

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2017

CORAM

THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.R.P. (PD) Nos.1747 and 3856 of 2012

C.R.P (PD) No.1747 of 2012

Elangovan

..Petitioner /
2nd Defendant

vs.

1.Sulochana

... 1st respondent/
Plaintiff

2.Bhaskar

3.Mahalakshmi

.. Respondents 2 & 3/
Defendants 1 and 3

Civil Revision Petition is preferred under Article 227 of the Constitution of India to strike off the suit filed in O.S.No.161 of 2011 pending on the file of the District Munsif Court, Madurantakam.

For Petitioner : MrJothi
for Mr.M.C.Govindan

For Respondents : Mr.K.Govi Ganesan

C.R.P (PD) No.3856 of 2012

Bhaskar .. Petitioner/
1st defendant

vs.

1.Sulochana .. 1st respondent/
Plaintiff
2.R.Elangovan ..
3.BMahalakshmi .. Respondents 2 &3
Defendants 2 & 3

Civil Revision Petition is preferred under Article 227 of the Constitution of India against the decreetal order dated 07.07.2012 and made in I.A.No.123 of 2012 in O.S.No.161 of 2011 on the file of the District Munsif Court, Madurantakam.

For Petitioner : Mr.JOthi
for Mr.M.C.Govindan

For Respondents : Mr.K.Govi Ganesan for R1
No Appearance for R2 & R3

C O M M O N O R D E R

Invoking the provisions of Article 227 of the Constitution of India, the memorandum of civil revision petition

<http://www.judis.nic.in> C.R.P.No.1747 of 2012 has been filed to strike off the plaint

of the suit in O.S.No.161 of 2011, pending on the file of the learned District Munsif, Madhurantakam on the ground of abuse of process of Court, whereas C.R.P.No.3856 of 2012 has been directed against the fair and decretal order dated 07.07.2012 and made in the interlocutory application in I.A.No.123 of 2012 in O.S.No.161 of 2011 on the file of the learned District Munsif, Madhurantagam.

2. With the issue involved in both the revision petitions is one and the same and the parties to the revision petitions are also one and the same, it has become necessary for this Court to dispose these two civil revision petitions in this common order.

3. The revision petitioner in C.R.P.No.1747 of 2012 is the second defendant in the suit in O.S.No.161 of 2011 and the first respondent is the plaintiff and the respondents 2 and 3 are the defendants 1 and 3. The revision petitioner in C.R.P.No.3856 of 2012 is the first defendant in the suit, whereas the first respondent is the plaintiff and the respondents 2 and 3 are the defendants 2 and 3 in the suit. As aforesaid, C.R.P.No.1747 of 2012 has been filed by the second defendant in the above suit for striking off the plaint in the suit in O.S.No.161 of 2011 pending on the file of the District Munsif, Madhurantagam and the other revision in C.R.P.No.3856 of 2012 has been filed challenging the order dated 07.07.2012 and made in I.A.No.123 of 2012 in the above suit. Mrs.Sulochana w/o.Arumugam, who is the first

respondent in both the revision petitions seems to have filed the suit in O.S.No.161 of 2011 as against the revision petitioners and the other defendants seeking the following reliefs:

1.To declare the General Power of Attorney dated 25.05.2007 executed by the plaintiff in favour of first respondent as null and void;

2.To declare the sale deed dated 29.10.2007 executed by the first respondent as null and void;

3.For permanent injunction restraining the defendants from alienating or encumbering the suit properties;

4.Directing the defendants to pay the plaintiff the cost of the suit;

5.To grant such other relief.

4. According to the first respondent/plaintiff, the suit properties were originally belonged to her father Poruran Mudhaliar. He died in the year 1982 leaving behind the following heirs:

- | | | |
|--------------------|---|----------|
| 1. Dhanalakshmi | - | Wife |
| 2. Padmavathy | - | Daughter |
| 3. Sulochana | - | Daughter |
| 4. Savithri | - | Daughter |
| 5. Sundaravadivelu | - | Son |
| 6. Ramalinga Jothi | - | Son |
| 7. Haridoss | - | Son |

The first daughter Padmavathy had died leaving the following heirs:

- | | | |
|--------------|---|---------|
| 1.Vinayagam | - | Husband |
| 2.Kumar | - | Son |
| 3.Srinivasan | - | Son |
| 4.Magesh | - | Son |

5. The first defendant Bhaskar, who is the petitioner in C.R.P.No.3856 of 2012, has been dealing with real estate business. According to the first respondent/plaintiff, he had approached her to lay out the entire suit properties with the consent of other heirs and promised to pay the market value of 1/7th share of entire suit properties by laying the plots and selling it to the purchasers. The first defendant/the petitioner in C.R.P.No.3856 of 2012 had suggested that for the purpose of laying out the suit properties into house sites, a general power of attorney in his favour must be executed by the plaintiff specifically representing that the Power of Attorney is only for laying out the suit properties and house sites and obtaining permission from the concerned authorities. Accordingly, the first defendant had taken the plaintiff to the Registrar's office, Tambaram and obtained several signatures from the plaintiff in stamped and blank papers at the Sub-registrar's office, Tambaram stating that they were required for obtaining permission from the concerned authorities for such lay out.

6. At the request of the plaintiff, the first defendant had paid a sum of Rs.5 lakhs in cash on 25.05.2007 and also paid another sum of Rs.5 lakhs. Subsequently, the first defendant had given a Demand Draft for Rs.10,000/- by obtaining an Savings Bank account for plaintiff on 08.12.2007. Besides this, the first defendant had also paid Rs.5 lakhs by way of cheque on 06.04.2011. Therefore, the first defendant had paid a sum of Rs.15,10,000/-, which was on the specific understanding that it would be adjusted in the amount payable to the plaintiff on the sale of house plots. The plaintiff was put to understand that the first defendant had also obtained documents from other heirs of Poruran Mudhaliar. That on 09.07.2011, the first defendant had declared that he had executed a sale deed in favour of the second defendant, who is none other than the brother of his wife, who is the third defendant in the suit in pursuance of the General Power of Attorney obtained from the plaintiff. When the plaintiff had obtained the copies of General Power of Attorney dated 25.05.2007 and alleged sale deed dated 29.10.2007, executed by the first defendant in favour of the second defendant, she came to know that the first defendant had fraudulently obtained the General Power of Attorney as if he was empowered to sell 1/7th share of plaintiff in the suit lands. The plaintiff had never agreed to sell her share in the suit lands.

7. The plaintiff further came to know that the first defendant had fraudulently brought about the alleged sale deed dated 29.10.2007 as if he had conveyed 1/7th share of plaintiff

in the suit properties in favour of the second defendant. The power deed dated 25.05.2007 is vitiated by fraud and misrepresentation. Equally the sale deed dated 29.10.2007 said to have been executed by the first defendant in favour of the second defendant is also vitiated by fraud as it is conclusive in nature.

8. The second defendant, who is fully aware of all the facts, is merely a name lender in perpetrating the fraud by the defendant on the plaintiff. The plaintiff and the first defendant had negotiated for selling the suit lands, after forming layout into several house plots at Rs.70,000/- per sent. Since the price is increasing day-by-day it was not finalized. The third defendant is colluding with the defendants 1 and 2 in such fraud activities and therefore she has also been impleaded in the suit as one of the defendants for effective adjudication. Now, the plaintiff is put to understand that the defendants 1 and 2 are attempting to sell the plaintiff's share in favour of the third defendant, who is the wife of the first defendant. Hence, the suit is filed.

9. Mr. Bhaskar, the petitioner in C.R.P.No.3856 of 2012, is the first defendant in the suit, whereas the petitioner in C.R.P.No.1747 of 2012 is the second defendant. As it is revealed from the contents of the plaint, this Court understands that the first defendant Bhaskar is the husband of the third defendant Mahalakshmi, whereas the second defendant Elangovan is the

brother of third defendant and brother-in-law of the first defendant.

10. Insofar as the third defendant Mahalakshmi is concerned, no relief is sought for in the plaint. It is also manifested from the records that the revision petitioner Bhaskar (C.R.P.No.3856 of 2012) seems to have filed two suits viz., O.S.No.43 of 2008 and O.S.No.143 of 2008. The suit in O.S.No.43 of 2008 has been filed by him as against Dhanalakshmi w/o.Late Poruran Mudaliar and 8 others seeking the relief of permanent injunction, namely

a) To restrain them from cancelling the Power of Attorney Deed bearing Document No.145 of 2005 on the file of Sub-Registrar, Madhuranthagam (dated nil);

b) To restrain them from interfering with his peaceful possession and enjoyment of the property specified therein;

9. Another suit in O.S.No.143 of 2008 has also been filed by Bhaskar as against Dhanalakshmi w/o.Late Poruran Mudaliar and 11 others seeking the relief of specific performance of contract of sale agreement dated 26.03.2005 and also for permanent injunction. In this suit, the plaintiff in the present suit in O.S.No.161/2001 has been arrayed as second defendant. Both the suits are pending.

11.It is also revealed from the records that the petitioner in C.R.P.No.3856 of 2012, who is the first defendant in the suit (O.S.No.161 of 2011), has filed an application in

I.A.No.123 of 2012 under Order VII Rule 11 of the Code of Civil Procedure to reject the plaint in the suit in O.S.No.161 of 2011 on the following grounds:

- i.Plaint does not disclose the cause of action;
- ii.The suit is barred by limitation; and
- iii.Filing of the suit itself is abuse of process of Court as well as law.

12.This petition was vehemently contested by the first respondent therein, who is the plaintiff in the present suit (O.S.No.161 of 2011). After hearing both sides, the trial Court has proceeded to dismiss the petition after disagreeing with the grounds set forth by the revision petitioner. Challenging the correctness of the order dated 07.07.2012, the revision petitioner, who is the first defendant in the suit, has come forward with the revision petition in C.R.P.No.3856 of 2012.

13. The second defendant Elangovan, after invoking the provisions of Article 227 of the Constitution of India, has straightaway approached this Court with the revision petition in C.R.P.No.1747 of 2012 to reject the plaint on the above said grounds.

14. Mr.N.Jothi, learned counsel for the revision petitioners in both the civil revision petitions, has adverted to that the learned District Munsif, Maduranthakam had taken the suit in O.S.No.161 of 2011 on his file without jurisdiction.

Mr.N.Jothi has drawn the attention of this Court to the Prayer

Portion No.2, wherein the first respondent Tmt.Sulochana has sought the relief of declaration to declare the sale deed dated 29.10.2007, which is said to have been executed by the first defendant viz., Bhaskar (petitioner in C.R.P.No.3856 of 2012) in favour of Mr.Elangavan (petitioner in C.R.P.No.1747 of 2012) as null and void. On perusal of the sale deed dated 29.10.2007, it is disclosed that Bhaskar (first defendant) seems to have executed the sale deed on behalf of the plaintiff Sulochana, who is the first respondent herein, in the capacity of General Power of Attorney agent in pursuant to the General Power of Attorney Deed bearing Document No.2672 of 2007 executed in favour of Elangovan (second defendant) for a total sale consideration of Rs.10 lakhs.

15. As it appear from Prayer No.2 of the plaint, the first respondent herein/plaintiff has sought the relief of declaration to declare that the sale deed dated 29.10.2007 as null and void. With reference to the first portion of the prayer i.e., for declaring the General Power of Attorney dated 25.05.2007 as null and void, the first respondent/plaintiff has valued the relief at Rs.1000/- and has paid the Court fee at Rs.75.50 under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act. With reference to Prayer No.2 for declaring the Sale Deed dated 29.10.2007 said to have been executed by the first defendant in favour of the second defendant as null and void, the plaintiff has valued this relief at Rs.1000/- and paid the Court fee at Rs.75.50 under Section 25(d) of the TNCF Act.

16. Section 25 of Tamil Nadu Court Fees and Suits Valuation Act deals with the suits for declaration. Section 25 encompasses 4 clauses viz., Clause (a) to (d). It enacts that in a suit for a declaratory decree or order, whether with or without consequential relief, not falling under section 26 -

"(a) Where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on ¹[rupees one thousand and five hundred], whichever is higher;

(b) Where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or rupees one thousand, whichever is higher;

(c) Where the prayer relates to the plaintiff's exclusive right to use, shall, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or rupees two thousand, whichever is higher;

(d) In other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or rupees one thousand, whichever is higher."

17. The provision of Section 40(1) of Tamil Nadu Court Fees and Suits Valuation Act is also very much relevant to this

issue, which is extracted as under:

"40. Suits for cancellation of decrees, etc.

(1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be-- if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed; if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.

(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.

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18. On perusal of the averments of the plaint, it is revealed that the first respondent/plaintiff is entitled to 1/7th share in the properties. It is also revealed that she had negotiated with the first defendant in respect of her 1/7th share for which she had totally received a sum of Rs.15,10,000/- on various dates as it is manifested from Paragraph No.4 of the plaint. Further, from the averments of Paragraph No.9, it is

clear that the first respondent/plaintiff has admitted that

she had received Rs.15,10,000/- from the first defendant. However, the sale deed dated 29.10.2007 reveals that total sale consideration is Rs.10,00,000/- only. In this connection, Mr.N.Jothy has raised a crucial question as to whether the District Munsif Court, being the feeder cadre in the hierarchy of Courts, is having pecuniary jurisdiction to entertain the suit.

19.This question can easily be answered in the negative form saying 'no', because the pecuniary jurisdiction of the District Munsif Court has been limited upto Rs.1,00,000/-. If the value of the subject matter exceeds Rs.1,00,000/-, definitely the suit in respect of which shall have to be taken to Subordinate Court or District Court depending upon the value of the subject matter in respect of which the relief of declaration is sought for. But, insofar as the present case on hand is concerned, the subject matter in respect of the prayer No.1 is General Power of Attorney dated 25.05.2007 and hence it need not be brought under controversy. With reference to Prayer No.2 is concerned, the subject matter is sale deed dated 29.10.2007 which is valued at Rs.10,00,000/-. Therefore, at the first instance, this Court can answer that the District Munsif Court does not have pecuniary jurisdiction to entertain the suit with reference to this prayer, because by declaring the document dated 29.10.2007 as null and void, the first respondent/plaintiff wants to set aside or nullify the above said document. If it is so, definitely the prayer No.2 should have been valued under Section 40(1) of the Tamil Nadu Court Fees and Suits Valuation Act.

20.The first defendant has also admitted in his revision petition that he was duly authorized by the General Power of Attorney Deed dated 25.05.2007 by the first respondent/plaintiff to execute the sale deed in respect of her share viz., 1/7th share in the suit property in favour of the second defendant. It is pertinent to note here that prior to the execution of the sale deed dated 29.10.2007, the above said Power of Attorney dated 25.05.2007 was not cancelled or revoked by the first respondent/plaintiff. As on 29.10.2007, when the sale deed is executed in favour of the second defendant by the first defendant, the Power of Attorney Deed dated 25.05.2007 was very well in existence and therefore, the first defendant had performed or acted as an agent of his Principal viz., first respondent/plaintiff to execute the above said sale deed on her behalf.

21.In this connection, this Court would like to place reliance upon the decision of this Court in **B.Raghumaran (Rep. By his Power Agent, R.Bharathidasan) Vs. Ms.Pushpabai and another** reported in **(2016) 6 MLJ 286**. In this case, this Court had an occasion to deal with the following Additional Substantial Questions of Law in Second Appeal in S.A.No.392 of 2015, which was decided on 08.06.2016:

1) Whether the Additional District Munsif Court,

<http://www.judis.nic.in> Mayiladuthurai was not having pecuniary

jurisdiction to entertain the suit?

2) Whether the suit in O.S.No.174 of 2010 is barred by limitation?

22. With reference to the question relating to Pecuniary jurisdiction of the District Munsif Court, Mayiladuthurai to entertain the suit, this Court has dealt with elaborately citing various decisions of the Apex Court as well as the High Courts. With regard to this question, it was argued before this Court on behalf of respondent therein that the suit had to be filed for setting aside the sale deed and not for declaration to declare the sale deed dated 21.03.2007 as null and void. It was also contended that the suit in the above cited decision was clearly barred by limitation. This Court is of considered view that the above raised two questions would squarely be applied in the given case on hand also. In the above cited case, Ex.B2 was the sale deed in question. It was executed for a total sale consideration of Rs.12,56,250/-. Under this document, the ownership over the suit property was transferred to the first defendant for a total consideration of Rs.12,56,250/-. In this connection, this Court would like to point out that like that of the instant case on hand, in the case cited supra also, the sale deed under Ex.B2 was executed by the second defendant therein in favour of the first defendant in pursuant to a General Power of Attorney Deed which was said to have been executed by the original owner of the property one Mr.Kannan in favour of the second defendant M.Thangaraj.

23. On account of this reason, it was argued that the original owner Mr.A.Kannan was not a party to the sale deed Ex.B2, which was sought to be declared as null and void and therefore, the plaintiff, who was the subsequent power agent of the original owner Kananan, had to value the suit property under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act for the relief of declaration to declare the document as null and void. But, this contention was negatived in the above cited case and ultimately the second appeal was dismissed confirming the judgment and decree of the First Appellate Court viz., Sub-Court, Mayiladuthurai. In this connection, this Court has observed as follows:

"83. Generally, there exists a conception that where a sale deed is sought to be declared as null and void, fee shall be computed in accordance with Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act 1955, provided he is not a party to the document impugned. Section 40(1) of the Tamil Nadu Court Fees and Suits Valuation Act envisages that in a suit for cancellation of a decree for money or other property having a money value or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject matter of the suit, and such value shall be deemed to be if the whole decree or other document is sought to be cancelled, the amount or value of the property, for which the decree was passed or other document was executed if a part of the decree or other

document is sought to be cancelled, such part of the document or value of the property.

84. On coming to the instant case on hand though the plaintiff is not a party to the Sale Deed, Ex.B2 dated 21.03.2007, he indirectly wants to assert his title as well as to declare that he is the absolute owner of the suit properties by virtue of his sale deed dated 26.03.2007 (Ex.A.10) and therefore he is bound by the decree which may be passed in the suit.

85. Since the document under Ex.B2 is valued at Rs.12,56,250/-, the plaintiff ought to have valued the suit and computed the Court fee under Section 40(1) of the Tamil Nadu Court -fees and Suits Valuation Act, 1955 and not under Section 25(d) of the Act.

86. Clause (d) of Sec.25 of Tamil Nadu Court Fees and Suits Valuation Act, 1955 does not per se make any distinction between the person who is a party and the person who is not a party to the document (sale deed) which is sought to be declared as null and void. Even a person, who is a party to a sale deed or any document can seek a decree for declaration either to declare the same as null and void or to declare that it will not bind upon him, or for cancellation.

87. The phrase "Null and Void" as per Black's Law Dictionary (10th Edition) Page 1235, is a common redundancy. The word "Null" connotes the meaning having no legal effect; without binding force as it is defined in Black's Law Dictionary in the very page. As it is defined at page 1580, the meaning of the phrase

24. While writing judgment in the above cited case, this Court has placed reliance upon the decision made in **K.A.Alagiah Vs. .A.Chinnazhagu and Ors.** reported in **(1996) 2 MLJ 4. 92**. In the said case, the the plaintiff therein had filed the suit in O.S.No.244 of 1995 on the file of the District Munsif, Madurai Taluk seeking a decree and judgment that any encumbrance done by the first respondent with the second defendant or his men to sell away the properties in any manner, including half share of the property of the plaintiff is null and void and consequently restraining the defendants by way of permanent injunction from in any way alienating or selling away the properties to third parties.

25.M.Srinivasan.J., a learned Judge of this Court as he then was, in paragraph No.2 of the said judgment has observed that a perusal of the plaint clearly shows that the plaintiff has adopted a camouflage and instead of directly praying for a declaration of her half share in the properties or directly asserting that she has got one half share in the suit property and preventing the defendants from alienating the properties, has prayed for a declaration that the alienation affected by the defendants is null and void, which is only on the basis that the plaintiff is entitled to one half share in the properties. The plaintiff therein had filed an interlocutory application in I.A.No.508 of 1995 for interim injunction during the pendency of the suit. The defendant had contested the application stating that the Court had no jurisdiction to entertain the suit.

26. The defendant therein had also contended that the value of the suit properties was such that the Court of the District Munsif would have no jurisdiction to deal with the claim as the sale proceeds amounted approximately to Rs.8 lakhs. The learned Judge in Paragraph 5 has observed that the plaint has been valued under Sections 25(d) and 27 (c) of the Tamil Nadu Court-Fees and Suits Valuation Act. Under Section 25(d) if the matter does not fall under Clauses (a), (b) and (c), whether the subject matter of suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees four hundred, whichever is higher. Under Section 27(c), in a suit for injunction, whether the subject matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees four hundred, whichever is higher.".

".....According to the plaintiff, she is entitled to one half share in the said properties and the defendants have unlawfully alienated her half share also denying thereby her title. That is why the plaintiff has sought for a declaration that the alienation effected by the defendants is null and void and not binding on her."

27. According to the learned Judge, the case would fall squarely under Section 25 (a) as well as Section 27(a). Just because the plaintiff has chosen to couch the prayer in such a language as would apparently take it out of Sections 25(a) and 27(a), the plaintiff cannot escape the question jurisdiction and

file the suit in a court which has no jurisdiction to deal-with the matter. A perusal of the plaint as well as the order passed by the learned District Munsif is sufficient to show that the suit falls outside the pecuniary jurisdiction of the District Munsif. In the present case also, on a perusal of the plaint, this Court finds that the suit falls outside the pecuniary jurisdiction of the District Munsif Court.

28. In the above cited case, this Court has made reference to the decision made in **Minor Divya Vs. Sengamalari (2011 (3) CTC 26:2011(4) MLJ 803)**. In this case, it is observed that Legislature in their wisdom used only the expression 'value' for the purpose of payment of Court-fees under Section 40(1) of the Tamil Nadu Court Fees and Suits Valuation Act. The Legislature could have very well expressed the word 'market value'. In fact, there are other provisions in the said Act dealing with assessment of market value for the purpose of computing the proper Court-fee. A specific distinction was drawn by the Legislature between value and market value for the purpose of computation of Court-fees. The language of Section 40 is very clear. It does not call for a different interpretation than the one suggested expressly.

29. In Raghumaran's case cited supra, this Court also has referred to the decision in **S.K.Kumaraswami & Others Vs.**

S.R.Somasundaram & Others, (1995) 1 MLJ 322., wherein the plaintiff had filed the suit to pass a decree:

"(a)declaring that the decree passed in O.S.No.37 of 84 on the file of Sub Court, Coimbatore is sham and nominal, ultra vires, collusive unsustainable, invalid, unenforceable and not binding on the plaintiffs:

(b)granting a decree for division of the entire schedule mentioned properties by dividing into three equal shares, and allotting one such share to the plaintiff.

(c)directing the 1st defendant or such of those defendants who are found liable to furnish true and proper accounts to the plaintiffs with regard to the income from the joint family properties and ascertain the amount payable to the plaintiffs. and

(d)directing the defendants to pay the plaintiffs the costs."

Based on the written statement filed by the defendants 1 to 3, the plaintiffs had filed an application in I.A.No.452 of 1993 for amending paragraph No.21 of the plaint pertaining to valuation only. The amendment prayed was to delete "'Section 40'" and substitute "'Section 25(d)'" therefor. While disposing the said application, alongwith the other applications, the learned trial Judge had concluded among other findings that the payment of Court fee under section 25(d) and Section 37(2) of the Court fees Act was correct. Insofar as Interlocutory Application in I.A.No.452 of 1993 is concerned, the learned Subordinate Judge had held that the proper Section is only 25(d) of the Court fees

Act and the plaintiff is entitled to amend paragraph No.21 of the
 plaint by substituting ''Section 25(d)'' in the place of
 ''Section 40''.

30. While penning down the judgment, Srinivasan,J., as he
 then was after referring to catena of cases at the first instance
 has held that the learned Subordinate Judge had exceeded his
 jurisdiction in rendering findings on the merits of the main case
 while dealing with the issue relating to the valuation of the
 plaint and Court fee payable preliminarily. Placing reliance upon
 the decision rendered in **Sathappa Chettiar Vs.Ramanathan
 Chettiar, Selvahimar Rice and Oil Mills, Salem Vs. Tamil Nadu
 Electricity Board, 99 L.W.740, Ramu Udayar Vs. Tamil Nadu
 Electricity Board, 1990 T.L.N.J. 107 and Santhana Kesari
 Vs.Kathija Bai(1994) 2 MLJ 413.**, the learned Judge has observed
 that the question of court fees must be considered in the light
 of the allegations made in the plaint and the decision cannot be
 influenced either by the pleas in the written statement or by the
 final decision of the suit on the merits. He has also held that,
 however, Courts have always taken care to point out repeatedly
 that mere astuteness in drafting the plaint will not be allowed
 to stand in the way of the Court looking at the substances of the
 relief asked for and the Court should look into the allegations
 in the plaint to see what is the substance of the relief asked
 for and the Court should look into the allegations in the plaint
 to see what is the substantive relief that is asked for.

31. Srinivasan.J, in paragraph No.18 of the above decision has also made reference to the decision of **Shamsher Singh Vs. Rajinder Prashad(AIR 1973 SC 2384)**. In this case, the plaintiffs prayed for a relief on the basis that the property in dispute was a joint Hindu family property and there was no legal necessity to execute a mortgage. They sued for a declaration that the decree obtained by the appellant before Supreme Court against their father was not binding on them. The Court held that they were really asking either for setting aside the decree or for the consequential relief of injunction restraining the decree holder from executing the decree against the mortgaged property as he was entitled to do.

32. In the above cited case, the decision of the Full Bench of the Lahore High Court in Mr.Zeb-ul-nisa Vs. Din Mohamed AIR 1941 Lahore, 97 was referred to and Srinivasan J., has quoted the following passage from the above cited decision:-

(i) the mere fact that the relief as stated in the prayer clause is expressed in a declaratory form does not necessarily show that the suit is for a mere declaration and no more. If the relief so disclosed is a declaration pure and simple and involves no other relief, the suit would fall under Article 17(iii).

33.After referring to the observation of the Full Bench of the Lahore High court that in deciding whether a suit is purely declaratory, the substance and not merely the language of the form of the relief claimed should be considered. The Court

"It seems to me that neither the answer to the question whether the plaintiff is or is not a party to the decree or the deed sought to be declared as null and void, nor to the question whether the declaration sought does or does not fall within the purview of section 42, Specific Relief Act, furnishes a satisfactory or conclusive test for determining the court fee payable in the suit of this description. When the plaintiff is a party to the decree or deed, the declaratory relief, if granted, necessarily relieves the plaintiff of his obligations under the decree or the deed and, hence it seems to have been held in such cases, that the declaration involves a consequential relief. In cases where the plaintiff is not a party to the decree or the deed, the declaratory relief does not ordinarily include any such consequential relief. But there are exceptional cases in which the plaintiff though not a party to the deed or the decree is nevertheless bound thereby. For instance, when a sale or mortgage of joint family property is effected by a manager of a joint Hindu family, the alienation is binding on the other members of the family (even if they are not parties to it) until and unless it is set aside. Similarly, a decree passed against the manager will be binding on the other members of the family. If therefore, a coparcener sues for a declaration that such an alienation or decree is null and void, the declaration must, I think, be held to include consequential relief in the same way as in those cases in which the plaintiff is himself a party to the alienation or the decree, which is

sought to be declared null and void. The case dealt with in AIR 1936 Lah 166 seems to have been of this description. The case of an alienation by a mutwalli of waqf property would also appear to stand on a similar footing. In the case of waqf property, it is only the trustee or the mutwalli who can alienate the property. If he makes an alienation it is binding on all concerned, until and unless it is set aside. If, therefore, a person sues to get such an alienation declared null and void, he can only do so, by getting the deed invalidated. The relief claimed in such cases also may therefore be found to include a consequential relief."

34. The learned Judge has also made reference to the decision of **Vembu Ammal Vs. Swaminathan (1986) 1 MLJ, 105:**

"In this case, it is observed that 'no doubt in computation of the fee, the recitals in the plaint have to be taken into account. But, there are exceptions to that rule. Then the plaintiff by a clever device tries to say that she is in possession it is the duty of the court to see whether, in the circumstances mentioned in the plaint, she could have been in possession. The plaint allegation cannot be taken into consideration on the face value itself, when the circumstances would lead to the conclusion that what is stated cannot be true.'"

35. The learned Judge in paragraph No.19, has observed that:

"19. If the allegations made in the plaint in the present case are considered, one can have no doubt whatever that in substance the suit is for setting aside the compromise decree passed in O.S. No. 37 of 1984. The plaintiff cannot get any relief in the suit without setting aside the said decree. Admittedly he was a party to the decree himself. His age at the time of the present suit is stated to be 36 years in the plaint. At the time of the decree in the earlier suit O.S. No. 37 of 1984, he must have been 33 years old. The 10th defendant, who was the first plaintiff in the present suit when it was instituted is stated to be 45 years old at the time of the plaint. He would have been 42 years old at the time of the compromise decree. Both of them were represented by counsel in that suit. The grounds on which the compromise decree is sought to be set aside are that it is vitiated by collusion, fraud, undue influence and misrepresentation. I have set out earlier in detail the summary of the plaint. A perusal thereof is sufficient to point out that though the plaintiff has chosen to pray for the relief of declaration, in substance he is praying for setting aside the decree and displacing the same, when only he can seek the relief of partition. The mere fact that the plaintiff has chosen to introduce an allegation that the compromised decree is sham and nominal, invalid, unsustainable and unenforceable, will not alter the nature of the suit or absolve the plaintiff from the necessity to have the decree set aside.

36. In **Upbhokta Sahakati Bhandar Vs. Vinod Lal** [1979 M.P.L.J.253.], the Madhya Pradesh High Court has held that the finality declared by Section 12 of the Court fees Act is limited only to question of valuation pure and simple and does not relate

to the category under which the suit falls.

37. Srinivasan J., in the decision cited supra viz., S.K.Kumaraswami and Others Vs. S.R.Somasundaram and Others (1995) 1 MLJ 322 has made reference to Mrs.J.Kasthuri Vs. Seth Ghamhamdas Vonsimal Deva Bank....on 11 January, 1979:(1979)2 MLJ 11.

"In this case, the prayer of the suit was for declaration that the three documents styled as hundies executed in favour of the first defendant in the suit were invalid, inoperative and void. The Court pointed out that the form of the prayer did not matter and the substance of the relief should be ascertained for determining the court fee payable."

38. The Court has observed that:

"There can be no doubt whatever that for purpose of determining the court fee payable, it is the substance of the relief that a plaintiff prays for that has to be taken into account and not the technical form of the prayer. It is to be otherwise, mere astuteness and ingenuity of the person drafting the plaint will have the effect of not only camouflaging and disguising the real relief which a plaintiff claims in a suit but also nullifying and defeating the provisions of law dealing with the payment of court fee based on the nature of the relief litigants seek in a court of law."

39. In the decision afore cited (S.K.Kumaraswami's case),

this Court in paragraph No.10 has observed as under:

'from the above decisions, it is clear that the plaintiffs in the present case having executed the hundies, they will have to have those hundies cancelled or set aside and for that purpose they will have to pay court fee under Section 40 of the Act. By merely couching the prayer in the form of a declaratory relief, the plaintiffs cannot avoid the reality of the situation, namely, that they are challenging the hundies executed by them on the ground that they were not supported by consideration and they were obtained by misrepresentation or fraud. Under these circumstances, it will be clear that the learned IV Assistant Judge was right in directing the petitioners herein to pay court fee under Section 40 of the Act.'

40. Ultimately, the learned Judge (Srinivasan.J.) in paragraph No.28 has observed that.....

'there can be no doubt whatever that the present case is governed by Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act and the plaintiff has to pay court fee under that section. The order of the lower court permitting the plaintiff to amend the plaint by substituting Section 25(d) in the place of Section 40 is wholly unsustainable.'

41. In another case in **P. Bakthavatchalam Vs. B. Mohanasundari & 3 Others** [(2009)-2-L.W. 617], the husband had filed the suit in O.S.No.157 of 2004 as against his wife and three others. In addition to praying for various other reliefs, he had also prayed for the relief of declaration that to declare the Settlement Deed is null and void, the first defendant after

entering appearance filed an I.A. under section 11(2) of the

Pondicherry Court Fee and suit Valuation Act, 1972 praying the Court to decide on the valuation and the adequacy of court fee paid, whereupon the Court rendered its verdict on 18.10.2007 to the effect that the court fee should have been paid on the market value of the property referred to in the impugned settlement deed and not notionally in a sum of Rs.15,000/- by invoking section 25(d) of the said Act.

42. On coming to the present case on hand, this Court is of view that the suit should not have been brought before the District Munsif Court, Madhuranthagam. Instead, it should have been brought before the Subordinate Court as the value of the sale deed dated 29.10.2007 exceeded the pecuniary jurisdiction of the District Munsif.

43. With regard to the ground of limitation, it is to be noted that the sale deed, which is to be declared as null and void was executed on 29.10.2007. It is a registered document bearing Document No.7411/07. If at all the first respondent / plaintiff wants to challenge this document or wants to set aside or to declare the document as null and void, the suit ought to have been filed within three years from the date of execution of the document. But, the suit is not filed within the stipulated period of 3 years as envisaged under Article 58 of the Limitation Act, 1963. Article 58 of Limitation Act, 1963 enacts that to obtain other declaration, the period of limitation is three years. Starting point of limitation is when right to sue first accrue. Article 59 of the Act, 1963 also very much relevant to

be referred to. Since the suit has been filed seeking declaratory relief to declare the impugned sale deed dated 29.10.2007 as null and void, it ought to have been filed within a period of three years. Since the suit is not filed within the prescribed period, as contemplated under Article 58 of the Limitation Act, it is definitely barred by limitation. This ratio has been laid down by this Court in **B.Raghumaran (Vs. Ms.Pushpabai, cited supra.**

44. Insofar as the present suit is concerned, the suit was filed on 28.07.2011. The sale deed was executed on 29.10.2007. The right to sue accrues from the date of execution of the sale deed i.e, from 29.10.2007. But the suit seems to have been filed after the lapse of 9 months and 27 days. Therefore, the suit is squarely barred by limitation.

45. In the above cited decision (Raghumaran's case) this Court has observed as under: सत्यमेव जयते

"127. Mr.R.Subramanian, in support of his contention has placed reliance upon the decision of the Apex Court in L.C.Hanumanthappa Vs. H.B.Shivakumar, 2015(6) CTC 562.

"In this case, while speaking on behalf of the Hon'ble Division Bench of the Apex Court Mr.Justice R.J.Nariman in paragraph No.13 has observed as under:

<http://www.judis.nic.in> '13. We have heard learned counsel for the parties. It is not disputed that Article 58 of the

Limitation Act would apply to the amended plaint inasmuch as it sought to add the relief of declaration of title to the already existing relief for grant of permanent injunction. In *Khatri Hotels Private Limited & Anr. v. Union of India & Anr.*, (2011) 9 SCC 126, this Court while construing Article 58 of the Limitation Act held as follows:-

'Article 58 of the Schedule to the 1963 Act, which has a bearing on the decision of this appeal, reads as under:

THE SCHEDULE

Period of Limitation

[See Section 2(j) and 3]

First Division-Suits

Description of Suit	Period of Limitation	Time from which period begins to run
Part III-Suits Relating to Declarations		
58.To obtain any other declaration	Three Years	When the right to sue first accrues

44.Article 120 of the Schedule to the Limitation Act, 1908 (for short the 1908 Act) which was interpreted in the judgment relied upon by Shri Rohatgi reads as under:

Description of Suit	Period of Limitation	Time from which period begins to run
Part III-Suits Relating to Declarations		
120.Suit for which no period of limitation is provided elsewhere in this schedule	Six Years	When the right to sue first accrues

language of the above reproduced two articles are:

(i) *The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,*

(ii) *Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.*

47. Article 120 of the 1908 Act was interpreted by the Judicial Committee in ***Bolo v. Koklan [(1929-30) 57 IA 325 : AIR 1930 PC 270]*** and it was held: (IA p. 331) ''

"There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.'" The same view was reiterated in *Annamalai Chettiar v. Muthukaruppan Chettiar* [ILR (1930) 8 Rang 645] and *Gobinda Narayan Singh v. Sham Lal Singh [(1930- 31) 58 IA 125]*."

In Rukhmabai v. Lala Laxminarayan [AIR 1960 SC 335 : (1960) 2 SCR 253] , the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (Rukhmabai case [AIR 1960 SC 335 : (1960) 2 SCR 253] , AIR p. 349, para 33):

<http://www.judis.nic.in> '' 33.... The right to sue under Article 120 of the [1908 Act] accrues when the defendant has clearly or

unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.''

While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word first has been used between the words sue and accrued. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.''

128. In the light of the observations made by the Apex Court in the decision afore cited, this Court is of view that since this suit is filed for seeking declaratory relief to declare the impugned Sale Deed dated 21.03.2007(Ex.B2) as null and void, it ought to have been filed within the period of three years. With the suit has not been filed within the prescribed time of three years as contemplated under Article 58 of the Limitation Act 1963, the suit itself is barred by Limitation and it is liable to be dismissed on this ground also.

very much relevant to be referred to :

Section 3 contemplates Bar of limitation. Sub Section (1) envisages that subject to the provisions contained in Sections 4 to 24(inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."

48. With regard to the grounds of lacking of cause of action and abuse of process of Court, Mr.N.Jothi has indicated that, the first respondent/plaintiff did not have any cause of action and there was also no transaction between the first defendant Bhaskar, who is the petitioner in C.R.P.No.3856 of 2012 and all the transactions between Bhaskar and the first respondent/plaintiff got terminated in the year 2007 itself once for all when the sale with respect to the suit property was completed by the execution of the sale deed dated 29.10.2007.

49.He has also added that the first respondent had been given full power with the power to sell the suit property and in this connection a Power of Attorney Deed was executed by her in favour of the first defendant Bhaskar on 25.05.2007, which was duly registered as Document No.2692 of 2007 on the file of Sub-Registrar, Tambaram. He would further contend that on the very same date itself she had received the entire sale consideration and executed a sale deed in a stamp paper acknowledging the sale consideration. She had also given a declaration stating that the sale was completed and that no claim in future in respect of the

suit property would be made either by herself or by her heirs after settling the entire sale consideration and after getting all the documents including the sale deed dated 29.10.2007, registered as Document No.7411 of 2007 in the Sub-Registrar Office, Maduranthakam in favour of the second defendant Elangovan. No cause of action is available to institute the suit.

50. With reference to abuse of process of Court Mr.N.Jothy has adverted to that during the month of March 2005, the first defendant Bhaskar had entered into an agreement of sale in respect of the suit property at the rate of Rs.23,000/- per cent with the legal heirs of Late Poruran Mudaliar and that the first respondent/plaintiff was one among them. The first defendant Baskar had paid nearly 80% towards the sale price of the property. Since certain problems arose between the first defendant and the legal heirs of Poruran Mudaliar, the first respondent/plaintiff had approached the first defendant and offered to sell her 1/7th undivided share of the property at the agreed rate itself. Only on this ground, the first defendant had taken a separate selling power from the first respondent/plaintiff and after deducting her share that was paid at the time of execution of the agreement, the first defendant had paid the entire sale consideration. Originally, the plaintiff had executed an unregistered sale deed and also given a valid receipt dated 25.05.2007 as full and final settlement towards sale of the property and she had also given an undertaking that neither herself or heirs would encumber the suit property in any

manner.

51. Mr.Jothy has drawn the attention of this Court to the averments of the affidavit filed in support of the petition in I.A.No.123 of 2011 filed by Baskar under Order VII Rule 11 CPC before the trial Court wherein it is revealed that during the month of April 2008 since the other legal heirs of PoruranMudaliar were not willing to honour the agreement, Mr.Baskar had filed a suit for specific performance against them before the District Judge, Chengalpattu in O.S.No.143 of 2008. The first respondent/plaintiff is the second defendant in the said suit. Thereafter, the dispute between first defendant Baskar and other heirs of Poruran Mudaliar was amicably settled and only thereafter he had paid them the sale consideration and got their 6/7th share of the property in the name of his wife under sale deed dated 13.12.2010 registered as Document No.5279 of 2011 in the office of Sub-Registrar, Maduranthakam. Since the first respondent/plaintiff had been pestering for some additional amount, the first defendant was not willing to heed her request as he had paid an additional amount of Rs.5 lakhs to her on 06.04.2011 and the same was admitted by her in her plaint.

52. Mr.N.Jothi has also submitted that the specific allegation made against the first defendant by the plaintiff is that she had given him only a power for forming layout and fulfilling approval formalities and she had not given power to sell the land. The submissions made by first respondent/plaintiff in her plaint were absolutely false and Mr.Jothi in this

connection has also drawn the attention of this Court to the counter statement filed by her before the trial Court by way of resisting the petition filed by the first defendant. He has also argued that the first respondent/plaintiff had miserably failed to resist the petition filed by the first defendant emphatically and the counter statement filed by the first defendant was merely an empty formality which did not contain any ground much less valid ground to resist the petition filed by the first defendant to reject the plaint suitably. The mere attempt made by the first respondent/plaintiff to file her counter statement without assigning any valid ground to reject the petition itself would go to show that she had filed the above suit vexatiously only for the purpose of wrecking vengeance on the petitioner.

53. This Court has also perused the grounds of revisions along with the impugned order passed by the Court below dated 07.07.2012. On careful consideration of the grounds of revision and examination of the impugned order this Court is of view that the first respondent/plaintiff does not have cause of action to maintain the suit as against the petitioners. Secondly, the District Munsif, Madhuranthagam is not having pecuniary jurisdiction to entertain the suit. Thirdly, the suit itself cannot be allowed to sustain as the same is squarely barred by law.

54. Keeping in view of the above facts, this Court is of

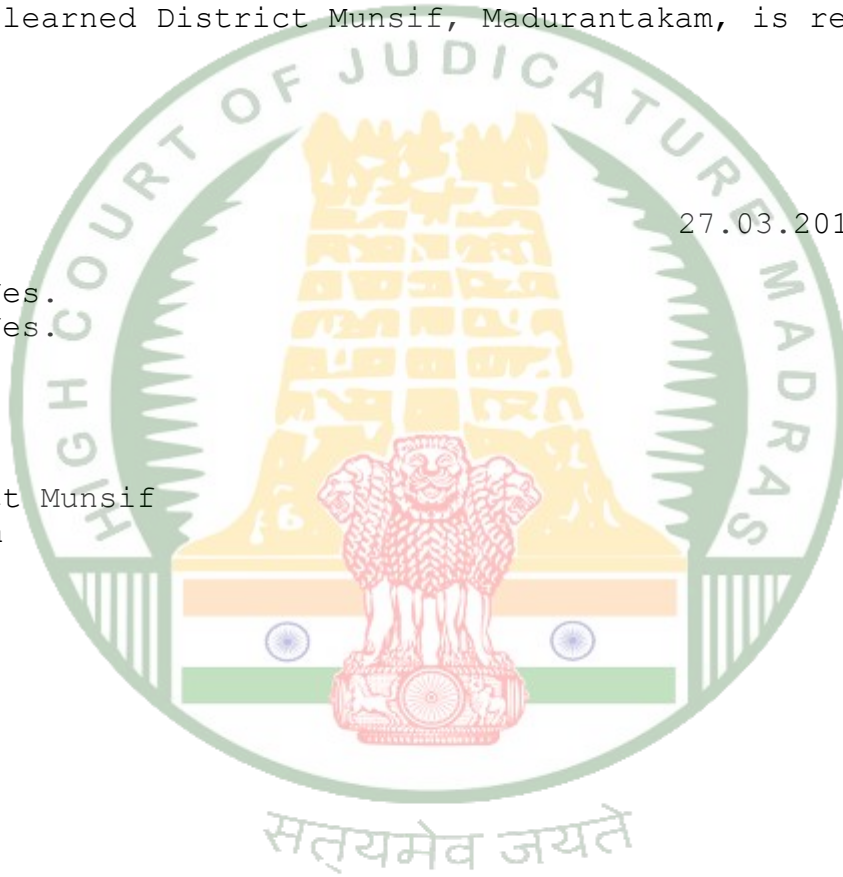
Accordingly, the civil revision petitions are allowed and the impugned orders dated 07.07.2012 are set aside. The petition in I.A. No.123 of 2012 in O.S.No.161 of 2011 is allowed. Ultimately, the plaint in O.S.No.161 of 2011, on the file of the learned District Munsif, Madurantakam, is rejected.

27.03.2017

Index : Yes.
Internet : Yes.

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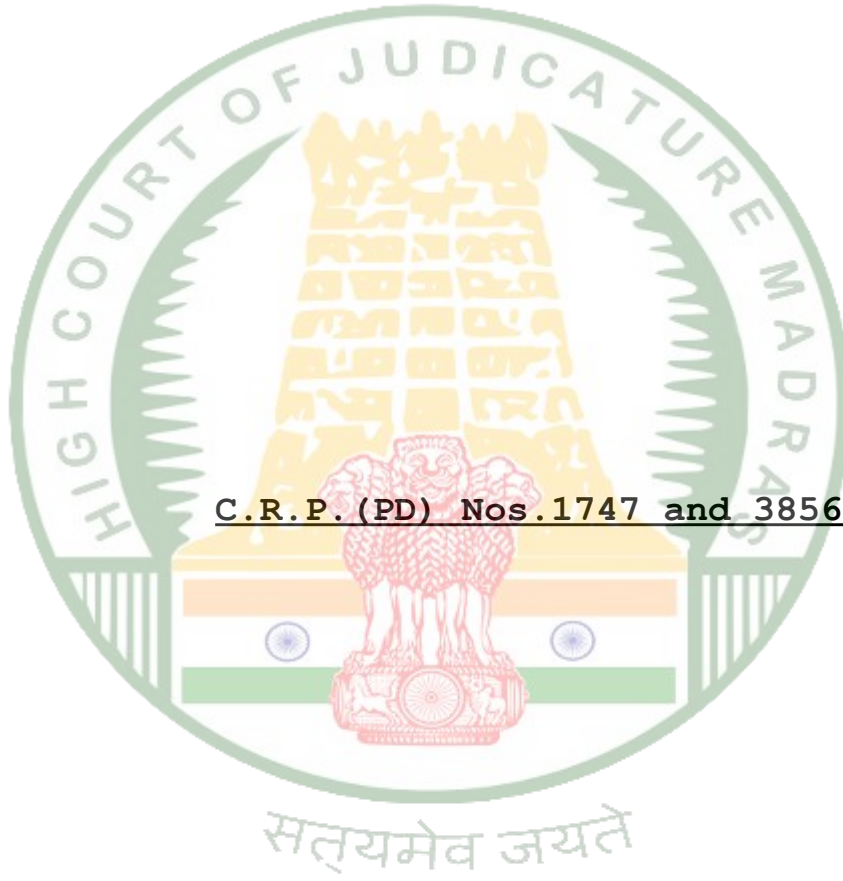
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