

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 29.11.2016
PRONOUNCED ON : 03.01.2017
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S. A.No.313 of 2011
&
M.P.No.1 of 2011

1.K.Jansi
2.K.V.Harinath
3.K.K.V.Seetharaman
4.K.S.B.Sankar
5.J.S.Jayasree

... Appellants

Vs.

1.Sub Registrar(Perambakkam),
Perambakkam Village and Post,
Thiruvallur Taluk.

2.Saroja(deceased)
3.Thamayandhi
4.Sumathi
5.Ambika
6.Paripooranam
7.Venkatesan

... Respondents

(RR3 to 7 were brought on record
as the legal heirs of the deceased
R2, vide order of court dated
15.11.2016 made in memo dated
15.11.2016 in S.A.No.313 of 2011).

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 26.09.2007 made in A.S.No.75 of 2004 on the file of the Subordinate Judge, Thiruvallur, confirming the Judgment and Decree dated 22.12.2003 made in O.S.No.394 of 1995 on the file of the District Munsif Court, Thiruvallur.

For Appellants : Mr.P.C.Harikumar for
M/s.P.C.Harikumar & Associates.
R1- : No Appearance

For RR3 to 7 : Mr.J.Thilagaraj

JUDGMENT

The plaintiffs in this second appeal have impugned the Judgment and decree dated 26.09.2007 made in A.S.No.75 of 2004 on the file of the Subordinate Judge, Thiruvallur, confirming the Judgment and Decree dated 22.12.2003 made in O.S.No.394 of 1995 on the file of the District Munsif Court, Thiruvallur.

2.The suit has been laid by the deceased first plaintiff for declaration and permanent injunction. Pending suit, the first plaintiff died and his legal heirs namely, the plaintiffs 2 to 6 were brought on record. The plaintiffs claim title over the suit property based upon the Sale Deed dated 28.12.1990 executed by one Gajendran. The certified copy of the above said Sale Deed has been marked as Ex.A2. Further, according to the plaintiffs, Gajendran purchased the suit property from Ekambaram, the second defendant under the Sale Deed dated 27.05.1988. The certified copy of the above said Sale Deed has been marked as Ex.A7. Further, according to the plaintiffs, in respect of the above said sale transaction, a rectification deed was also executed by Ekambaram in favour of Gajendran dated 20.06.1988. The certified copy of the above said rectification deed has been marked as Ex.A1. Thus claiming title to the suit property, it is contended by the plaintiffs that on 23.08.1995 to their shock learnt that the first defendant is attempting to get a sale deed registered through the second defendant with reference to the suit property, pursuant to the decree passed in O.S.No.399 of 1988 and according to the plaintiffs the decree passed in O.S.No.399 of 1988 has been fraudulently obtained in collusion between the defendants 1 and 2 and therefore, the said decree is not binding on the plaintiffs and therefore according to the plaintiffs they have been necessitated to lay the suit for appropriate reliefs. The plaintiffs have sought the relief of declaration that they have title to the suit property and the relief of permanent injunction has been sought restraining the defendants 1 and 2 from interfering with the plaintiffs possession in respect of the suit property and also from the execution of the decree passed in O.S.No.399 of 1988. As per Ex.B1, it could be seen that the decree has been passed in O.S.No.399 of 1988 on 06.09.1988. The above said suit has been presented on 15.06.1988, O.S.No.399 of 1988 has been laid by the first defendant Sivaraj against the second defendant Ekambaram and N.Rajendaran, S/o.Nandhan, claiming the relief of specific performance for a direction to the second defendant to execute the sale deed in favour of the first defendant in respect of the suit property. Admittedly, the suit ended in a decree in favour of the first defendant on 06.09.1988. The first defendant, who is mainly contesting the present suit has contended that in view of the suit filed in O.S.No.399 of 1988

and the decree passed in the suit on 06.09.1988, the sale obtained by the first plaintiff from Gajendran, S/o.Nandan on 28.12.1990 is hit by lis pendens.

3.Further, it is the specific case of the first defendant that in O.S.No.399 of 1988 I.A.No.906 of 1988 has been filed on 15.06.1988 and in that Interlocutory Application, the first defendant had obtained the order of interim injunction and the same had been made absolute. As regards the above case of the first defendant that he had been granted the relief of interim injunction in I.A.No.906 of 1988 in O.S.No.399 of 1988, the same is not controverted. Thus according to the first defendant, the sale transaction made pending O.S.No.399 of 1988 till the culmination of the execution proceedings therein is hit by lis pendens as provided under Section 52 of the Transfer of Property Act and therefore, it is contended that the plaintiffs are not entitled to seek and obtain the reliefs sought for in the plaint. Further according to the first defendant as against the decree passed in O.S.No.399 of 1988, no appeal has been preferred by any one and the plaintiffs are fully aware of the proceedings in O.S.No.399 of 1988 and also the execution proceedings levelled therein and therefore the plaintiffs should be non suited. The Courts below have mainly rejected the plaintiffs case on the footing that the plaintiffs purchase of the suit property dated 28.12.1990 is hit by lis pendens.

4.In this second appeal, the main point that is urged by the learned counsel for the appellants is that, the plaintiffs vendor Gajendran had purchased the suit property from the second defendant Ekambaram on 27.05.1988 much prior to the filing of O.S.No.399 of 1988 and in such view of the matter, according to him, the purchase of the suit property by Gajendran on 27.05.1988 would not be hit by the principle of lis pendens and consequently, the purchase of the suit property by the first plaintiff from Gajendran on 28.12.1990 would also not hit by the principle of lis pendens and therefore according to him, the Courts below have erred in rejecting the plaintiffs case that the plaintiffs purchase of the suit property is hit by the principle of lis pendens.

5.As seen earlier, the suit in O.S.No.399 of 1988 has been presented on 15.06.1988. Based on the above fact, according to the learned counsel for the appellants, inasmuch as Gajendran had purchased the suit property from Ekambaram on 27.05.1988 itself, the said sale is not hit by lis pendens. As seen earlier, the certified copy of the Sale Deed dated 27.05.1988 has been marked as Ex.A7. A perusal of Ex.A7 would go to show that under the sale deed, Gajendran had not purchased the suit property situated in S.No.1069/1A measuring acres 0.63. On the other hand, under Ex.A7, it is found that Gajendran had purchased an extent of 0.63 cents in the total extent of 1.68

acres in punjai S.No.889/2,3,4. It could therefore be seen that under Ex.A7 dated 27.05.1988, Gajendran had not purchased the suit property.

6.Further, as seen earlier, the first defendant, Sivaraj had obtained the order of interim injunction against the second defendant and even against the plaintiff's vendor Gajendran in I.A.No.906 of 1988 by order dated 15.06.1988 and the said order of injunction has also been made absolute. As regards the above position, there is no dispute. It could therefore be seen that any transaction thereafter made with reference to the subject matter of O.S.No.399 of 1988 could be seen to be hit by the principle of lis pendens.

7.As per the provisions contained in Section 52 of the Transfer of Property Act, it could be seen that during the pendency of any suit or proceedings, which is not collusive or in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings 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. Therefore, a reading of the above provisions would go to show that inasmuch as the suit property is the subject matter of O.S.No.399 of 1988 and inasmuch as the first defendant Sivaraj had also obtained the order of interim injunction restraining the defendants in O.S.No.399 of 1988 from in any manner dealing with the suit property, it could be seen that the subject matter of the suit in O.S.No.399 of 1988, that is the suit property cannot be transferred or otherwise dealt with by any party to the suit or proceedings therein.

8.Therefore, it has now to be seen whether the parties to O.S.No.399 of 1988 had dealt with the suit property after the institution of O.S.No.399 of 1988. O.S.No.399 of 1988 has been presented on 15.06.1988 and on the same day the first defendant had obtained an order of injunction against the defendants therein. In O.S.No.399 of 1988, the second defendant Ekambaram has been arrayed as the first defendant. Further as found earlier, one N.Rajendran, S/o.Nandan, has been arrayed as the second defendant in the said suit. It is contended by the first defendant Sivaraj that N.Rajendran, S/o.Nandan is only the vendor of the plaintiffs and therefore according to him, the vendor of the plaintiffs is also a party to O.S.No.399 of 1988. No doubt, the vendor of the plaintiffs has been named as N.Rajendran, S/o.Nandan in O.S.No.399 of 1988. Further, it has been admitted by the plaintiffs that their vendor Gajendran is a party to the proceedings in O.S.No.399 of 1988. In this connection, the fourth plaintiff K.K.V.Seetharaman examined as PW1, during the course of his evidence has admitted that their

vendor Gajendran is a party in O.S.No.399 of 1988 and in that suit his name has been shown as Rajendran. It could therefore be seen that as admitted by the plaintiffs, Gajendran, the vendor of the plaintiffs has been made as a party in O.S.No.399 of 1988. To establish or to show that Gajendran is not a party to O.S.No.399 of 1988 or that he is not aware of the proceedings in O.S.No.399 of 1988, the plaintiffs have not evinced any interest to examine their vendor Gajendran in the present suit. That apart, the plaintiffs have also not impleaded their vendor Gajendran as a party in the present suit. Therefore, it could be seen that Gajendran is aware of the proceedings in O.S.No.399 of 1988. No doubt, Ekambaram appears to have conveyed the property in S.No.889/2,3,4 to Gajendran under the Sale Deed dated 27.05.1988.

9.However, as adverted to earlier, under the above said sale, the suit property has not been conveyed. On the other hand, subsequent to the filing of O.S.No.399 of 1988, it appears that the second defendant Ekambaram had executed a Rectification Deed in favour of Gajendran dated 20.06.1988 stating that the survey number has not been correctly mentioned in Ex.A7 and hence he had executed the rectification deed in favour of Gajendran on 20.06.1988. There is no evidence to hold that the property conveyed under Ex.A7 and A1 are one and the same. Under Ex.A7, as found earlier, what was conveyed is only 0.63 cents out of 1.68 acres in S.Nos.889/2,3,4 within the specific boundaries and it is also found that the market value of the property has been mentioned as Rs.3780/-, whereas, under the rectification deed dated 20.06.1988 marked as Ex.A1, the survey number is mentioned as 1069/1A and the entire extent of 0.63 cents in the above said survey number has been included. Under Ex.A1, Rectification Deed, the market value of the above said property is mentioned as Rs.3780/-. It could therefore be seen that as against the order of interim injunction granted in favour of the first defendant, Sivaraj in O.S.No.399 of 1988, it appears that the second defendant Ekambaram has executed the Rectification Deed conveying the suit property to Gajendran alleging that in the Sale Deed dated 27.05.1988, the survey number has been wrongly mentioned.

10.However, as rightly argued by the learned counsel for the first defendant, it could be seen that pending O.S.No.399 of 1988 and in violation of the injunction order passed in I.A.No.906 of 1988 dated 15.06.1988, the second defendant Ekambaram and the plaintiffs vendor Gajendran had otherwise dealt with the suit property with a view to affect the rights of the first defendant Sivaraj. It could therefore be seen that when as per Section 52 of the Transfer of Property Act, the parties to a civil suit are precluded from transferring or otherwise dealing with the subject matter of the suit, the rectification deed dated 20.06.1988 is found to be clearly in

violation of Section 52 of the Transfer of Property Act. In this connection, it has to be noted that the second defendant Ekambaram is the paternal uncle of the plaintiffs vendor Gajendran. It could therefore be seen that Ekambaram and Gajendran are closely related.

11.It is contended by the learned counsel for the appellants that even though the rectification deed has been executed pending O.S.No.399 of 1988, it is in continuation of the Sale Deed dated 27.05.1988 and therefore, it is argued by him that the rectification deed would not be hit by lis pendens. Further, it is also argued by him that based upon the boundary recitals found in Ex.A7 and A1, the court should conclude that the property comprised in the above said two documents is one and the same. However, the above contention does not merit acceptance. When there is an embargo under Section 52 of the Transfer of Property Act, that the parties to the proceedings in the civil suit should not only transfer but even otherwise not deal with the subject matter of the suit and when it is found that the first defendant Sivaraj had obtained the order of injunction and when Ekambaram and Gajendran are fully aware of the same, it could be seen that the rectification deed executed during the pendency of O.S.No.399 of 1988 and also in defiance of the order passed in I.A.No.906 of 1988, the same would be hit by the principle of lis pendens as adumbrated in Section 52 of the Transfer of Property Act. With reference to the contention that the boundary recitals found in Ex.A7 and A1 would only go to show that it is only the suit property that is dealt with in both the documents, as regards the above contention, there is no evidence on the part of the plaintiffs. Even then, when both Ekambaram and Gajendran had been enjoined from dealing with the suit property in any manner in I.A.No.906 of 1988, the contention that they are entitled to execute the rectification deed dated 20.06.1988 as such cannot be countenanced in any manner.

12.It is the case of the plaintiffs that the decree in O.S.No.399 of 1988 is a collusive decree engineered between the defendants 1 and 2. However, with reference to the above case of the plaintiffs, there is no proof. In this connection, PW1 in his evidence has deposed that he does not know whether the decree in OS.No.399 of 1988 has been obtained by the first defendant based upon the agreement of sale and does not know whether the second defendant Ekambaram had preferred several petitions to set aside the ex-parte decree passed in O.S.No.399 of 1988 and does not know whether the execution proceedings had been laid in the year 1989 and they had not enquired either their vendor Gajendran or Ekambaram with reference to the same. Therefore, from the evidence of PW1, it could be seen that he has is aware of on what basis and under what circumstances, the suit in O.S.No.399 of 1988 had been preferred and also about

the conduct of the above said suit and the execution proceedings levelled therein. He has not also inquired about the same from his vendor and the second defendant Ekambaram. Further, according to PW1, the plaintiffs came to know about the execution proceedings from one Devan of Mappedu village. However, the said Devan has not been examined. However, one Devan of Mappedu Village has been examined as PW2, but he has not deposed anything about having apprised of the execution proceedings levelled in O.S.No.399 of 1988 to the plaintiffs. It could therefore be seen Devan referred to by PW1 is not PW2. Therefore, the case of the plaintiffs that they came to know about O.S.No.399 of 1988 and the proceedings related thereto only during the course of execution proceedings through one Devan of Mappedu village as such cannot be accepted in the absence of any convincing and reliable evidence.

13. According to the first defendant, the plaintiffs are fully aware of the proceedings in O.S.No.399 of 1988 and also the execution proceedings levelled therein and after making several attempts to stall the proceedings and finally finding that no further delaying tactics could be adopted, it is contended that the present suit has been laid by the plaintiffs without any cause of action. Considering the evidence of PW1, it could be seen that when he is not aware of anything about the proceedings in O.S.No.399 of 1988 and when in particular, he has not asked about the same from his vendor Gajendran or from Ekambaram the second defendant, the case of the plaintiffs that the decree passed in O.S.No.399 of 1988 is a collusive decree manoeuvred by the defendants 1 and 2 as such cannot be accepted. On the other hand, it could be seen that as argued by the learned counsel for the first defendant, the plaintiffs father was aware the proceedings in O.S.No.399 of 1988 and finally with a view to prevent the first defendant from obtaining the sale deed pursuant to the decree could be seen to have preferred the present suit so as to prevent the first defendant from enjoying the fruits of the decree obtained by him in O.S.No.399 of 1988. Therefore, the plea of collusion projected by the plaintiffs as against the defendants 1 and 2 in the obtainment of decree in O.S.No.399 of 1988 as such cannot be countenanced.

14. As far as the sale obtained by the plaintiffs, it is found that it has been obtained pending the execution proceedings levelled in O.S.No.399 of 1988. Further, PW1 is also not aware as to under what circumstances, the deceased first plaintiff had purchased the suit property from Gajendran. In this connection, PW1 has deposed that he does not know directly as to under what circumstances, his father, the first plaintiff had purchased the suit property. Further, it is also admitted that the first plaintiff was engaged in the Real Estate business.

15. According to the first defendant, the first plaintiff had purchased the litigation knowing fully well about the proceedings in O.S.No.399 of 1988 and only on account of the same, has levelled the false suit without any basis. Further, according to PW1, they have purchased the suit property based upon the decree obtained by Gajendran as against Sivaraj and another person in O.S.No.489 of 1988 i.e., an ex-parte decree. No doubt, Gajendran had obtained the ex-parte decree as against the first defendant and another in O.S.No.489 of 1988. It could be seen that the said suit has come to be laid on 08.08.1988. The decree in O.S.No.399 of 1988 has been passed on 06.09.1988. Admittedly, as found earlier Gajendran is a party to O.S.No.399 of 1988. An injunction order operates against Gajendran also in O.S.No.399 of 1988. Despite the same, it appears that suppressing the above facts, it is found that Gajendran had obtained an ex-parte decree in O.S.No.489 of 1988 on 11.07.1989. It could therefore be seen only after the decree has been passed in favour of the first defendant Sivaraj in O.S.No.399 of 1988, the decree had been passed in favour of Gajendran in O.S.No.489 of 1988. In such view of the matter, it could be seen that Gajendran knowing well about the decree passed in O.S.No.399 of 1988, suppressing the same had obtained the decree in O.S.No.489 of 1988 on 11.07.1989. No doubt, the first defendant is a party in O.S.No.489 of 1988. However, the first defendant had already obtained a decree as against Gajendran with reference to the suit property in O.S.No.399 of 1988. In such view of the matter, the case of the plaintiffs as projected through the evidence of PW1, that they had purchased the suit property from Gajendran, based upon the decree obtained by him in O.S.No.489 of 1988 alone would go to show that the plaintiffs have not made any enquiry about the proceedings in O.S.No.489 of 1988 as well as the proceedings in O.S.No.399 of 1988 from their vendor and proceeded to purchase the suit property without verifying the title of the vendor in respect of the suit property.

16. Further, as found earlier, before laying the present suit, the plaintiffs have not cared to verify from their vendor Gajendran or Ekambaram about the proceedings in O.S.No.399 of 1988 or the proceedings in O.S.No.489 of 1988. Therefore, viewed totally, it could be seen that the plaintiffs' vendor, the plaintiffs and the second defendant Ekambaram are found to have acted in collusion in creating the Rectification Deed, Ex.A1, the Sale Deed Ex.A2, with a view to thwart the decree obtained by the first defendant Sivaraj in O.S.No.399 of 1988. The plaintiffs, in this suit have sought the relief of permanent injunction preventing the first defendant from executing the decree in O.S.No.399 of 1988. The plaintiffs have failed to establish that the decree passed in O.S.No.399 of 1988 is a collusive decree obtained by the defendants 1 and 2. On the other hand, it is found that it is only the plaintiffs' vendor

Gajendran, the second defendant Ekambaram and the first plaintiff had acted in collusion in creating the rectification deed and the sale deed and also in laying the suit in O.S.No.489 of 1988, suppressing the suit proceedings in O.S.No.399 of 1988. In such view of the matter, it has not been explained by the plaintiffs as to how in such circumstances, without setting aside the decree passed in O.S.No.399 of 1988, they can seek the relief of permanent injunction restraining the first defendant from executing the decree passed in O.S.No.399 of 1988.

17. In this connection, as per the decision reported in 2008 (4) LW 103 (Usha Sinha Vs. Dina Ram & Others), it could be seen that the expression 'transferee from the judgment debtor' has been interpreted to mean the 'transferee from a transferee' from the judgment debtor. Further in the above said decision, it has also been held as Follows:

"It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court. The doctrine of 'lis pendens' prohibits a party from dealing with the property which is the subject matter of suit. 'Lis pendens' itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit.

The doctrine is based on the principle that the person purchasing property from the judgement debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Resistance at the instance of transferee of a judgment debtor during the pendency of the proceedings cannot be said to be resistance or obstruction by a person in his own right and therefore, is not entitled to get his claim adjudicated."

It could therefore be seen that when it is found that the plaintiffs' vendor and the plaintiffs' vendor's vendor are the judgment debtors in O.S.No.399 of 1988 and pending O.S.No.399 of 1988, they had dealt with the suit property otherwise in contravention of the injunction order passed in O.S.No.399 of 1988 by obtaining the rectification deed from the second defendant Ekambaram, who is also a party in O.S.No.399 of 1988, it could be seen that the doctrine of lis pendens would apply even to the Sale Deed marked as Ex.A2 dated 28.12.1990.

18. The learned counsel for the plaintiffs in support of his case has relied upon the decisions reported in 1924 SCC Online Mad 512 : AIR 1925 Mad 710 (Akki Guru Basappa and another Vs. Valuvathi Setra Santhappa and others), 2015(3) LW 575 (M.Pandia Nadar & Others Vs. Sivakamasundari & Others), 1991(1) SCC 715 (Hamda Ammal Vs. Avadiappa Pathar and 3 Others), (2008) 7 SCC 310 (Mohammadia Cooperative Building Society Limited Vs. Lakshmi Srinivasa Co-operative Building Society Limited and Others). As

far as in the decisions 1 and 2 cited above, it could be seen that the question involved in those decisions was as to whether the sale deed executed before the filing of the suit, but registered after the filing of the suit, whether or not hit by the doctrine of lis pendens.

19. Insofar as our case is concerned, the question is as to whether the rectification deed, Ex.A1 executed pending O.S.No.399 of 1988 and in violation of the injunction order passed in the above said suit would be hit by the doctrine of lis pendens, when the suit property has not been conveyed under Ex.A7, which has been taken prior to the laying of O.S.No.399 of 1988, only under Ex.A1, the rectification deed has been taken by including the suit survey number in the document. As rightly argued, the rectification deed requires compulsory registration and also need to be properly stand in accordance with the laws of the concerned State. It could therefore seen that the rectification deed as such is an independent transaction and when it has been found to have been brought about during the pendency of O.S.No.399 of 1988, in violation of injunction order, it could be seen that the same would be hit by the doctrine of lis pendens. Further, in the Sale Deed, Ex.A2, the title deed of the plaintiffs only the rectification deed is referred to and the main sale deed dated 27.05.1988 has not been specifically referred to. This would only go to show that inasmuch as the plaintiffs are fully aware that what was conveyed under Ex.A7, is not the suit property and only under Ex.A1, the suit property has been collusively and fraudulently included, it could be seen that with the view to give a legal cover to their sale transaction, the plaintiffs have suppressed the Sale Deed dated 27.05.1988 and referred to only the Rectification Deed dated 20.06.1988 in their Title Deed dated 28.12.1990 marked as Ex.A2.

20. In such view of the matter, the authorities relied upon by the learned counsel for the plaintiffs as rightly put forth by the learned counsel for the first defendant would not be applicable to the facts and circumstances of the present case.

21. In the light of the above discussions, it could be seen that the first plaintiff cannot be termed as a bonafide purchaser for value without notice of the proceedings in O.S.No.399 of 1988 and it could therefore be seen that the Sale Deed dated 28.12.1990 as well as the Rectification Deed dated 20.06.1988 are hit by the doctrine of lis pendens and in such view of the matter, the Courts below have rightly found that the plaintiffs are not entitled to seek and obtain the reliefs sought for in the plaint.

22. In conclusion, no substantial question of law is found to

be involved in this second appeal. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Subordinate Judge,
Thiruvallur

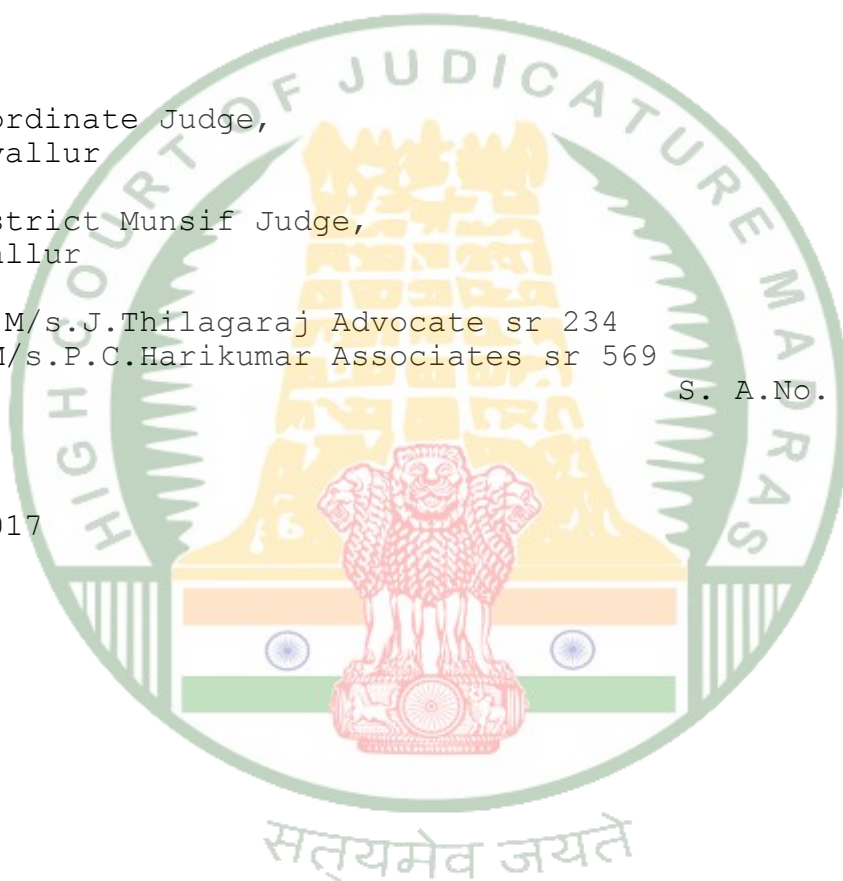
2. The District Munsif Judge,
Thiruvallur

+2 ccs to M/s.J.Thilagaraj Advocate sr 234

+1 cc to M/s.P.C.Harikumar Associates sr 569

S. A.No. 313 of 2011

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