

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2017

DELIVERED ON : 19 .01.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.286 of 2013

G.Sunil Panickar .. Plaintiff
vs.

1.Mrs. G.N.Gomathy
2.Mrs. M.Vijaya .. Defendants

Civil Suit filed under Order VII Rule 1 of CPC
read with Order 4 Rule 1 of O.S. Rules praying for the
following judgment and decree against the defendants.

i) for direction to the defendants to jointly and
severally execute and register a sale deed in favour of the
plaintiff or his nominee in respect of the property being
house, ground and premises and part of Old No.5 New Door
No.46, Sadullah Street, T.Nagar, Chennai -600 017 measuring
an extent of 1224 sq.ft. together with undivided half share
an extent of 195 sq.ft (out of 390 sq.ft.) in the 6 feet
common passage in all measuring 1419 s1.ft. More
particularly described in the Schedule hereunder failing
which this Court may be pleased to execute and register a
sale deed on behalf of the defendants in favour of the
plaintiff or his nominee in respect of the schedule

property as per the Agreement of Sale dated 04.3.2010.

(ii) Permanent injunction restraining the defendants their men, agents and every other person claiming through the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the property being house, ground and premises and part of Old Door No.5, New Door No.46, Sadullah Street, T.Nagar, Chennai - 600 017 measuring an extent of 195 sq.ft. (out of 390 sq.ft) in the 6 feet common passage in all measuring 1419 sq.ft. More particularly described in the schedule here under.

For Plaintiff : Ms. M.Vidya

For defendants : Ms.R.RathnaThara

J U D G M E N T

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The suit is filed for execution and registration of sale deed in favour of the plaintiff in respect of the suit property, as per the Agreement dated 04.3.2010 and for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession in the suit property.

2.The brief facts of the case of the plaintiff are as

follows:

The defendants, who are the owners of the property in question, entered into agreement of sale dated 04.3.2010 with the plaintiff agreeing to sell the schedule property to the plaintiff for a total consideration of Rs.80,00,000/-. The plaintiff also paid advance amount of Rs.20,00,000/- to the defendants. The defendants also handed over vacant possession of the suit property to the plaintiff. Since then, the plaintiff continues to be in peaceful possession of the schedule property. Though the plaintiff is willing to pay the entire balance sale consideration, the defendants sought time to perform their obligation by obtaining Release Deed from one Ravindran, the 1st defendant son and 2nd defendant's brother, in order to resolve their family dispute. Thereafter, at the end of 2010, only by way of abundant caution, the plaintiff called upon the defendants to execute and register the sale deed in respect of the suit schedule property, even without obtaining Release Deed.

2.1. While so, the defendants informed the plaintiff that the said Ravindran, had obtained an interim injunction against the defendants from selling the suit property in a suit filed by him in O.S.No.11137 of 2010 on the file of the VI Assistant City Civil Court, Chennai and

also requested the plaintiff to grant time to execute the Sale Deed. Thereafter, the plaintiff filed an application to implead him in the aforementioned suit, but the same was dismissed. However, the aforementioned suit itself was dismissed as against the suit property on 21.3.2013. When the plaintiff called upon the defendants to execute and register the Sale Deed, the defendants threatened the plaintiff in dire consequences.

2.2. In the meantime, the said Ravindran issued a legal notice to the defendants on 01.4.2013 making false and frivolous allegations and calling upon them to effect partition. According to the plaintiff, the said Ravindran himself has admitted that the suit filed by him was dismissed with regard to the suit schedule property in view of the fact that he had not sought for any share in the schedule property. That being the case, he cannot seek for partition. Since the defendants committed breach of agreement dated 04.3.2010, the plaintiff has no other option but to file the above suit for specific performance of the sale agreement dated 04.3.2010.

3. The brief facts of the case of the 1st defendant are as follows:

The suit filed by the plaintiff is not maintainable

either in law or on facts. The suit has been filed only after a period of three (3) years from the date of the agreement and, therefore, it is barred by limitation. According to the 1st defendant, the plaintiff has not deposited the balance sale consideration. The 1st defendant is the absolute owner of the suit property and she can pass on a valid title to the plaintiff but the plaintiff did not heed to it and failed to get the Sale Deed registered within the time as stipulated in the sale agreement. The plaintiff's claim that possession was given to him without the sale consideration being paid and without the agreement of sale being registered only proves his malafide intention and ulterior motive to usurp the suit property. The plaintiff, though aware of the suit in O.S.No.11137 of 2010 even in the year 2010, has filed an impleading application only in February 2013, at the fag end, when the matter was listed for arguments. Therefore, the same was rightly rejected. According to the 1st defendant, in view of the inordinate delay in getting the sale deed registered by paying the balance sale consideration, she has been put to untold hardship misery and mental agony at the fag end of her life. The 1st defendant denies the allegation that her son-in-law threatened the plaintiff. According to the 1st defendant, it is the plaintiff who is trying to usurp the property since

it is situate in a prime area in T.Nagar where the market value of the property is more than two crores. It is stated that the plaintiff cannot claim for possession of the suit property by relying on an unregistered agreement of sale. Hence, she prays for dismissal of the suit.

4. The second defendant adopted the written statement filed by the 1st defendant.

5. On the above pleadings, originally, this Court, on 20.10.2014, has framed the following issues:

1. Whether the agreement dated 04.03.2010 entered into between the plaintiff and defendants is true and unforceable?

2. Whether the plaintiff was ready and willing to perform his part of the contract?

3. Whether the plaintiff is in possession of the suit property as specified under Section 53A of the Transfer of Property Act?

4. Whether the plaintiff is entitled to the relief of specific performance as claimed?

5. Whether the suit is barred by limitation?

6. Whether the plaintiff is entitled to

the relief of permanent injunction?

7.To what other reliefs, the parties are entitled to?

5. On the side of the plaintiffs, P.W.1 and P.W.2 were examined and Exs.P1 to P7 were marked and on the side of the defendants, D.W.1 was examined and no documents were marked. The details of the documents are hereunder:-

Exhibits produced on the side of the plaintiffs:

S. No	Exhibits	Date	Description of documents
1.	P-1	04.3.2010	Original Agreement of Sale entered into between the plaintiff and the defendants
2.	P-2	-	Photo copy of the petition and affidavit filed in I.A.No.10654/2013 in O.S.No.11137 of 2010, City Civil Court, Chennai
3.	P-3	01.4.2013	Photocopy of the legal notice sent to the plaintiff
4.	P-4	-	Letter with original courier receipt
5	P-5	-	Photocopy of the interim order order passed in I.A.No.17331 of 2010 in O.S.No.11137 of 2010 by the City Civil Court, Chennai
6	P-6		Certified copy of the judgment passed in OS.No.11137 of 2010, referred to in para 6 of the proof affidavit
7	P-7		Certified copy of the decree granted in the said suit.

Witnesses examined on the side of the plaintiff:

P.W.1. - G.Sunil Panickar
P.W.2 - Ms. Anitha Panickar

Witnesses examined on the side of the defendants

D.W.1 - M.Vijaya

6. Heard, Ms. M.Vidya, the learned counsel appearing for the plaintiff and Ms.RathnaThara, the learned counsel appearing for the defendants and perused the records.

7. The learned counsel for the plaintiff submitted that the agreement dated 04.03.2010 is not even disputed by the defendants and in fact they have received a sum of Rs.20,00,000/- (Rupees twenty lakhs only) as advance on the date of agreement and also agreed to obtain Release Deed from one of the legal heirs. However, the defendants have not obtained Release Deed as agreed by them. The learned counsel for the plaintiff further submitted that the plaintiff was always ready and willing to perform his part of the contract even at the end of 2010 itself. But when the plaintiff was ready to register the property even without obtaining Release Deed from other legal heirs, 1st defendant informed the plaintiff that her son has filed a suit before the City Civil Court and obtained an interim order against the defendants from selling the suit

property. Therefore, the defendants requested the plaintiff to wait for some time. The suit was dismissed in the year 2013. Immediately after the dismissal of the suit, though the plaintiff was willing to pay the balance sale consideration on several occasions, the defendants have not come forward to sell the property. It is submitted by the learned counsel for the plaintiff that the delay on the part of the plaintiff was only due to the Civil Suit filed by the 1st defendant's son.

8. It is the submission of the learned counsel for the plaintiff that the plaintiff was also given possession on the date of the agreement. The suit property itself was agreed to be purchased by the plaintiff since it is a neighboring property and common passage is also required for both parties. It is the contention of the learned counsel for the plaintiff that the plaintiff was always ready and willing to perform his part of the contract. It is also the contention of the learned counsel for the plaintiff that merely because there was a delay in filing the suit itself cannot be a ground to waive the plaintiff's right. Since the plaintiff was always ready and willing to perform his part of the contract, he is certainly, entitled for specific performance.

9. In support of his contention, the learned counsel for the plaintiff relied upon the judgments of the Hon'ble Apex Court reported in AIR 1953 SC 98 (***Sha Mulchand and CO.Ltd., v. Jawahar Mills Ltd.,***); AIR 1974 SC 2089 (***All India Power Engineer Federation and otehrs v. Sasan Power Ltd.***) and AIR 2010 SC 1654 (***S.Kaladevi v. V.R.Somasundaram and others***) .

10. Per contra, it is the contention of the learned counsel for the defendants that as per Ex.P1 agreement itself, the plaintiff was aware that the 1st defendant is the absolute owner. However, for his own convenience, he imposed a condition in the agreement that the 1st defendant has to get the Release Deed from her son besides, he has also agreed to pay the further advance amount immediately. However, by taking advantage of the fact that there was some dispute between the 1st defendant and her son, the plaintiff has waited all these days to snatch away the valuable property. The learned counsel for the defendants further contended though the agreement was entered on 04.3.2010, the plaintiff has never shown readiness and willingness from the very beginning to pay the balance sale consideration immediately. The plaintiff, being real estate developer, in order to take undue advantage has filed the

present suit. He was never given possession and possession pleaded by the plaintiff is also not sustainable in law. Hence, the learned counsel for the defendants prayed for dismissal of the suit.

11. The learned counsel for the defendants, to substantiate her contention, also relied on the judgments of this Court reported in 2013 (6) CTC 624 (**G.Anbazhagan and another v. G.Manoharan**) and 2016 (6) CTC 58 (**T.Baskar v. S.Venkatammal**).

12. It is pertinent to point out here that there is a typographical error crept in while framing issue No.1, i.e. Whether the agreement dated 04.03.2010 entered into between the plaintiff and defendants is true and unforceable? Instead of the word "enforceable", it has been wrongly typed as "unforceable". In view of the same, the corrected version of issue No.1 reads as follows:

1.1. Whether the agreement dated 04.03.2010 entered into between the plaintiff and defendants is true and enforceable?

Issue Nos: 1 to 7:

13. The execution of the agreement between the parties is not disputed. When Ex.P1 agreement dated 04.03.2010 is carefully perused, it is seen that an agreement was entered into between the parties and as per the said agreement, 1st

defendant is the absolute owner of the property. Similarly, the above agreement clearly shows that the property was registered in the name of 1st defendant. In fact, other legal heirs of late Narayanan are also entitled to share in the suit property. At any event, the parties in Ex.P1 specifically agreed that 1st defendant is the absolute and undisputed owner. The parties further agreed to complete the sale for a total consideration of Rs.80,00,000/- (Rupees eighty lakhs only). On the date of agreement, a sum of Rs.20,00,000/- (Rupees twenty lakhs only) was received by the 1st defendant through cheque. In the agreement, condition was imposed that the first vendor, (1st defendant herein) has to obtain Release Deed from one of her son, by name, Ravindran. Further, he has also imposed a condition that the 1st vendor, i.e., 1st defendant herein has to execute Development Power of Attorney Deed in favour of the purchaser, i.e., the plaintiff herein. On executing such Development Power of Attorney in favour of the purchaser, the plaintiff also agreed to pay the balance sale consideration.

14. It is to be noted that the condition, which was imposed on the first vendor, i.e. 1st defendant herein that she has to obtain Release Deed from his son within one week from the date of agreement, is impracticable one. It is well known that the co-sharer cannot compel another co-

sharer to execute some document in favour of the purchaser. At any event, having imposed such a condition, now the plaintiff has come to this Court for enforcing such agreement.

15. It is admitted fact that in the end of December 2010, the son of the first vendor/1st defendant has filed a suit in O.S.No.11137 of 2010 and obtained an interim injunction against the defendants herein from selling the suit property and other property. Further, the aforementioned suit was dismissed only in the year 2013, as could be seen from Ex.P6, certified copy of the judgment. Ex.P5, is the interim order passed in the aforementioned suit. These facts are not disputed.

16. It is to be noted that the condition set out in the agreement to obtain Release Deed by the 1st defendant from one of his son is unenforceable on the parties to the document. Ex.P1 clearly shows that only the 1st defendant is the owner of the property. Title and other aspects are admitted by the parties to the agreement. The plaint pleadings also show that as if at the end of 2010, the plaintiff was ready to purchase the property even without Release Deed being obtained from one Ravindran, the son of the 1st defendant. Para 6 of the plaint, clearly shows that the plaintiff has relinquished the condition set out

in the agreement, i.e., obtaining Release Deed from the said Ravindran.

17. In the above background, now it has to be analysed as to whether the plaintiff was ready and willing to perform his part of the contract from the very beginning. Though a sum of Rs.20,00,000/- was paid as advance on the date of agreement, the plaintiff has not made any attempt to get the so called Development Power of Attorney Deed from the 1st defendant immediately. Though it is contended by the plaintiff that only because of the interim order passed by the VI Assistant City Civil Court in O.S.No.11137 of 2010, the defendants could not execute the Sale Deed and they requested further time, it is to be noted that in Ex.P1 even though time limit was not fixed, the condition was imposed on the 1st defendant to get the Release Deed from her son within 7 days and thereafter the 1st defendant has to execute the Development Power of Attorney Deed. The above conditions clearly indicate that the parties intended to complete the sale transaction within the reasonable time. Admittedly, the suit in O.S.No.11137 of 2010 was filed before the VI Assistant City Civil Court, at the fag end of 2010 whereas Ex.P1, agreement was entered on 04.3.2010. Till the filling of such suit, the plaintiff has not demanded the defendants to execute the Development Power of Attorney Deed in his name. No steps whatsoever

have been taken in this regard.

18. It is further to be noted that the Release Deed cannot be normally obtained by any person from the other co-sharer by compulsion, therefore, the condition imposed by the plaintiff clearly indicate the impossibility of executing such contract. Further, in the suit for specific performance, it is for the plaintiff to establish that he was always ready and willing to perform his part of the contract. At any event, the plaintiff himself at para 6 has stated about his willingness to purchase the property without obtaining Release Deed from one Ravindran. The plaintiff has made such a decision only at the fag end of the year 2010 and till such time, he has not taken any steps to prove his willingness to purchase the property without obtaining the Release Deed. The plaintiff ought to have shown his readiness and willingness to perform his part of contract from the date of agreement itself.

19. Further, the plaintiff having asserted that only the 1st defendant is the owner of the property, he ought not have waited till the end of 2010, i.e, till the filing of the suit by the son of the 1st defendant. That apart, the plaintiff having come to know that said Ravindran has no right over the suit property ought to have filed an impleading application immediately after the filing of the

suit by the son of 1st defendant, But, he has filed an application to implead himself in the said suit only at the fag end of trial, which could be seen in Ex.P2. Ex.P2, affidavit filed by the plaintiff in the impleading petition clearly indicate that for the first time, he was taking such defence that the said Ravindran has no right over the suit property. That being the case, the plaintiff's contention before this Court that he was waiting till 2013 due to the pendency of the aforementioned Civil suit cannot be countenanced at all. Of course, there was an injunction against the defendants for sale of the property in the aforementioned suit. But the same came into force only at the end of 2010. Therefore, before that, the plaintiff could have taken some steps either to pay the balance sale consideration or to get the Development Power of Attorney Deed in his name as set out in the agreement. But he was keeping quite till the filing of the aforementioned suit. Except pleading in his plaint that he was ready and willing to perform his part of the contract, no evidence whatsoever produced to show that in between 04.3.2010 till the filing of the suit in OS.NO.11137 of 2010 at the end of 2010, the plaintiff had money in his hand to tender the balance sale consideration.

20. Admittedly, the suit filed by the 1st defendant's son was dismissed on 21.3.2013. Even if the plaintiff's

stand is accepted that he was waiting for the result of the suit as there was an injunction, it is not known why the plaintiff has not taken any steps to execute the sale deed even after the dismissal of the suit. The conduct of the plaintiff in this regard assumes significance in this case. It is pleaded by the plaintiff that though he has tendered the balance sale consideration of Rs. 60,00,000/- on 22.03.2010 itself, the defendants refused to accept the same and thereafter on 24.3.2013, as the husband of the 2nd defendant threatened the plaintiff for forcible possession of the suit property, he sent a letter dated 27.3.2013 once again tendering the balance sale consideration of Rs.60,00,000/-.

21. In this regard, it is useful to refer Ex.P4, the letter said to have been written by the plaintiff on 27.3.2013. The above letter was addressed to the defendants 1 and 2. In the above letter, nothing is whispered about the alleged threat made by the 2nd defendant's husband Muthuswamy. The alleged allegation that Muthuswamy started threatening to take forcible possession of suit property has been introduced in the plaint for the first time. This fact clearly indicate that the plaintiff in every stage has improved his pleadings only for the purpose of seeking relief for specific performance. Such improvement is also fortified in view of the other

circumstances.

22. It is the specific pleading of the plaintiff that on 27.3.2013 while sending a letter, he has once again tendered the balance sale consideration of Rs.60,00,000/- to the defendants. The above pleadings of the plaintiff is nothing but concocted only for the purpose of this case. The said specific pleading that on 27.3.2013 once again tendered balance sale consideration while sending the letter Ex.P4 itself is falsified by his own document. It is to be noted that though Ex.P4, letter was dated 27.3.2013, it was despatched through courier only on 05.4.2013. When the letter itself was despatched on 05.4.2013, the question of tendering Rs.60,00,00/- at the time of sending letter as pleaded in the plaint is highly improbable and the same clearly shows that the pleadings have been introduced only for the purpose of this case.

23. That apart, no evidence, whatsoever produced by the plaintiff to show that he had ready cash to pay the balance sale consideration from the date of agreement. Not even iota of evidence is produced to prove the capacity of the plaintiff to pay the money. The plaintiff has not taken any steps to deposit the balance sale consideration even after the filing of the the suit in the year 2013 to till now. Of Course deposit of the balance sale consideration is not a mandatory one, as per section 16

(c) of the Specific Relief Act. But the conduct of the plaintiff in this case, clearly show that he has taken the plea that he was always ready and willing to perform his part of the contract only for the purpose of getting relief and not otherwise.

24. It is further to be noted that the 1st defendant's son has also issued a legal notice dated 01.4.2013 claiming 1/5 shares in the suit property. Ex.P1 also clearly show that other legal heirs of the 1st defendant are also having right over the suit property. Merely because the property was registered in the name of the 1st defendant, at the request of other legal heirs, cannot take away the rights of the co-owners. Even assuming that the same is not germane, for consideration in this suit, it is well settled that burden always lies on the purchaser/plaintiff, who seek specific performance relief, to prove ready and willingness from the very beginning. As discussed above, even assuming that the suit filed by the 1st defendant's son restrained the defendants from selling the property, from the date of the contract till filing of the suit, the plaintiff has not shown any readiness and willingness to perform his part of the contract as agreed. Even after the dismissal of the suit in the year 2013, the plaintiff has not shown any readiness and willingness to perform the contract. The pleading of the plaintiff that he

has tendered the balance sale consideration on two occasions is also found to be false. Further, to substantiate that he was ready and willing and he had the capacity to raise balance consideration at the relevant time, no scrap of paper is filed.

25. It is also the contention of the plaintiff that he has taken possession of the suit property on the basis of the agreement Ex.P1. In this regard, when his evidence is carefully perused, he has admitted in the cross examination that even before entering Ex.P1 agreement, the defendants had handed over the possession. The inconsistent plea set up by the plaintiff with regard to handing over possession also clearly show that he has set up a false case, only in order to get the relief in his favour.

26. The plaintiff in his evidence admitted that he is doing real estate business. P.W.2 is his wife. She has also stated in her evidence that the plaintiff is doing real estate business. Though it is the case of the plaintiff that since the defendants are neighbours, he often requested them to sell the property, in his cross examination, he has stated that the defendants are residing in the plaint address i.e. Apartment. He has also admitted that he was not aware when the defendant moved to the said address. That being so, the plaintiff's

contention that as he was a neighbour to the defendants, he frequently requested them to sell the property is also highly unbelievable.

27. More over, Ex.P4, courier receipt, clearly show that the same has been prepared only for the purpose of the case. The specific pleadings that he has tendered the balance sale consideration of Rs.60,00,000/- on 27.3.2010 and the allegation with regard to the handing over possession on the date of the agreement are also found to be false. The plaintiff being real estate developers have waited all these years to grab the property by taking advantage of the litigation between the family members of the defendants. Suddenly, the plaintiff has filed the suit by contending that he is ready and willing to pay the remaining sale consideration. Even to infer that he was always ready and willing to perform his part of the contract, no documents, whatsoever filed to show that he had ready money at the relevant time. Further, no evidence available on record to show that he has the capacity to mobilise the remaining sale consideration. Therefore, taking advantage of the litigation between the defendants, without taking any steps to perform his part of his obligation, now the plaintiff cannot contend that he is ready and willing to perform his part of the contract.

Besides, he has also pleaded a false case about the conduct

of plaintiff forces this court to infer that he has not come to the court with clean hands to seek equitable relief. The particular pleading that he has tendered the amount of Rs.60,00,000/- on 27.3.2013 itself is found to be false. The above conduct clearly shows that he has not come to Court with clean hands and he has set up a false case. Therefore, this Court holds that readiness and willingness on the part of plaintiff is not at all been established. Possession pursuant to the agreement is also not been established. Further, the question of limitation does not arise as the suit has been filed within three years and that there is no period fixed in the agreement. Since the plaintiff has not established the plea of readiness and willingness, the equitable relief cannot be granted. The issues are answered accordingly.

28. Insofar as the judgments cited by the learned counsel for the plaintiffs are concerned, there is no dispute with regard to the proposition laid down in different contexts. In all the judgments principles are one and the same. But in the instant case, the readiness and willingness has not been established by the plaintiff. Therefore, the judgments cited by the learned counsel for the plaintiff are not applicable to the facts of the present case.

29. In the result, the suit is dismissed. However,
there shall be no order as to cost.

sd/.N.S.K.J

19.01.2017

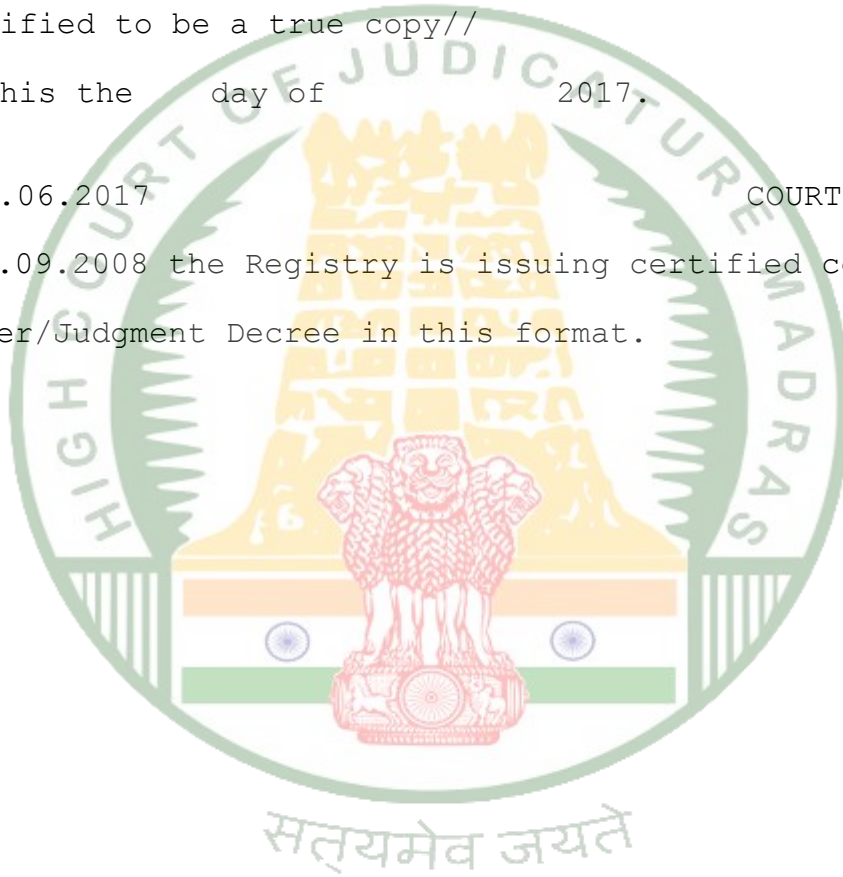
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Dated this the day of 2017.

P.M./09.06.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of
the Order/Judgment Decree in this format.



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