

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated: 17.07.2017****CORAM****THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN****CRP(PD)No.5155 of 2011
and
M.P.No.1 of 2011**

1.Kamatchi ammal

2.Kesavan

.. Petitioners

Vs.

1.The Village Panchayat President,
Kadiyar Village,
Tirukoilur Taluk.2.The State Government of Tamilnadu,
Rep. by its Collector,
Villupuram.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal in C.M.A.No.8 of 2010 dated 22.03.2011, on the file of the 1st Additional Subordinate Judge, Villupuram, reversing the fair and decretal order in I.A.No.45 of 2010 in O.S.No.10 of 2010, dated 07.09.2010, on the file of the Principal District Munsif, Tirukoilur.

For Petitioners : Mr.N.Suresh

For Respondents : No Appearance

ORDER

The petitioners are the plaintiffs in O.S.No.10 of 2010, on the file of the learned Principal District Munsif, Thirukoilur.

2.The case of the petitioners/plaintiffs is that they filed the suit in O.S.No.10 of 2010 before the learned Principal District Munsif, Thirukoilur, for declaration and for permanent injunction against the respondents/defendants.

3.The suit properties are situated at Kadiyar Village, Thirukoilur Taluk, Villupuram District, which is classified as Gramanatham in the Revenue Records. The petitioners/plaintiffs also stated that the first item of the suit schedule of property belongs to the 1st petitioner/1st plaintiff and the second item of the suit schedule of property belongs to the 2nd petitioner/2nd plaintiff and the entire suit properties are in absolute possession and enjoyment of the petitioners/plaintiffs and their forefathers time in immemorial.

4.It is also the case of the petitioners/plaintiffs is that there is a property adjacent to the northern side of the suit schedule of property and their forefathers have been enjoying the same as their Cattle shed and Cart shed for storing hay and now used for the Tractor shed. Considering the petitioners/plaintiffs case, the time immemorial enjoyment of the suit schedule of property, the 1st respondent viz., the District Collector, Villupuram District, also confirmed the title and issue patta in RS.No.79/99 in favour of the petitioners/plaintiffs. Therefore, the suit properties are absolute possession of the petitioners/plaintiffs.

5.The petitioner also states that earlier the petitioners/plaintiffs were filed a civil suit in O.S.No.901 of 1994 before the very same learned Principal District Muunsif Court, Thirukoilur, against the 3rd parties and the same was also decreed on 03.08.2000. Therefore, the respondents/defendants in this suit have no right or title over the suit properties. As per the direction of the District Collector, the 1st respondent herein had permitted the 2nd respondent Village Panchayat President to make construction a building in the village and the 2nd respondent taking advantage of that with a view to reck the vengeance due to recent local Panchayat Election, the 2nd respondent

Village Panchayat President arranged to construct a building on 05.01.2010 in the suit schedule of properties. Therefore, the petitioners/plaintiffs are filed the suit in O.S.No.10 of 2010. Along with the suit, the petitioners were filed Interlocutory Application in I.A.No.45 of 2010 for temporary injunction restraining the respondents, their men and subordinates from interfering into the petitioners peaceful possession and enjoyment of the suit schedule of properties.

6.On receipt of the Interlocutory Application, the 2nd respondent has filed counter, which was adopted by the 1st respondent in which he denied the entire allegations set out in the affidavit and they admitted that the suit schedule of property situated at Kadiyar Village, Thirukoilur and the same was classified as Gramanatham. The respondents were denied that the 1st item belongs to the absolute possession of the 1st petitioner and 2nd item is belongs to the possession of the 2nd petitioner.

7.The respondents states that it is not true that the petitioners/plaintiffs were given patta by the Government based on their possession and enjoyment, the respondents were also equally

denied that the suit filed in O.S.No.901 of 1994 against the 3rd parties, since the respondents were no knowledge about the filing of the suit in O.S.No.901 of 1994, since the respondents were not parties to the said suit.

8.The respondents also states that the Survey Numbers and the boundaries given in the suit schedule of property are not correct, since the suit property is mentioned in the Adangal as empty garden and it is also classified under Natham Land Revenue System. The respondents also states that the suit schedule of properties were not registered in the name of the petitioners/plaintiffs. The properties in S.No.40/1 is a Natham Poramboke belongs to the Government, measuring about 1502 sq. mt. and the petitioners/plaintiffs were given thoraya patta S.No.40/3 to an extent of 178 sq. metre and S.No.40/4 to an extent of 174 sq. metre, based on which the petitioners/plaintiffs does not have any right to construct any building in the suit schedule of properties and the revenue authorities would take steps to cancel the thoraya patta given in favour of the petitioners/plaintiffs, if necessary. Since the Government have making arrangements to construct a building in the gramamatham poramboke land belonging to them, which is next to the south of the suit schedule of properties in the interest of the general public under

education scheme, as a result of which the said petition has been filed by the petitioners/plaintiffs. Therefore, the respondents are prayed the trial Court to dismiss the Interlocutory Application filed by the petitioners/plaintiffs.

9. Considering both side arguments, the learned Principal District Munsif, Thirukoilur, by order dated 07.09.2010 was pleased to allow the Interlocutory Application in I.A.No.45 of 2010 and grant an order of injunction in favour of the petitioners/plaintiffs. The learned Judge passed an order based on the order of the Judgment reported in **2010 (1) Law Weekly page 123**, it has been held that the Gramanatham cannot be considered, ipso facto, as Government property and once it is found that the suit schedule of property is classified as Gramanatham, it should be held that it does not belongs to Government. The learned Judge also states that except Exs.P1 and P2, the petitioners were not produced any other documents, but on perusal of the records, it is seen that the suit properties are vacant house site and therefore, it is seen that as per Ex.R1 the land 'Natham' has been recommended for transfer in S.No.40/1 (after sub-division in S.No.41/19) to the Education Department for the purpose of construction of building. But, it does not stated in Ex.R1 that the lands in R.S.No.40/1 (now sub-divided as 40/3 and 40/4) has to be

transferred to the Education Department for the purpose of construction of building. Moreover, S.No.40/1 has been sub-divided as 40/19 as per Ex.R1 and it is not meant for the petitioners/plaintiffs land comprised in S.No.40/3 and 40/4 (Old R.S.No.40/1). Thus, it is evident that even though the respondents/defendants has right to construct a building for the purpose of Education Department, it is restricted to 00320 sq. mt. in R.S.No.40/19 as per Ex.R1.

10.The learned Judge also states that the respondents have not produced any documents to show that whether the land actually vest either with the Government or the Town Panchayat in respect of classification of land as Gramanatham. It is not the communal property in the sense in which thrashing floor or burning grounds or other property is communal. The Gramanatham land if unoccupied is assigned from from time to time by the proprietor whether it is an Zamindariarora or in an inam area. Therefore, considering all these facts, the learned Principal District Munsif, Thirukoilur, allowed the I.A.No.45 of 2010.

11.Challenging the order passed in I.A.No.45 of 2010, the 2nd respondent Village Panchayat President has filed an Appeal in CMA.No.8 of 2010 before the learned 1st Additional Subordinate Judge,

Villupuram, on the ground that when the Tamilnadu Land Encroachment Act, 1905, was enacted Gramanatham (House site) is exempted from Government property under Section 2(e) of the Act, in respect of this Court, considering the same, from the year 1949 to 2010 continuously and concurrently prohibited the Government from interfering in the house site. The house site belongs to the individuals who had occupied it, neither the Government can issue patta nor cancel it because it is not the property of the Government.

12.The 2nd respondent/appellant also raising ground by saying that the property in question is the Education Department is making construction in the property to an extent of 320 sq. mt. in S.No.40/19, which is nothing to do with S.No.40/3, 40/4 alleged as properties of petitioners. Therefore, they prayed the First Appellate Court viz., the learned First Additional Subordinate Judge, Villupuram, to allow the said Civil Miscellaneous Appeal and set aside the order passed in I.A.No.45 of 2010 in O.S.No.10 of 2010, dated 07.09.2010.

13.Considering both side cases, the learned First Additional Subordinate Judge, Villupuram, allowed the said CMA.No.8 of 2010, by setting aside the order passed in I.A.No.45 of 2010 in O.S.No.10 of 2010, dated 07.09.2010 by the learned Principal District Munsif,

Thirukoilur, granting injunction in favour of this petitioners/plaintiffs, on the ground that the Survey Number, which has been given by the petitioners/plaintiffs in the suit schedule of property as S.No.40/3 and S.No.40/4 is no way connected with the suit property. But the Education Department is making construction in S.No.40/19, which is clearly proved through Ex.R1, which is filed by the respondent/appellant.

14.The learned Judge also states that without any legal basis, the learned Principal District Munsif, Tirukoilur, was pleased to allow the application in I.A.No.45 of 2010 for granting injunction, since the petitioners/plaintiffs have not shown prima facie case and possession over in S.No.40/19 to an extent of 0.320 sq. mt. Challenging the order in CMA.No.8 of 2010, dated 22.03.2011, the present Civil Revision Petition has been filed by the petitioner/plaintiff.

15.I heard Mr.N.Suresh, learned counsel appearing for the petitioners and there is no representation on behalf of the respondents and perused the entire records.

16.It is the case of the petitioners/plaintiffs is that the suit schedule of property in R.S.No.40/1, sub divided as 40/3 and 40/4 is

classified in the revenue records as Gramanatham.

17.As per the Gramanatham, the first occupier of the land is the owner of the land and it was classified only for house sites and the said village Gramanatham lands were never vested with the Government or the town Panchayat and the Government have no right over the Gramanatham property. Therefore, the petitioners/plaintiffs are the first occupier of the property, they were in absolute possession and enjoyment of the same. To recognise their possession of the said suit schedule of property, the 3rd respondent/Tahsildar has also issued patta on 25.05.1990 itself and recognise their continuous occupation and possession and enjoyment of the suit schedule of property. Therefore, it is evident that the petitioners/plaintiffs have been in possession and enjoyment of the suit schedule of property right from the year 1990.

18.Per contra, the respondents, particularly the 2nd respondent Village Panchayat has filed an appeal before the learned First Additional Subordinate Judge, Villupuram, by stating that as per Ex.R1, the land in Survey number in R.S.No.40/19 to an extent of 0.320 sq. mt. was allotted for constructing the building for the purpose of Education Department, except the said document, there is

no other documents filed by the 2nd respondent Village Panchayat.

19. Apart from this, there was no representation for the 2nd respondent/Village Panchayat to make arguments for supporting their case. In fact, when the matter has been taken up for admission on 23.12.2011, this Court grant an order of the interim injunction in favour of the petitioners/plaintiffs and the order is follows:

"Notice regarding admission returnable in three weeks. Private notice is also permitted.

2. It is represented by the learned counsel for the petitioner that he had the benefit of injunction and it was not stated before the Appellate Court.

Hence, there shall be an order of interim injunction for a period of three weeks."

For vacating the said interim injunction as on date, there was no application filed by the 2nd respondent/Village Panchayat.

20. Apart from this, this Court in various judgments considered the cases that the Gramanatham land is not the property of the Government or the Village Panchayat or Town Panchayat. This Court also held that the first occupier of the land is the absolute owner of the particular portion of the land of Gramanatham. The petitioners

also states that earlier they were filed a Civil Suit in O.S.No.901 of 1994 before the very same Court against the 3rd party in which the very same Court namely, the learned District Munsif Court declare the possession and title of the property in favour of the petitioners/plaintiffs.

21. When the suit has been filed for the schedule of property in respect of S.No.40/1, which was sub divided as 40/3 and 40/4, how the learned Appellate Judge has taken the view that the case of the 2nd respondent Village Panchayat President that the suit schedule of property is in respect of R.S.No.40/19 and the said land to an extent of 0.320 sq. mt. allotted to the Education Department for the purpose of constructing the building to the Education Department. The Appellate Court has not considered that since when the claim of the petitioners/plaintiffs is only that the suit schedule of property is S.No.40/1, which is sub divided as 40/3 and 40/4, how the Appellate Court comes to conclusion that the suit schedule of property is S.No.40/19. The learned Appellate Judge namely, the learned First Additional Subordinate Judge, Villupuram, totally loss his eyes, when the case of the respondent/appellant in respect of the Village Panchayat that the land in S.No.40/19 was allotted to Education Department, the Appellate Judge might have seen that and to verify

the suit schedule of property that the petitioners/plaintiffs filed a suit only in respect of Survey No.40/1 sub-divided as S.No.40/3 and S.No.40/4 and the learned Appellate Judge cannot say that S.No.40/3 and S.No.40/4 are not relevant to the suit schedule of property and S.No.40/19 is only the relevant.

22. When the petitioners/plaintiffs filed a case only in respect of S.No.40/3 and S.No.40/4, there is no question of S.No.40/19 would arise in this case and the allegations of the Village Panchayat President that S.No.40/19 was allotted to Education Department is no way connected with the case in hand. To support his case, the petitioners/plaintiffs has produced several judgments as follows:

(1) In the case of **1.A.K.Thillaivanam, 2.A.K.Dayalan v. 1.The District Collector, Chengai Anna District at Kancheepuram, 2.The District Revenue Officer, Kancheepuram, Chengai Anna District. 3.The Revenue Divisional Officer, Kancheepuram, Chengai Anna District and 4.The Tahsildar, Sriperumbudur Taluk, Chengai Anna District** reported in **1993-3-L.W. 603**, in para 19, 23 and 25 as follows:

"19. That apart, it has been admitted in the counter affidavit that the land is a village Natham. The village Natham is a land which never vested with the respondents

and they have no right to it. Admittedly, when the land has been classified as village Natham, it is obvious that no portion of the land vests with the respondents. The admitted classification is village Natham and merely because the petitioners have converted the same into agricultural lands, no right could accrue to the respondents even after conversion.

23. Being a grama natham, it is obvious that the land in question had never vested with the Government. Section 2 of the Land Encroachment Act, 1905 excludes gramanatham owned as house site. As such the provisions of the Land Encroachment Act, 1905 cannot be invoked by the respondents in respect of the land in question.

25. In *S. Rengaraja Iyengar and another v. Achikannu Ammal and another* (1959 2 MLJ 513 = 72 L.W. 767) it has been held thus:-

"It is contended that in relation to buildings, specific provision is made under Section 18 of Act XXVI of 1948 and that, consequently, unless a house site can be brought within the ambit of Section 18, such house-site

should be held to be property as to which title gets transferred to the Government under Section 3(b). Section 18 deals, in my opinion, with buildings wherever they may be situate, whether in the gramamatham or in ryoti lands or pannai lands or waste lands. Section 18 has no particular application to buildings or house sites in a gramamatham. A building in a gramamatham (or Village habitation) is protected from transfer of title to the Government both under Section 18(1) of Madras Act XXVI of 1948 and under the Madras Land Encroachment Act (III of 1905). The title to a house site in a gramamatham is protected from transfer to Government by the operation of Madras Act III of 1905.

It is not necessary that in order that the policy underlying Madras Act XXVI of 1948 be completely given effect to, house-sites belonging to private individuals (that is persons other than the land holder) in a gramamatham, should be transferred to the Government. It is not part of the policy of the Act to transfer to the Government, land in which the proprietor had no interest at any time. Further, transfer of title of such house-sites to the Government would be virtually without payment of

compensation because there would be no means of determining the part of the total compensation payable for the estate as a whole, which should be regarded as compensation paid for a few cents of house-sites in a hamlet of the village. Therefore, if there is any ambiguity in the Act, in relation to transfer of title as to a house site, such ambiguity should be resolved in favour of the owner, because no legislation should be held to be expropriatory in character if such an inference could possibly be avoided. I hold that Section 3(b) of Madras Act XXVI of 1948 does not have the effect of transferring to the Government title to a house-site within a gramamatham belonging to a person other than the land holder when the estate in which the house site is situate is taken over under a notification issued under the Act."

(2) In the case of ***The Executive Officer, Kadathur Town Panchayat, Harur Taluk, Dharmapuri District v. 1.V.Swaminatham, 2.The State of Tamil Nadu, rep. by its Secretary, Revenue Department, Fort St. George, Chennai-600 009. 3.The District Collector, Dharmapuri District, Dharmapuri. 4.The Revenue Divisional Officer, Dharmapuri District,***

Dharmapuri reported in **2004-3-L.W. 278**, in para 5 as follows:-

"5. While dealing with the contentions urged by the learned counsel for the appellant, the matter has to be dealt with in the light of the nature and classification of the land which is under occupation of the petitioners. There is no dispute that the land under occupation of the petitioners is classified as 'Natham' or otherwise called as 'Grama Natham' land and the petitioners were granted pattas as early as in the year 1992 recognising their continued occupation. For the purpose of exercising right as against the petitioners to evict them from the land in question, it has to be decided as to whether the 'Grama Natham' land actually vests either with the Government or the Town Panchayat. As regards the classification of the land as 'Grama Natham', it is not the communal property in the sense in which thrashing floor or burning grounds or other property is communal viz., the property reserved for the use of the community. The 'Grama Natham' land, if it is unoccupied, is assigned from time to time by the proprietor whether it is in zamindari area or in an inam village; and the said practice was referred to by the learned Judge Wadsworth, J.

In Chinnathambi Goundan vs. Venkatasubramania Ayyar (49 L.W. 326) as early as on 6.12.1938. The learned Judge while dealing with the vacant house sites, taken note of the recognised practice of the then Madras Presidency, excluding the areas with a special revenue law such as Malabar, the control of unoccupied village site vests in the proprietor whoever he may be. A further reference is also made therein to the effect that in Zamindari areas, that control is exercised by Zamindar and in a shrotriem village not falling under the Estates Land Act, the village site vests in the shrotriemdar. Even in respect of lands covered under the Madras Estate Land Act, it is held that the Government can exercise its powers only to the limited extent to prevent the diversion of village site poramboke from the purpose for which it has been reserved and it was held therein that the village sites did not actually vest with the Government. The above view was approved subsequently in the decision rendered in Palani Ammal vs. L.Sethurama Aiyangar reported in 1949 (1) MLJ 290=62 L.W.204."

(3) In the case of **A.Srinivasan, 2.S.Rukmani Ammal v. The**

Tahsildar, Egmore Nungambakkam Taluk, Madras-600 031

reported in **2010-1-L.W. 123**, it is held as follows:

"Tamil Nadu Land Encroachment Act (1905), Section 7/'Gramanatham', if government property/Suit for declaration of title, Scope, C.P.C., Section 79.

Held: appellants filed the suit, praying to declare that the notice, issued by the defendant is illegal, arbitrary and non est in law and for a permanent injunction restraining the defendant and others from, in any manner, interfering with the plaintiffs' enjoyment of the plaint schedule mentioned property.

Para 2

It is clear that 'Gramanatham' cannot be considered, ipso facto, as Government property – Once it is found that item No.1 of the suit schedule mentioned property is classified as 'Gramanatham', it should be held that it does not belong to the Government – There can be no doubt that the defendant cannot invoke the provisions of the Tamil Nadu Land Encroachment Act, 1905 – Notice issued by the defendant, under Section 7 of the Act, 1905, is invalid in the eye of law – Hence, there is no necessity to implead the Government as a party to the suit, since the

appellants had not filed the suit for declaration of their title, in respect of the suit property – Section 79 of the Act would not be applicable to the present case. Para 29

It has been admitted by the appellants that item No.2 of the suit schedule mentioned property is a poramboke land, the defendant would be entitled to invoke the procedures prescribed, under Section 7.”

Para 30

(4) In the case of ***Muthammal (died) & another v. 1.The State of Tamil Nadu, rep. by the Collector of Salem District, Salem. 2.The Revenue Divisional Officer, Namakkal, Salem District*** reported in ***2006-3-L.W. 361***, in para-13 as follows:

“13.It is the admitted case of both the parties that the suit properties are grama natham lands. As rightly contended by the learned senior counsel no patta will be issued in respect of grama natham and the first occupier is the owner of the particular portion of land. Though D.Ws 1 and 2 have deposed that the suit 1 and 2 properties were vacant sites, D.W.1 admitted that there is a hut used for keeping haystack. He has also admitted that there were houses around the suit properties. It is very unfortunate

that to prove that the plaintiff was not in possession of the suit properties no documentary proof in the nature of revenue records or registers have not been produced by the defendants. Even the fasalis mentioned by D.W.1 relates to the period after filing of the suit. D.W.2 in his evidence admits that 36 cents is in possession of the plaintiff."

(5) In the case of ***M.S.Krishnan (Died) and 26 others v. Government of Tamil Nadu rep. by the District Collector Salem. 2.The Revenue Divisional Officer, O/O, the Revenue Divisional Office, Salem. 3.The Tahsildar, Taluk Office, Fort Main Road, Salem. 4.Arulmigu Sri Mariamman Koil Devasthanam rep. by the President Secretary and Treasurer of the Trustees*** reported in ***2001-2-L.W. 723***, in para-6 as follows:

"6.The learned counsel for the appellant very vehemently and strenuously contended that the provisions of the Land Encroachment Act 1905 (hereinafter called as the Act'), cannot at all be invoked in respect of the land in question. According to him, Section 2 of the Act exempts the applicability of the Act to 'Temple sites' or house sites or backyards etc. He would further contend that even if

the property was to be considered as Grama Natham, the plaintiffs were entitled to continue in possession and no action could be taken to remove them under Land Encroachment Act. For this proposition, strong reliance is placed on the judgment of E.Padmanabhan, J. in 1998 3 L.W.603 (Thillaivanam and another v. the District Collector, Chengai Anna Dist. At Kanchipuram and others) in respect of his contention that provisions of the land encroachment Act cannot be invoked in respect of Grama Natham."

23.Per contra, the respondent/appellant produced the following judgments before the learned First Additional Subordinate Judge, Villupuram as follows:

"In the case of ***Syed Abdul Jabbar v. 1.The Executive Officer, Selection Grade Town Panchayat, Denkanikottai, Dharmapuri District and two others*** reported in ***2010 (3) TLNJ 643 (Civil)***

Tamil Nadu Panchayats Act 1958, Section 170

suit for recovery of possession Grama Natham land from Government – decreed and the first appellate Court reversed the decree – on further appeal High Court held

that 'Grama Natham' is ground set apart for houses in village – further held that unless the same not assigned occupier has no right payment of house tax or professional tax would not confer any ownership – judgment of first appellate court confirmed – Second appeal dismissed.”

24. Considering all the case cited supra, when the petitioners/ plaintiffs was issued patta by the 3rd respondent/Tahsildar on 25.05.1990 by recognising their continuous possession and enjoyment of the property, the order of the learned First Appellate Judge by setting aside the order in I.A.No.45 of 2010 by stating the petitioner is not in possession of the property is totally wrong. The trial Court himself has allowing I.A.No.45 of 2010 in O.S.No.10 of 2010 dated 07.09.2010, by considering the petitioners possession, this Court finds that the petitioners/plaintiffs is in absolute possession and enjoyment of the suit schedule of property. Hence, this Court warranting necessity for the interference in the order passed in C.M.A.No.8 of 2010, dated 22.03.2011, on the file of the learned First Additional Subordinate Judge, Villupuram, accordingly the same is liable to be set aside.

25. In the result:

(a) this Civil Revision Petition is allowed by setting aside the order passed in CMA.No.8 of 2010, dated 22.03.2011, on the file of the learned Additional Subordinate Judge, Villupuram, and the order in I.A.No.45 of 2010 in O.S.No.10 of 2010, dated 07.09.2010, on the file of the learned Principal District Munsif, Thirukoilur, is restored and the injunction is granted till the disposal of the suit.

(b) the learned Principal District Munsif Court, Tirukoilur, is directed to take up the suit on day to day basis, without giving any adjournment to either parties and to dispose the suit within a period of three months from the date of receipt of a copy of this order. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit. No costs.

Speaking Order
Index:Yes

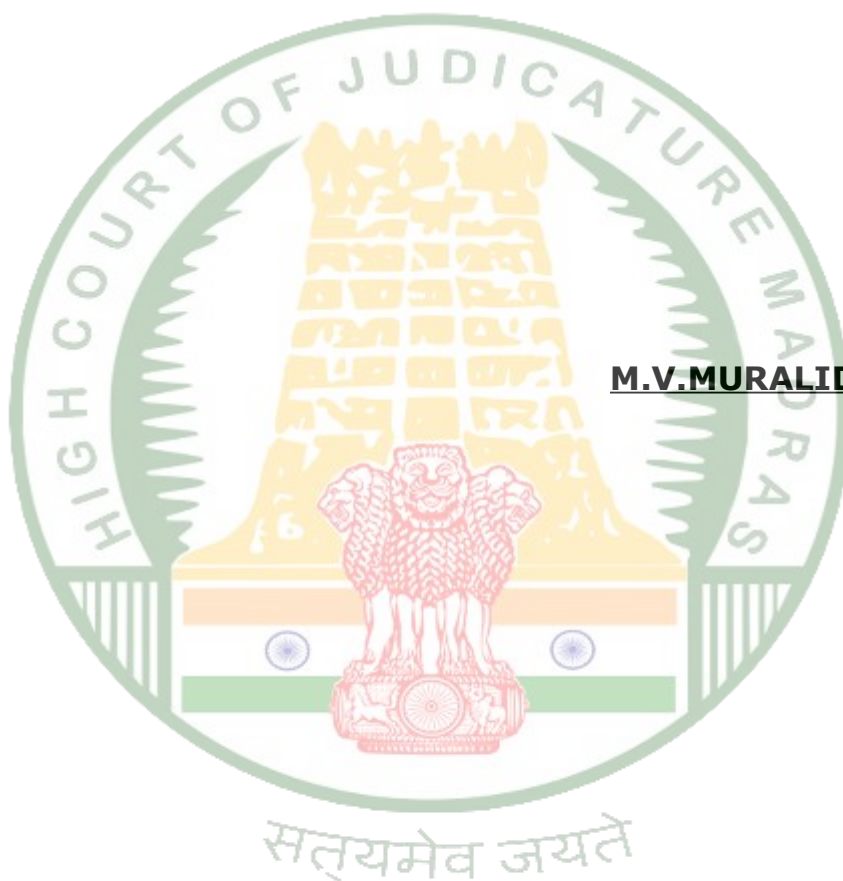
vs

To

WEB COPY 17.07.2017

1.The 1st Additional Subordinate Judge,
Villupuram.

2.The Principal District Munsif,
Tirukoilur.



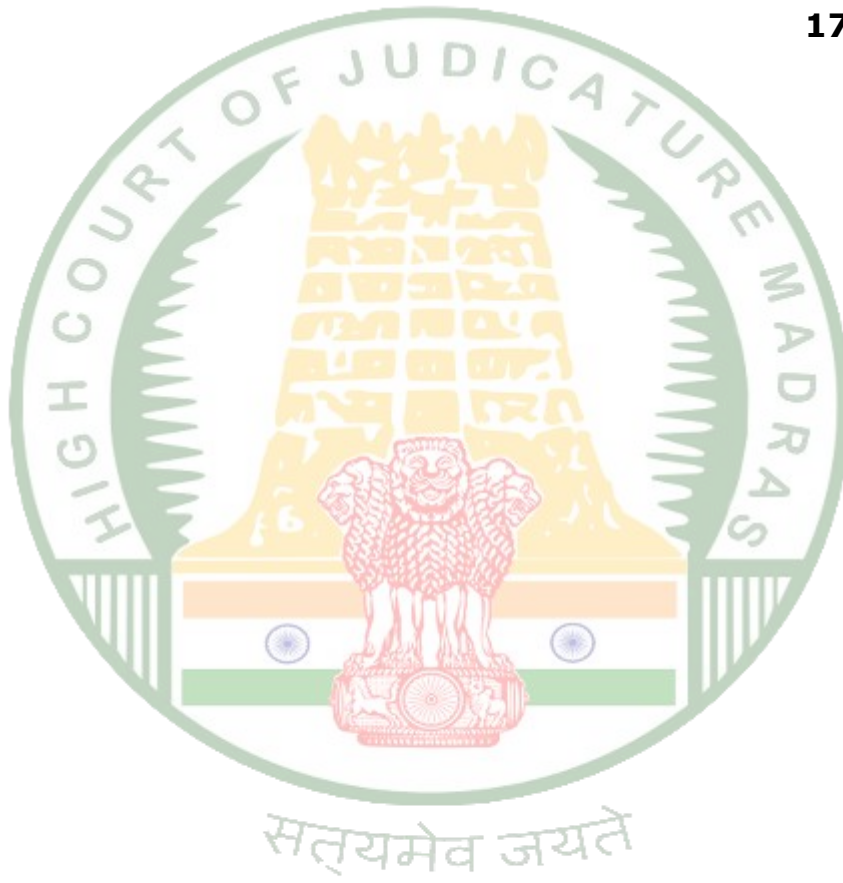
M.V.MURALIDARAN, J.

VS

WEB COPY

Pre-Delivery order made in
CRP(PD)No.5155 of 2011
and
M.P.No.1 of 2011

17.07.2017



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