got the sale deed registered only on 26.12.1977 as Document No.3604.

(b) In the meanwhile, Krishna Setty fudged up a sale deed as though it was written on 21.12.1977 in the name of the second defendant who is a coparcenor of the family of the first defendant. The second defendant is the undivided son of the first defendant and the father of the first defendant only has purchased the stamp papers for the concocted sale deed dated 21.12.1977. After the suit was decreed, the first defendant filed an appeal in A.S.No.1 of 1980, wherein the suit was remanded back to the Trial Court. However, the said suit was subsequently dismissed as not pressed. The sale deed in favour of this plaintiff is dated 16.12.1977 and registered on 26.12.1977. The sale is for valuable consideration preceded by an agreement of sale. The very executant is estopped to deny his execution. Thus, the plaintiff prayed for decreeing the suit.

3. The appellant herein who is the 2nd defendant in the suit had filed the written statement wherein it was stated that it is true that the suit property belonged to Krishan Setty, s/o.Venkatakrishna Setty and he was in possession of the same. The said Krishna setty filed a suit against the first defendant for declaration of title and

injunction in O.S.No.295 of 1974 and the same was decreed on 31.07.1977. There is no such sale agreement and if there is any such document, it is a forged one. After the decree in the suit in O.S.No.295 of 1974, Krishna Setty and his son Venkatakrishna Setty sold the suit property to this defendant under the sale deed dated 21.12.1977. However, on 26.12.1977, the plaintiff and his brother aided by their supporters went to the house of Krishna Setty accompanied by Stamp Vendor Krishnappa and got the document registered on 26.12.1977. The said Krishna Setty issued a notice on 27.12.1977 questioning the validity of the document registered. Thus, Krishan Setty never intended to execute any sale deed in favour of the plaintiff and he has not received any money from the plaintiff. Furthermore, Krishna Setty also executed a cancellation deed on 18.01.1978 in respect of the alleged sale in favour of the plaintiff and recitals in the cancellation deed itself would expose the fraud played by the plaintiff. Thus, by stating the above averments, the second defendant prayed for the dismissal of the suit.

4. The sum and substance of the written statement filed by the third defendant is also follows:

The father of the 3rd defendant is the owner of the suit property. The stamp papers were not purchased on 16.12.1977 in the name of the 3rd defendant's father and no amount was paid to Venkatakrishna Setty. Even if any such document exists, it is a forged one. Further, till this date the alleged sale deed has not been acted upon and there have never been any delivery of possession. On the other hand, the sale deed in favour of the 2nd defendant has been executed by the 3rd defendant and his father and thereafter, the 2nd defendant is in enjoyment of the suit property. Thus, the 3rd defendant prayed for the dismissal of the suit.

5. The Learned Trial Judge after considering the averments both in the plaint and written statement and arguments on either side counsel, has framed necessary issues and on perusing the oral and documentary evidence viz., P.W.1 to P.W.4, D.W.1 to D.W.4 and Exs.A.1 to A.4 and Exs.B.1 and B.5, decreed the suit. Aggrieved against the judgment and decree of the trial court, the defendant preferred an appeal in A.S.No.102 of 1996 on the file of the Subordinate Court, Hosur.

6. The learned First Appellate Court has considered the argument advanced on either side and framed necessary point for consideration and confirmed the Judgment and Decree passed by the Trial Court and dismissed the appeal. Against the Decree and Judgment of the first Appellate Court, the present second appeal has been preferred by the defendant.

7. At the time of admission, the following question of law has been framed.

"1. Assuming the sale deed executed in favour of the plaintiff is true and valid, whether the Courts below are right in decreeing the suit for Declaration, when the 3rd defendant - owner of the remaining half share did not join in the execution of the sale deed in favour of the plaintiff?"

8. Challenging the concurrent finding of the Courts below, the second defendant as an appellant has preferred the present appeal stating that originally the suit properties belong to one Krishna Setty from whom the plaintiff had allegedly purchased the same under Ex.A.2 on 16.12.1977 and the same was registered on 21.12.1977 between 4.00 and 4.30 P.M. Whereas the appellant herein has purchased the property on 21.12.1977 and presented the same for registration between 3.00 and 4.00 P.M. The Trial Court without considering the same has held that once the document has been registered as per Section 47 of the Registration Act, it relates back to the date of execution of sale deed. So, the sale deed in favour of the plaintiff is in the earlier point of time. Hence, the suit has been decreed. However, both the Courts below has failed to consider that the document stands in the name of the second defendant. Ex.A.2 has been presented in the earlier point of time, even though on 21.12.1977 itself at 3.00 to 4.00 P.M the document was registered. Hence, the learned counsel for the appellant prayed for setting aside the decree and judgment of the Courts below. The learned counsel further submits that it is not in dispute that Krishna Setty is the original owner of the property and he had filed the suit in O.S.No.295 of 1974 on the file of the District Munsif Court, Hosur for mandatory injunction. The said suit was decreed on 31.07.1977 against which the an appeal in A.S.No.1 of 1980 has been filed and the same was allowed remanding back the matter to the Trial Court. At that point of time, the said Krishna Setty has withdrawn the suit. In the said suit, the plaintiff herein is arrayed as the third defendant. Further, the Ex.A.2 that refers to the sale agreement dated 17.06.1977 has not been filed before the Court and neither P.W.3/Ramaiah nor P.W.4/Seetharaman has spoken about the sale agreement. The learned counsel would further submit that Venkatakrishna Setty who has been examined as D.W.1 has deposed that his father has sold the property to the second defendant and both the Courts below has not considered those aspects in proper perspective. He further submitted that Doctrine of priority is not available because the appellant alone has presented the sale deed at the earlier point of time and hence, the learned counsel for the appellant prayed for allowing the appeal. To

substantiate his argument, the learned counsel for the appellant relied upon the following decisions:

1. 1963 KLT 252, Krishna Iyer v. Chandy.
2. 1996-1.L.W.622, Krishnan v. Sivalinga Gounder and another.

9. Resisting the same, the learned counsel appearing for the third respondent would submit that it is not disputed that Krishna Setty is the owner of the property. He had purchased the property on 16.12.1974 and the same was registered on 21.12.1977. Though the second defendant presented his document on 21.12.1977 at 3.00 to 4.00 P.M, the balance sale consideration has not been paid and it was paid only on 28.12.1977 and it was registered on 29.12.1977. The learned counsel would further submit that on 18.01.1978, the said Krishna Setty revoked the Ex.A.2/Sale Deed under Ex.B.1/Cancellation Deed. But the vendor by the unilateral execution of the cancellation deed cannot annul the registration as was held by the full bench of this Court in the decision reported in 2011-1-L.W.673, M/s.Latiff Estate Line India Ltd., v. Mrs.Hadeeja Ammal and others. The learned counsel further submitted that as per Section 47 of the Registration Act, the right of the vendor relates back to the date of execution of the sale deed and to substantiate the said argument, he relied upon the decision reported in 1991-2-L.W.110, Hamda Ammal v. Avadiappa Pathar. Thus, putting forth the above argument, the learned counsel for the respondent prayed for the dismissal of the appeal.

10. Considered the rival submissions made by both sides and perused the material records, oral and documentary evidences.

11. It is an admitted fact that the suit properties originally belong to one Krishna Setty who is the father of D.W.1/Venkatakrishna Setty. When the first defendant attempted to interfere with his possession and put up illegal construction, the said Krishna Setty filed a suit in O.S.No.295 of 1974 for mandatory injunction, wherein the plaintiff herein was arrayed as the third defendant. It is also admitted that the suit was decreed and as against the same, an appeal in A.S.No.1 of 1980 was preferred and in the said appeal, the matter was remanded back to the Trial Court. In the said suit, it was specifically averred in the plaint as follows:

"The plaintiff also cause a notice through his counsel dated 27.12.1977 issued to the third defendant and his younger brother attacking the sale deed and the same has been served on the third defendant and refused by the younger brother on 30.12.1977. The transaction has been repudiated long before the third defendant filed the application under Order 1 Rule 10 CPC before the District Court on 1.7.78. The said sale deed in favour of the third

defendant was not executed, was not acted upon and was never intended to be acted upon either. No possession was also granted under the sale deed either and the plaintiff ignores the said sale deed. But still as the District Court has in its order of remand stated that the defendants 2 and 3 are to be brought on record for full and final adjudication they have been impleaded as parties to the suit. Hence the suit."

However, the said suit was subsequently withdrawn and now the present suit has been filed for declaration of title and for recovery of possession by the third defendant in O.S.No.295 of 1974.

12. Now this Court has to decide whether Ex.B.2/Sale Deed, dated 21.12.1977 is true and genuine?

On perusal of Ex.B.2/Sale Deed, it is found that it was presented on 26.12.1977 between 3.00 and 4.00 P.M. But as per Ex.B.3, on 28.12.1977, a sum of Rs.1600/- has been paid to this vendor in the presence of the Sub-Registrar and the said document has been registered on 29.12.1977 as Document No.3633. Whereas the Ex.A.2/Sale Deed in favour of the plaintiff was written on 16.12.1977 and presented for registration on 26.12.1977 between 4.00 to 5.00 P.M and registered as Document No.3604.

13. At this juncture, it is appropriate to consider the decisions relied on by the learned counsel for the appellant.

13.1. In the decision reported in 1963 KLT 252, Krishna Iyer v. Chandy, it was held that the presumption of execution on the date borne by the deed is of a weak type. It is appropriate to incorporate the relevant portion of the said decision.

"3.Under the Indian Law signing and delivery are necessary to give complete operation to a document. The word "execute" under the Indian Law (the Registration Act for instance) is used in the sense of "signing" and the execution of a document therefore means signing it. But as stated before the date of signing or execution need not necessarily be the date on which the deed was written up, since when once the executant affixes his signature, the deed will, as was observed in an English case, speak from the date of its execution and not from the date apparent on the face of it. There is also provision in the Registration Act for registering a deed executed by several persons at different times. Such provision clearly shows that the date of execution of a deed need not necessarily be the date appearing on the deed so far as persons executing the deed subsequently. Hence it is very doubtful that proving the execution of a deed in any way implies the inference that

execution was on the date appearing on the face of the document. In my opinion on the mere proof that a person admits the execution of a document does not in any way necessarily lead to the inference that the signature was affixed on the date appearing on the document or that the date appearing on a deed was the date in which it was really written. The one need not have any connection with the other. In a case therefore where the genuineness of a deed is impeached by a third party on the ground that it was not really executed on the date appearing on the deed it is not enough for the party who relied on the deed to prove merely its execution since as already remarked, the date of execution may be quite different from the date apparent on the face of the deed. Hence proof of genuineness of a deed, when its genuineness is impeached not merely on the ground that it was not really executed but also not on the date the deed bears must consist of evidence of persons who are in a position to say not merely that they saw the executants sign the deed but also that they signed it on the date the deed was written up. In the absence of such evidence no inference can be drawn that the date of execution is identical with the date appearing on the deed. As in the present case, there is no evidence to show that executants of Ext. I affixed their (signatures on the date appearing on the face of Ext. I, I must hold that there is no legal proof that Ext. I was really executed on 8th Meenom 76.

4. Counsel for the respondent relied on *Mina Kumari Bibi v. Bijoy Singh Dudhuria*. The relevant passage therein reads thus:

"It is a general, though not a conclusive, presumption that a document was made on the day of the date it bears, so that for what it is worth the plaintiff starts with that in her favour; but her case does not rest there, for such oral evidence as there is on the point supports the presumption, and was not seriously challenged by the cross-examination. It has been suggested that the plaintiff should have called other witnesses to the date of execution. But her advisers had no reason to apprehend that this contention would be advanced. It is not pleaded in the written statement, it is not raised in the issues, and the judgment of the first court certainly does not suggest that it was given prominence even at the trial."

The above passage is clear that the presumption of execution on the date borne by the deed is of a weak type.

It is a presumption that generally comes into play in the absence of a challenge as to the date of execution of the deed."

13.2. In the decision reported in 1996-1.L.W.622, Krishnan v. Sivalinga Gounder and another, it was held that the registration Act will not absolve a person from proving the date of execution. In cases where the date of execution of the document is challenged, it is the bounden duty of the purchaser to prove by the best evidence that the document was executed on the date it bears. It is appropriate to incorporate paragraphs 11, 12 and 13 of the said decision:

"11. Even though it can be presumed that a document was executed on that date on which it purports to have been executed and bears the date, that is only a weak presumption. When the execution is challenged, and the allegation is that it is ante-dated, it is for the person claiming under the document to prove that it was executed on the date which it bears. Even the weak presumption will apply only between the parties to the transaction and not against the third person.

12. In (1916) 44 Indian Appeals 72 = (1917) 5 L.W.717 (Mina Kumari Bib v. Bijoy Singh Dudhuria), it was held thus:-

"It is a general, though not a conclusive, presumption that a document was made on the day of the date it bears, so that for what it is worth the plaintiff starts with that in her favour; but her case does not rest there, for such oral evidence as there is on the point supports the presumption, and was not seriously challenged by the cross-examination. It has been suggested that the plaintiff should have called other witnesses to the date of execution. But her advisers had no reason to apprehend that this contention would be advanced. It is not pleaded in the written statement, it is not raised in the issues, and the judgment of the first court certainly does not suggest that it was given prominence even at the trial."

13. From the above passage, it is clear that the presumption is of very weak type and the same can be applied only in case where it is not challenged."

14. By relying on the above citations, the learned counsel for the appellant contended that even though the stamp paper for the Ex.A.1/Sale Deed was alleged to be purchased on 16.12.1977, it will not be presumed that the sale deed has been executed on the same date itself and it is a weak presumption. There is no quarrel over the said proposition. However, it is the duty of the respondent/plaintiff to prove that the Ex.A.2/Sale Deed has been executed on the date mentioned in the stamp paper.

15. It is also pertinent to note that the deposition of krishnappa has been marked as Ex.A.3. Since krishnappa had died, to prove the same P.W.3/Ramaiah was examined and he has stated that his father had died. Under Ex.A.3, he was examined in O.S.No.295 of 1974, wherein he has specifically mentioned that he sold the stamp papers on 16.12.1977 and the same were purchased by Krishna Setty, the vendor of Ex.A.2. In such circumstances, it can be presumed that the stamp papers for Ex.A.2 has been purchased by Krishna Setty who is the vendor on 16.12.1977 and so, the document has been executed on 16.12.1977 and the same was presented for registration on 26.12.1977 between 4.00 to 5.00 P.M and registered as Document No.3604. Whereas the document in Ex.B.2 was written on 21.12.1977, presented on 26.12.1977 between 3.00 to 4.00 P.M. The balance sale consideration of Rs.1600/- was paid on 28.12.1977 as per Ex.B.3 and it was registered on 29.12.1977 as Document No.3633. In such circumstances, as per Section 47 of the Registration Act, which relates back to the date of execution, Ex.A.2/Sale Deed had come into existence at the earlier point of time.

16. Further, P.W.2/Govindasamy who was examined on behalf of the plaintiff is the identifying witness for Ex.A.2. At the time of registration, he has identified the vendor Krishna Setty. So, the evidence of P.W.2 would falsify the evidence of D.W.1/Venkatakrishna Setty. Even D.W.1 who is the son of Krishna Setty had deposed that Ex.A.2 was registered by forcibly taking him and his father to the Sub-Registrar office by Pasavaraj, Durairaj, Baire Gowdu and others. Even though D.W.1 had deposed that he has given police complaint, it was not placed before the Court. Furthermore, though Krishna Setty issued notice under Ex.B.4 on 27.12.1977, he has not filed any suit for setting aside the Ex.A.2/Sale Deed. However, Krishna Setty revoked the Ex.A.2/Sale Deed under Ex.B.1/Cancellation Deed, dated 18.01.1978. But, as per the full bench decision of this Court reported in 2011-1-L.W.673, M/s.Latiff Estate Line India Ltd., v. Mrs.Hadeeja Ammal and others, the vendor by the unilateral execution of the cancellation deed cannot annul a registered document duly executed by him as such an act of the vendor is opposed to public policy. It is appropriate to incorporate paragraph 58 of the said

decision:

"58. It can also not be overlooked or ignored that a unilateral cancellation of a sale deed by registered instrument at the instance of the vendor only encourages fraud and is against public policy. But there are circumstances where a deed of cancellation presented by both the vendor and the purchaser for registration has to be accepted by the Registrar if other mandatory requirements are complied with. Hence, the vendor by the unilateral execution of the cancellation deed cannot annul a registered document duly executed by him as such an act of the vendor is opposed to public policy."

17. The learned counsel for the respondent also relied upon the decision reported in 1991-2-L.W.110, Hamda Ammal v. Avadiappa Pathar, wherein it was held Section 47 of the Registration Act makes it clear that after the registration it will relate back to the date of execution of the sale deed. The act of registration is to be performed by the registering authority. According to Section 23 of the Registration Act a document of the nature of sale deed shall be accepted for registration within four months from the date of its execution. Thus a statutory period of four months has been provided for presenting the sale deed for registration from the date of its execution.

18. In the instant case, since Ex.A.2/Sale Deed was written on 16.12.1997 and it was registered on 26.12.1977, it relates back to the date of execution. So, the plaintiff is the owner of the property. Even under Ex.A.1, as already stated the respondent herein has filed an application to implead himself as party to the proceeding and he was impleaded as 3rd defendant and only thereafter, the said suit was dismissed as not pressed. So, I am of the considered view that both the Courts below has rightly held that the respondent who is the purchaser from the real owner is entitled to declaration of title and recovery of possession. Even though the substantial question of law is that the 3rd defendant is owner of the ½ share, on perusal of Ex.A.1 would reveal that Krishna Setty is the owner of the property and it was attached in R.E.P.42/61 in O.S.214/1959, wherein he has filed an application in R.E.A.233/1961 in R.E.P.42/61 in O.S.214/59 challenging the attachment. After contest, the attachment was raised and the title of Krishna Setty was confirmed. So, the third defendant does not have any right over the property. The substantial question of law is answered accordingly.

19. The third defendant in his written statement has stated that it is true that the father of the third defendant was the owner of

the suit property. It is appropriate to incorporate paragraph 2 of the written statement:

"2. The suit is not maintainable since the plaintiff has not come forward before the sale deed. The execution of the sale deed as being voluntary or genuine is denied. It is true that the father of the 3rd defendant was owner of the suit property. It is also true that there is a prior court litigation in O.S.295/1974 on the file of the District Munsif, Hosur. It is also true that after the disposal of the suit there is a panchayat among the caste people and the father of this defendant agreed to sell the suit property to the 2nd defendant and has sold the same in his favour. The property sold has been given possession of to the 2nd defendant."

20. The above averments would reveal that the father of the third defendant namely, Krishna Setty is the owner of the property and so, the third defendant has got no right over the property. In view of the same and in view of the further fact that Ex.A.2 is a true and genuine document and it was executed on 16.12.1977. Though it was registered on 26.12.1977, it relates back to 16.12.1977, the date of execution of the sale deed as per Section 47 of the Registration Act. So, he is entitled to declaration of title and for recovery of possession.

21. In such circumstances, the respondent is entitled to declaration of title and recovery of possession, after removal of the superstructure and damages. Thus, the finding of the Courts below is a well-reasoned one and the same does not warrant interference by this Court and it is hereby confirmed. Consequently, second appeal is dismissed.

22. In fine,
- (a) The Second Appeal is dismissed with costs.
 - (b) The judgment and decree passed by the Trial Court as well as the first appellate Court is hereby confirmed.
 - (c) The time granted for delivery is two months.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Court,
Hosur.

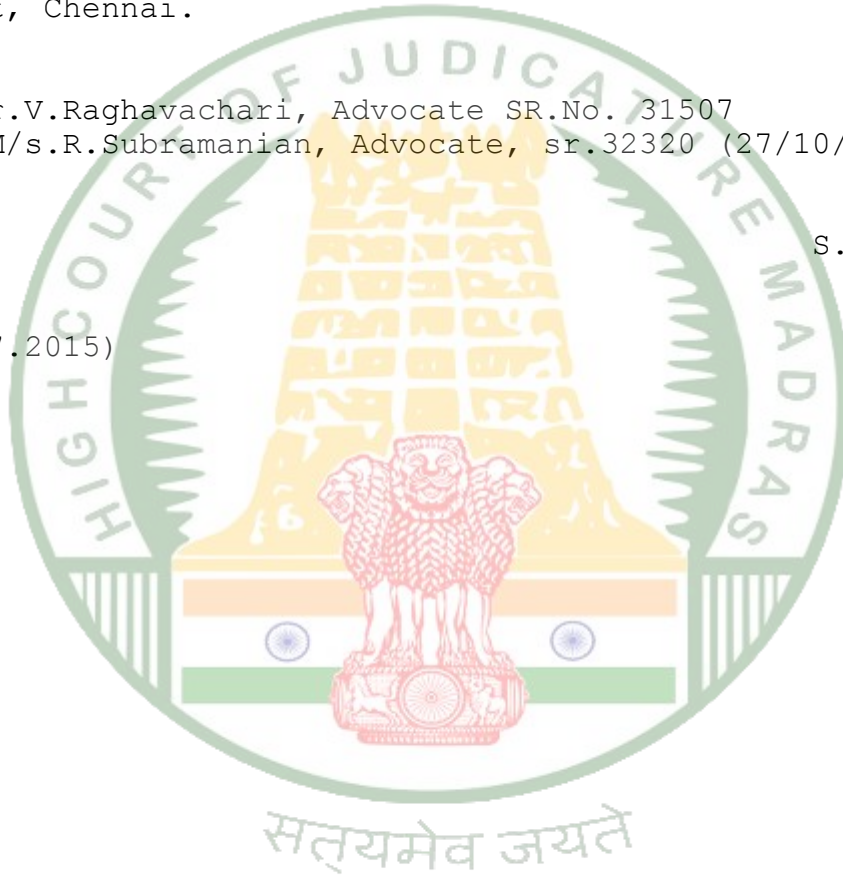
2.The District Munsif Court,
Hosur.

3.The Record Keeper,
V.R.Section,
High Court, Chennai.

1 CC to Mr.V.Raghavachari, Advocate SR.No. 31507
+1 cc to M/s.R.Subramanian, Advocate, sr.32320 (27/10/20150

S.A.No.629 of 2001

CNR (CO)
PSI (20.07.2015)



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