

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 05.09.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**

**CRP(PD)No.3509 of 2012**

**and**

**M.P.No.1 of 2012**

Thirupur Sports Organization,  
Rep. by its President,  
Dr.P.V.Ravi,  
No.36, K.P.N. Colony, 1<sup>st</sup> Street,  
Tirupur Town,  
Tirupur Taluk and District.

.. Petitioner

**Vs.**

1.S.Sudhan

2.The State of Tamilnadu,  
Rep. by the District Collector,  
Coimbatore.

.. Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the Judgment and Decree dated 02.12.2011 passed in I.A.No.1107 of 2011 in O.S.No.96 of 2008, on the file of the District Munsif Court, Tirupur.

For Petitioner : Mr.P.R.Balasubramanian

For Respondents : Mr.S.K.Rakhunathan (for R1)

No Appearance (for R2)

**ORDER**

The 2<sup>nd</sup> defendant in O.S.No.96 of 2008 is the Civil Revision Petitioner before this Court, challenging the order in I.A.No.1107 of 2011 in O.S.No.96 of 2008, on the file of the learned District Munsif Court, Tirupur.

2.The case of the plaintiff is that originally he has filed the suit in O.S.No.96 of 2008 against the defendant for declaration declaring that the alienation made by the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> defendant is void, unenforceable and not binding on the plaintiff and for permanent injunction.

3.The further case of the plaintiff is that the properties described in the suit were the ancestral joint family properties of Mr.K.N.Palanisamy Gounder and Mr.K.N.P.Sivasubramaniam, the

grandfather of the plaintiff. By way of registered partition deed dated 14.12.1959, the said properties were allotted to the share of Mr.K.N.P.Sivasubramaniam S/o K.N.Palanisamy Gounder.

4.In the year 1966, the 1<sup>st</sup> defendant namely, the District Collector, Tiruppur, has acquired the suit schedule of properties by way of Land Acquisition Proceedings for certain public purpose. After the acquirement, the Government was not taken possession of the properties. Though the properties were acquired, the lands were not utilised by the Government for the public purpose for which the lands were acquired and even after the acquisition, the properties were in a vacant possession and the plaintiff's father and grandfather were in possession and enjoyment of the said properties and the fact of the acquisition proceedings was not known by this plaintiff.

5.When the property was not utilised for a long period which was required by the Government for the purpose, for which it was acquired, the said property was returned by the Government in the year 1969 to the father of the plaintiff's father and his grandfather. This returning of the lands to the plaintiff's father and his grandfather was forwarded to the Registration Department and the same is registered by the Joint Sub-Registrar-II, Tirupur on 17.03.1969 in

document No.L.8/69 and 9/69. The said Registration copies of the return of the lands mentions the name Minor Karun Raghava Siva Subramaniam, the plaintiff's father and K.N.Palanisamy Gounder, grandfather of the plaintiff as the owners of the properties. In the meantime, on 03.01.1966, the said K.N.Palanisamy Gounder died and later on his son K.N.P.Sivasubramaniam also died on 12.10.1993. Being the son of the late K.N.P.Sivasubramaniam, the plaintiff, who is representing their estate and the plaintiff is in possession and enjoyment of the same.

6.While being so, the defendant, who is the petitioner herein stating that the 1<sup>st</sup> defendant namely the District Collector, Tirupur, has already transferred the properties to the 2<sup>nd</sup> defendant for constructing a Stadium and attempted to put up the constructions, since the 2<sup>nd</sup> defendant is a Private Organization and the 1<sup>st</sup> defendant without the knowledge of the return of the lands are suppressing the facts about the return of the lands of the plaintiff's predecessors in title by the Government, has instigating the 2<sup>nd</sup> defendant to construct a Stadium.

7.It is further case of the plaintiff is that when the plaintiff was a minor, the 2<sup>nd</sup> defendant with his men attempted to enter into the

suit schedule of properties and started constructions and the same was restrained by the plaintiff with the help of his family well-wishers, since both the defendants have no right to deal with the property and they have not in a possession of the suit schedule of properties.

8. Again on 22.02.2008, the 2<sup>nd</sup> defendant's men along with the 1<sup>st</sup> defendant's officials were attempted to enter into the suit schedule of properties, when the plaintiff questioned their illegal attempts, he was told that the 1<sup>st</sup> defendant has passed orders allotting the properties to the 2<sup>nd</sup> defendant to construct a Play Ground and if the plaintiff prevents them, they will use force to take possession of the properties. Since the defendants have no right, title of possession of the properties and they have no right to disturb the plaintiff's peaceful possession and enjoyment of the plaintiff in the suit schedule of properties.

9. It is the further case of the plaintiff is that when the Government through the 1<sup>st</sup> defendant namely the District Collector, Tirupur, were acquired the lands in the year 1966, later on the very same Government through the 1<sup>st</sup> defendant has returned the properties to the owners of the properties in the year 1969. Pursuant to the necessary directions to the 1<sup>st</sup> defendant's officials, they

returning all the documents which was registered in the office of the Joint Sub-Registrar-II, Tirupur, on 17.03.1969. Therefore, the defendants have no right whatsoever from interfering with the suit schedule of properties and claiming the title of properties. Therefore, the 2<sup>nd</sup> defendant has filed the above suit for declaration and for permanent injunction.

10. On receipt of the summon, a written statement was filed by the 1<sup>st</sup> defendant stating that though the plaintiff has filed the suit for the properties in respect of lands measuring to an extent of 6.45 acres of lands in S.F.Nos.655/1, 673/1 and 673/2 of Nallur Village, Tirupur Taluk. The Executive Engineer, Food Production Division, Vellore in his letter No.686/ dated 25.05.1965 applied for acquisition to an extent of 9.00 acres comprising in S.F.Nos.655/1, 673/1 and 2 and 674/2A of Nallur Village, for improvement of the Pond in Rakkiapalayam, hamlet of Nallur Village. The portions of the land applied for by the Executive Engineer, Food Production Division, Vellore, which were surveyed, subdivided and arrived at after survey as follows:-

| S.F.No.<br>Applied<br>subdivision | Areas applied<br>for (in acres) | S.F.No.after<br>Subdivision | Area arrived at after<br>survey and<br>(in acres) |
|-----------------------------------|---------------------------------|-----------------------------|---------------------------------------------------|
|-----------------------------------|---------------------------------|-----------------------------|---------------------------------------------------|

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|            |      |        |      |
|------------|------|--------|------|
| 655 (part) | 5.23 | 655/1  | 5.23 |
| 673/1      | 0.85 | 673/1  | 0.85 |
| 673/2      | 0.37 | 673/2  | 0.37 |
| 674/2      | 2.55 | 674/2A | 2.70 |
| <hr/>      |      |        |      |
| Total      | 9.00 |        | 9.15 |

11.After that, the Land Acquisition Officer were initiated the proceedings under the Land Acquisition Officer and the Assistant District Collector, Pollachi, and the lands were described hereunder were acquired from the land owners, in Award No.4/68, Current No.21372/68/A2 dated 26.10.1968 as follows:

| S.F.No. | Extent acquired<br>In acres | Name of the land owners                                                                |
|---------|-----------------------------|----------------------------------------------------------------------------------------|
| 655/1   | 5.23                        | Tmt.Periyathayammal, Minor<br>Karunaragahasivasubramaniam<br>Guardian mother Ponnammal |
| 673/2   | 0.37                        | Tmt.Periyathayammal, Minor<br>Karunaragahasivasubramaniam<br>Guardian mother Ponnammal |
| 673/1   | 0.85                        | K.N.Palanisamy Gounder                                                                 |
| 674/2A  | 2.70                        | Minor Senthilnathan Guardian<br>mother Kaliammal                                       |
| Total   | 9.15                        |                                                                                        |

12.The value of the lands was fixed at Rs.971/- per acre and the entire compensation amount were paid to the land owners. After the acquisition proceedings of the lands, the lands acquired for pond was

sub-divided and the same was changed by way of entering in the revenue records. After the acquisition proceedings, the Revenue Divisional Officer, Tirupur, recommended for alienation of the lands to the 2<sup>nd</sup> defendant namely the Tirupur Sports Organisation, Tirupur, on collection of the land value, vide his letter No.8029/94/A2 dated 15.10.1994. Subsequently, the Commissioner of Land Administration, Chennai in his letter No.D.Dis 234513/95/B2, dated 09.08.1995 also recommended for the alienation of the land on collection of Rs.11,49,030/-. As per the Government Orders in G.O.Ms.No.1136, dated 29.10.1996 have ordered the alienation of the land on collection of Rs.12,86,914/- to the Tirupur Sports Organisation, Tirupur. As per the orders of the Government, the amount have been remitted and the possession of the land was handed over to the Secretary, Tirupur Sports Organisation, Tirupur, on 24.07.1997.

13.The suit schedule of property was transferred as Government Poramboke land in the year 1969 itself and the compensation was paid to the land owners following the rules under the Land Acquisition Act, 1894. Therefore, the plaintiff has no right to deal with the property, since the plaintiff has not belonging to a poor family, he is having a status in the society. Therefore, there was no attempt to enter into the properties on 22.02.2008 and hence there is no cause

of action for filing of the suit and prayed for dismissal of the suit.

14.The 2<sup>nd</sup> defendant has filed his written statement narrating the same reasons mentioned by the 1<sup>st</sup> defendant Government in his written statement, since the land was purchased from the 1<sup>st</sup> defendant for a value of Rs.12,86,914/- for construction of a Sports Complex and the 2<sup>nd</sup> defendant has paid the consideration, stone value etc., and the Government handed over the possession of the suit properties of S.F.No.674/2A to the 2<sup>nd</sup> defendant.

15.The 2<sup>nd</sup> defendant also stated in the written statement that the Union Ministry of Youth Affairs and Sports sanctioned a sum of Rs.60,00,000/- for the construction of an indoor stadium in Tiruppur, but, without availing the funds from the Union Government, the 2<sup>nd</sup> defendant collected donations from the prominent citizens and philanthropists of Tiruppur, commenced the construction of the stadium on 30.07.2001 and completed the erection of more than 100 concrete columns in 2002 at a cost of nearly Rs.45,00,000/-. When the 2<sup>nd</sup> defendant was preparing to commence further work on the stadium, the plaintiff's mother filed the writ petition in W.P.No.37097 of 2002 before this Court for the issue a Writ of Certiorarified Mandamus to quash the G.O.Ms.No.1136 dated 29.10.1996, to

resume the lands from the 2<sup>nd</sup> defendant and re-convey the same to her on payment of Rs.12,86,914/- to the 2<sup>nd</sup> defendant. The plaintiff's mother obtained an order of interim injunction granted in WMP.No.55783 of 2002. Later on the contention of the plaintiff's mother was not accepted by this Court and the writ petition was dismissed on 25.06.2004, upholding the alienation of the land to the 2<sup>nd</sup> defendant. The Writ Appeal in W.A.No.2842 of 2004 was filed by the plaintiff's mother, which was also dismissed. After dismissing the above writ petition, it is not stated in the plaint, when the 2<sup>nd</sup> defendant or the Government handed over possession of the suit properties to the plaintiff. By suppressing the above facts, the suit for a bare injunction, is not maintainable, since there was no cause of action arosed. Therefore, the 2<sup>nd</sup> defendant prayed for dismissal of the suit.

16.While pendency of the suit, the plaintiff has filed a petition for amendment to amend the plaint in I.A.No.1107 of 2011 on 25.08.2010 before the said Court namely the District Munsif Court, Tirupur into declaration instead of permanent injunction. In the affidavit, the plaintiff has stated that initially the land was acquired by the 1<sup>st</sup> respondent for formation/improvement of a pond at Rakkiyapalayam, Nallur Village in the year 1966, later on when the

Government found that the acquired property is not required for the purpose for which it was acquired or for any other public purpose, the Government transferred the said land to the original owner. Therefore, the suit schedule of properties were not required for the improvement of the Pond, though the Government has returned the property to the plaintiff's predecessors in the year 1969, who never parted with the possession of the property, by registered document, registered as document Nos.8/1969 and 9/1969, on the file of the Sub-Registrar Office, Tirupur. The registration of the document by the Executive Engineer, Public Works Department, Pollachi, is not correct, since if any transfer of properties between the Government Departments is only by way of a proceedings and not by registered documents. Only in respect of individuals, the conveyance or re-conveyance is by a registered document. Hence, the title to the properties was restored to the plaintiff's predecessors in title. The plaintiff further stated that the State has no title after the re-conveyance of the property and hence the 1<sup>st</sup> defendant District Collector, has no right to alienate the properties to the 2<sup>nd</sup> defendant. Originally, the plaintiff has filed the suit for permanent injunction and at the time of filing the 2<sup>nd</sup> respondent is claiming a right based on the alleged alienation made by the 1<sup>st</sup> respondent in respect of the properties, since the petitioner to amend the plaint for the relief of

declaration that the alienation made by the 1<sup>st</sup> respondent in favour of the 2<sup>nd</sup> respondent is null and void and not binding on the plaintiff. Therefore, the plaintiff has filed the petition for amending the prayer for declaration instead of permanent injunction.

17. On receipt of the notice, a counter affidavit has been filed by the 2<sup>nd</sup> respondent for amendment of plaint and the 2<sup>nd</sup> defendant denying that in spite of due diligence the petitioner could not have raised the matter before the commencement of the trial. Therefore, the petition does not fall within the exception provided in the proviso to Order VI Rule 17 of CPC. When the 2<sup>nd</sup> defendant in his written statement dated 29.04.2008 has categorically stated that the plaintiff was to sue for declaration of his alleged title, since the plaintiff sought for the relief of declaration to be introduced by the amendment is barred by limitation. The plaintiff assignment/ alienation of the suit property to the 2<sup>nd</sup> defendant by the Government was on 29.10.1996 for a consideration of Rs.12,86,914/-. Apart from this, the mother of the plaintiff also filed a writ petition, challenging the alienation and handing over of possession to the 2<sup>nd</sup> respondent. Therefore, the amendment filed in I.A.No.1107 of 2011 is barred by limitation.

18. The 2<sup>nd</sup> defendant also states that if the amendment is

permitted, the Court below should direct that the amendment would be effective only from the date of the order granting leave to amend and not from the date of plaint. Therefore, he prayed for the dismissal of the petition in I.A.No.1107 of 2011. There was no counter filed by the 1<sup>st</sup> respondent/District Collector in I.A.No.1107 of 2011.

19.Considering both side cases, the learned District Munsif, Tirupur, passed an order dated 02.12.2011 allowing the petition filed under Order VI Rule 7 of CPC, on the ground that the claims of the plaintiff that the proposed amendment is necessary for adjudication of the suit dispute and that the amendment will not in any way alter or change the character of the suit or the cause of action.

20.The learned Judge also states that the objection of the 2<sup>nd</sup> defendant for the amendment on the contentions that it is a post trial amendment and therefore, barred by the embargo in the proviso to Order 6 Rule 17 of CPC and that in any event, the proposed prayer for declaration of title to the suit property without paying Advalorem Court fees on the market value. Though on the side of the plaintiff, PW1 was examined in Chief and three documents were marked on his side, Pending trial amendment and covered by the proviso to Order 6 Rule 17 of CPC. It provides that post trial amendment may not be

allowed unless the petitioner satisfies the Court that he could not have raised the matter before the commencement of trial in spite of due diligence.

21.The learned Judge also states that the proposed prayer is only incidental to the original prayer in the suit and since both the parties have set up rival claim of title to the suit property, the proposed amendment for declaration is necessary for complete adjudication of the dispute between the parties and thereby avoid further litigation between them. Apart from this, the learned Judge considered the judgment produced by the learned counsel for the petitioner reported in **2001 2 CTC 387**, which held that the amendment can be permitted at any stage of suit for determining real question in controversy. The learned Judge has allowed the petition by stating that the interest of the contesting defendant be protected by giving effect to the amendment from the date of amendment petition. Challenging the said order, the 2<sup>nd</sup> defendant has filed the present Civil Revision Petition before this Court.

22.I heard Mr.P.R.Balasubramanian, learned counsel appearing for the petitioner and Mr.S.K.Rakhunathan, learned counsel appearing for the 1<sup>st</sup> respondent. On behalf of the 2<sup>nd</sup> respondent/District

Collector, there was no representation.

23.Initially, the plaintiff has filed the suit for permanent injunction. The written statement also was filed by the 2<sup>nd</sup> defendant by stating that the suit land was allotted by the 1<sup>st</sup> defendant as per G.O.Ms.No.1136, Revenue Department (L2), dated 29.10.1996 in S.F.No.674/2A Hec.1.09.5 for a valid sale consideration of Rs.12,86,914/- to the 2<sup>nd</sup> defendant for the construction of a Sports Complex. Therefore, the plaintiff has filed the present petition. On 25.02.2008 for amending the prayer for declaration declaring that the sale alienation made by the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> defendant is void, unenforceable and not binding on the plaintiff and for permanent injunction, the present I.A.No.1107 of 2011 was filed.

24.It is the case of the 2<sup>nd</sup> defendant is that challenging the alienation the plaintiff's mother has filed a writ petition before this Court and the same was dismissed against which the Writ Appeal also filed and the same was also dismissed by the Hon'ble Division Bench of this Court and now the plaintiff has filed the present suit and the amendment filed, which is not maintainable on the ground that the petition filed was barred by limitation, since the mother of the plaintiff

has already filed a suit in the year 1966. Therefore, within the time limit, the petition for amendment has been filed.

25. In the counter affidavit filed by the 2<sup>nd</sup> defendant states that if the Court below has considered for the permission of the amendment, the Court should direct that the amendment would be effective only from the date of the order granting leave to amend and not from the date of plaint. Considering the same, the Court below has allowed the petition and the amendment shall be deemed from the date of this application seeking amendment.

26. This Court consider in several cases particularly the case in which reported in **2009 2 CTC 387** that the amendment can be permitted at any stage of suit for determining real question in controversy. Apart from this, the Hon'ble Apex Court in the case reported in **2002 4 CTC page 189** that liberal approach is to be adopted in permitting amendment in order to avoid multiplicity of the suit and that the interest of other party can be protected by imposing direction to preserve rights accrued prior to filing of amendment petition. On the other hand, the 2<sup>nd</sup> respondent has produced the judgment reported in **2004 1 CTC 742, 2004 1 MLJ page 100** and

**2009 SAR 149 Supreme Court** in which the amendment may not be allowed, if the petitioner does not satisfy the pre-condition that in spite of due diligence, he could not have raised the matter before commencement of trial and one another judgment reported in **1996 1 CTC 661** and **2002 4 CTC 189 Supreme Court** that the amendment should not be permitted if it is barred by limitation, it is made clear that in this case, in respect of limitation to seek declaration regarding the validity of alienation by the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> defendant started on 05.06.2008, when the 2<sup>nd</sup> defendant raise the said plea by way of written statement. Therefore, the plaintiff ought to have sought for declaration within 3 years from 05.06.2008, whereas the petition for amendment was filed in I.A.No.1107 of 2011 on 26.08.2011, which is beyond on the period of limitation. But it is my absolute view that the suit was filed in the year 2008 and the amendment was filed in the year 2011, which is in 3 years, even otherwise if amendment is permitted, no prejudice would be caused to the defendants, particularly the 2<sup>nd</sup> defendant, since the suit has been filed for permanent injunction restraining the 2<sup>nd</sup> defendant for interfering with the suit schedule of property. But after knowing the alienation of the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> defendant, the plaintiff has filed the petition for amendment for changing the prayer

for declaration within 3 years from the date of filing of the suit. Therefore, there is no question of limitation arises in this case.

27. Apart from this, this Court very categorically held in the judgment rendered in **2009 2 CTC 387** that the amendment can be permitted at any stage of suit for determining the real question in controversy. Apart from this, amending the prayer there is no change of cause of action or changing the entire case. Therefore, it is made clear that the proposed amendment is necessary for determining the dispute between the parties and also for the purpose of avoiding further litigation between them. Therefore, the well considered order passed by the learned Judge is not warranting interference by this Court. Accordingly, the same is liable to be dismissed.

28. In the result:

(a) this Civil Revision Petition is dismissed, by confirming the order passed in I.A.No.1107 of 2011 in O.S.No.96 of 2008, dated 02.12.2011, on the file of the learned District Munsif Court, Tirupur;

(b) the learned District Munsif Court, Tirupur, is hereby directed to take up the suit on day to day basis without giving any adjournments to either parties and

dispose the suit in O.S.No.96 of 2008, 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. Consequently, connected miscellaneous petition is closed.

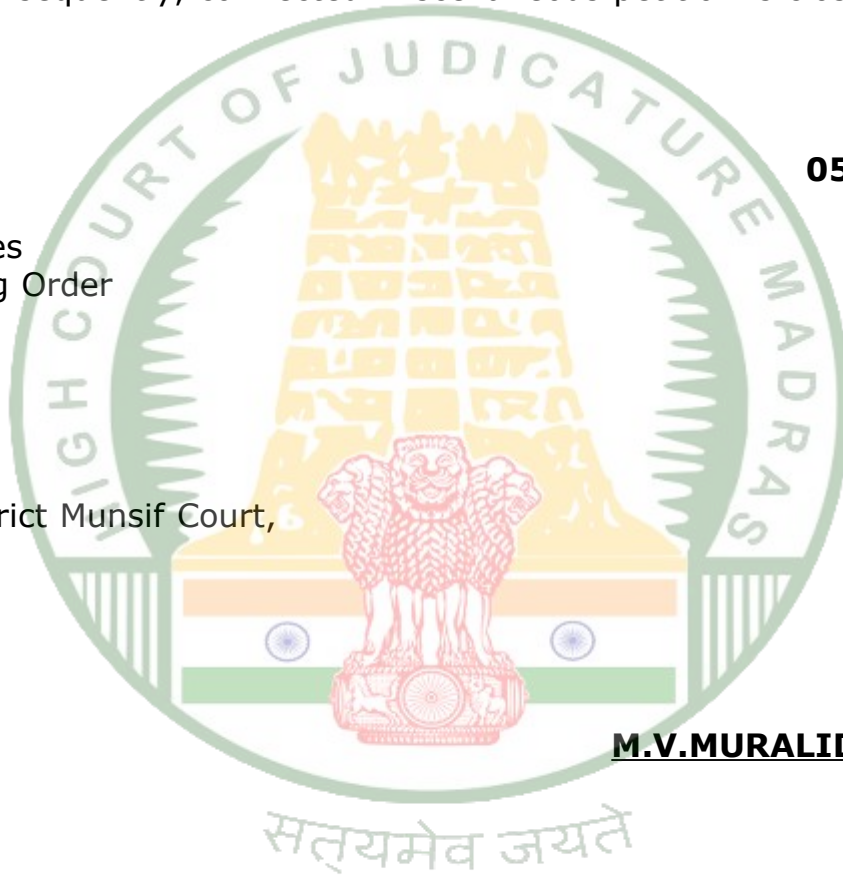
**05.09.2017**

Index:Yes  
Speaking Order

vs

To

The District Munsif Court,  
Tirupur.

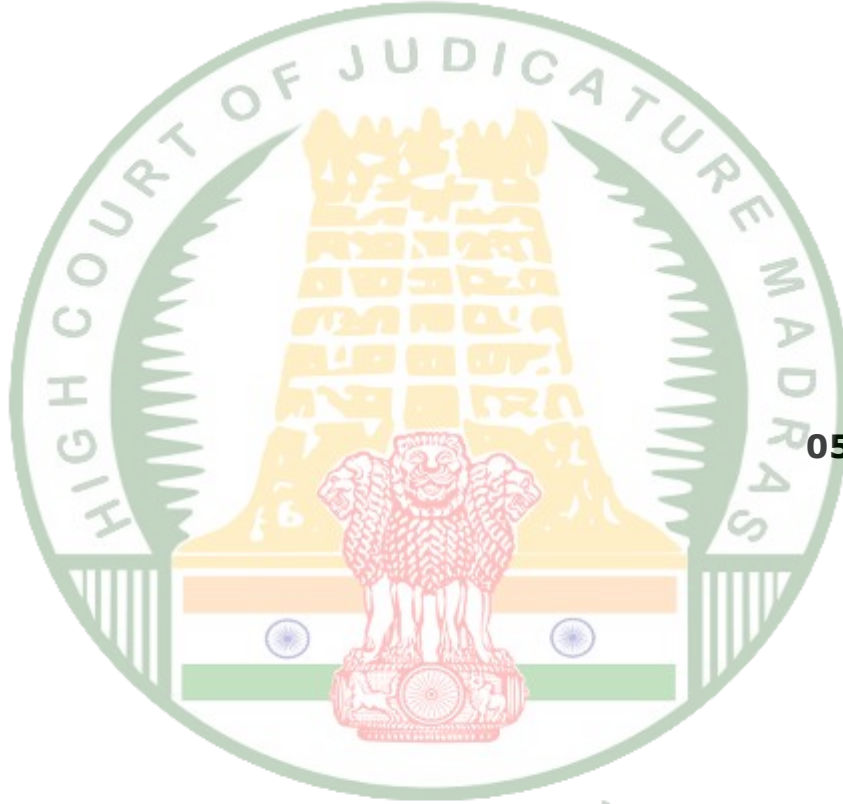


**M.V.MURALIDARAN, J.**

vs

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**Pre-Delivery order made in**  
**CRP(PD)No.3509 of 2012**  
**and**  
**M.P.No.1 of 2012**



**05.09.2017**

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