

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 31.10.2017****PRONOUNCED ON : 06.11.2017****CORAM****THE HONOURABLE MR. JUSTICE T.RAVINDRAN****S. A.No.45 of 2001**

1. K.K.Thangavelu
2. Devendran

...

Appellants

Vs.

1. Rangasamy
2. K.K.Subramaniam
3. P.Muthusamy gounder

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 30.06.2000 passed in A.S.No.112 of 1996 on the file of the Subordinate Court, Gobichettipalayam modifying the Judgment and Decree dated 25.04.1996 passed in O.S.No.15 of 1989 on the file of the District Munsif Court, Gobichettipalayam.

For Appellants

: Mr.M.Narayanasamy

For Respondents

: No appearance

JUDGMENT

The second appeal is directed against the Judgment and decree dated 30.06.2000 passed in A.S.No.112 of 1996 on the file of the Subordinate Court, Gobichettipalayam, reversing/modifying the Judgment and Decree dated 25.04.1996 passed in O.S.No.15 of 1989 on the file of the District Munsif Court, Gobichettipalayam.

2. Parties are referred to as per their rankings in the trial Court
3. Suit for specific performance.

4. The case of the plaintiffs, in brief, is that the suit property belonged to the first defendant and the first defendant agreed to sell the suit property to the plaintiffs and accordingly, the plaintiffs and the first defendant entered into a sale agreement in respect of the sale of the suit property on 25.12.1986, whereunder, the parties have agreed that the sale price should be at Rs.9,000/- and accordingly, the first defendant, on the date of the sale agreement, received a sum of Rs.4,000/- as advance towards part of the sale consideration and agreed to receive the balance amount within a period of two years from the date of the sale agreement and execute the sale deed in respect of the suit property in favour of the plaintiffs and despite the readiness and willingness on the part of the plaintiffs to part with the

balance sale consideration and get the sale deed from the first defendant, the first defendant had been evading to execute the sale deed one way or the other and the first defendant had also entrusted the title deed of the suit property to the plaintiffs in support of the sale agreement and as the first defendant evaded to complete the sale transaction, the plaintiffs sent a legal notice on 15.09.1988 calling upon the first defendant to complete the sale transaction by receiving the balance sale consideration and to the same, the first defendant sent a reply containing false allegations and it is false to state that the first defendant and his brother had alienated the suit property to the second defendant by way of the sale deed dated 10.10.1988 and the said sale deed is not true and valid and binding upon the plaintiffs and the first defendant and his brother have created the above said sale deed and the second defendant is also well aware of the sale agreement in favour of the plaintiffs and no valid consideration passed under the sale deed dated 10.10.1988 and hence, the second defendant is added as a party to the suit and during the pendency of the suit, it is learnt that the second defendant has alienated the suit property in faovur of the third defendant on 22.11.1989 and the third defendant is not a bonafide purchaser and his sale deed is hit by the doctrine of *lis pendens* and the defendants, in order to defeat the rights of the plaintiffs, have antedated the sale

deed as having been executed on 15.09.1988 and hence, the suit for specific performance.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. It is false to state that the first defendant had agreed to convey the suit property in faovur of the plaintiffs on 25.12.1986 for a sum of Rs.9,000/- and accordingly, received a sum of Rs.4,000/- as advance and agreed to execute the sale deed in respect of the suit property after receiving the balance sale consideration within 2 years and there is no need for the first defendant to convey the suit property in favour of the plaintiffs and the plaintiffs had promised to get necessary permission from the Government for enabling the first defendant to draw water to his lands from the channel by using his influence with the Government and accordingly, for the said purpose, had obtained the signature of the first defendant in blank papers and thereafter, on enquiry, it is learnt that the plaintiffs had not taken any action for getting the water connection for the first defendant as promised by them and on the other hand, it is found that they have made use of the signed blank papers entrusted to them by the first defendant for creating the sale agreement as if the first defendant had conveyed the suit property in his favour and the sale agreement has been created by

the plaintiffs by using his henchmen and the title deed was entrusted for the purpose of enabling the plaintiffs to identify the survey numbers of the first defendant's land at the time of getting permission for the water connection from the Government and hence, the plaintiffs are not entitled to seek the relief of specific performance on the basis of the alleged sale agreement. The suit property belongs to the first defendant and his brother Nagarajan and they had sold an extent of 57 cents of land including the suit property in favour of the second defendant pursuant to the sale agreement entered into between them and the second defendant on 21.08.1986 for a sum of Rs.45,000/- and on the date of the sale agreement, they had received a sum of Rs.15,000/- from the second defendant and further, the second defendant had discharged the debt due to one Thimma Naicker in respect of the suit property by paying a sum of Rs.15,000/- and accordingly, the first defendant and his brother had alienated the suit property with the other lands in favour of the second defendant on 15.09.1988 based upon the sale agreement dated 21.08.1986 and on account of the illness of the parties and the advent of Purattasi month, the sale deed could not be registered immediately and it had come to be registered on 10.10.1988 and it is false to state that the sale deed executed by the first defendant and his brother in favour of the second defendant is only to defeat the rights of the plaintiffs and

the same had not been antedated as put forth by the plaintiffs and the suit is not maintainable and hence, the plaintiffs are not entitled to obtain the reliefs sought for and therefore, the suit is liable to be dismissed.

6. In support of the plaintiffs' case, Pws1 & 2 were examined and Exs.A1 to 6 were marked. On the side of the defendants', DWs1 to 3 were examined and Exs.B1 to 4 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the suit. On appeal, the first appellate Court had also concurred with the judgment and decree of the trial Court in almost all the aspects, however, proceeded to hold that inasmuch as under the sale agreement dated 25.12.1986, the first defendant had received a sum of Rs.4,000/- from the plaintiffs, accordingly, directed the first defendant to pay the sum of Rs.4,000/- to the plaintiffs with interest at 12% from the date of the sale agreement and subsequent interest at 6% and accordingly, disposed of the first appeal preferred by the plaintiffs. Thus, it is found that as regards the main relief of specific performance sought for by the plaintiffs, the first appellate Court has also concurred with the

judgment and decree of the trial court in refusing the same to the plaintiffs. Impugning the judgment and decree of the Courts below, the present second appeal has been preferred.

8. At the admission of the second appeal, the following substantial questions of law were formulated for consideration;

" i. Whether the lower appellate court is correct in dismissing the suit for specific performance when it has come to the conclusion that the suit agreement is genuine and valid?

ii) Whether the Courts below are correct in dismissing the suit for specific performance when the Courts below failed to consider that Ex.B2 has not been proved properly by the defendants?"

9. From the evidence adduced by the respective parties in this matter, it is found that and also not in dispute that the suit property originally belonged to Periya Renganaickan and his wife and the same can be evidenced from the sale deed dated 03.06.1959 marked as Ex.A2. It is further seen that Periya Renganaickan had two sons viz., the first defendant and Nagarajan. Therefore, it is seen that on the

demise of Periya Renganaickan and his wife, the suit property would devolve both on the first defendant and Nagarajan. Therefore, it is seen that the claim of the plaintiffs that the first defendant is the absolute owner of the suit property and that, he had agreed to convey the same in favour of the plaintiffs under the sale agreement dated 25.12.1986 for the price mentioned therein and accordingly, received a sum of Rs.4,000/- as advance and agreed to receive the balance sale consideration within 2 years and execute the sale deed in respect of the suit property in favour of the plaintiffs as such cannot be readily accepted. As such it is seen that the first defendant is not the absolute owner of the suit property. Now, according to the plaintiffs, even at the time of the sale agreement, the first defendant has entrusted the title deed viz., Ex.A2 in respect of the suit property and therefore, it is evident that on a bare perusal of Ex.A2, the plaintiffs would have acquired knowledge about the ownership of the suit property i.e. The same not only vests on first defendant but also his brother Nagarajan. Therefore, the very base of the plaintiffs' case that they had taken the sale agreement in respect of the suit property marked as Ex.A1 only from the first defendant as such cannot be believed straightaway and there is no valid reason adduced by the plaintiffs as to why they had not endeavored to obtain the sale agreement Ex.A1 also from the first defendant's brother Nagarajan.

The above fact itself raises a very serious suspicion in the genuineness of Ex.A1. It is not the case of the plaintiffs that they are not aware of the joint ownership of the suit property by the first defendant and his brother Nagarajan and the same could not also be pleaded by them as on the date of Ex.A1, they were put on notice that the suit property belonged to the legal heirs of the Periya Renganaickan and Periyakkal, they being the first defendant and his brother Nagarajan.

10. Now, according to the plaintiffs, based upon Ex.A1 sale agreement, though they were ready to part with the balance sale consideration to the first defendant within the time stipulated thereunder, the first defendant had been evading to complete the sale transaction and hence, issued a legal notice and as the first defendant repudiated the legal notice by sending the reply by containing false allegations as if he and his brother had sold the suit property along with the other lands in favour of the second defendant on 15.09.1988. According to the plaintiffs, the above said sale transaction dated 15.09.1988 is not true, valid and binding upon them and the same had been made only to defeat the rights of the plaintiffs pursuant to the sale agreement marked as Ex.A1 and hence, according to the plaintiffs, they had been necessitated to lay the suit for specific

performance.

11. The defendants have taken the plea that the first defendant and his brother had agreed to convey the suit property and the other lands in favour of the second defendant and accordingly, they had entered into a sale agreement on 21.08.1986 marked as Ex.A1 for a sum of Rs.45,000/- and accordingly, received a sum of Rs.15,000/- as advance from the second defendant and pursuant to the same, the second defendant had also discharged the debt due to one Thimma Naicker in respect of the suit property by discharging the same and obtaining necessary receipt, which could be evidenced from Exs.B2 and B3 and accordingly, it is their case that the first defendant and his brother had conveyed the suit property in favour of the second defendant on 15.09.1988, the sale deed marked as Ex.B4 and therefore, it is stated that the second defendant being the owner of the suit property having obtained title to the same pursuant to Exs.B1 and B4 and as the sale agreement relied upon by the plaintiffs marked as Ex.A1 is subsequent to the sale agreement in favour of the second defendant marked as Ex.B1, it is contended that the plaintiffs cannot obtain any relief based upon Ex.A1 agreement and hence, the suit is liable to be dismissed. It is the further case of the defendants that owing to illness of the parties and the advent of the Purattasi

month, the sale deed marked as Ex.B4 could not be registered immediately and had come to be registered only on 10.10.1988.

12. From the materials placed in the matter, it is found that the sale agreement put forth by the defendants is much prior to the sale agreement projected by the plaintiffs. It is thus found that when the owners of the suit property viz., the first defendant and his brother Nagarajan had already agreed to convey the suit property with the other lands in favour of the second defendant under Ex.B1 for a sum of Rs.45,000/- and accordingly, received a sum of Rs.15,000/- as advance, the case of the plaintiffs that thereafter on 25.12.1986, the first defendant alone had agreed to convey the suit property in favour of the plaintiffs as such cannot be accepted readily. As seen above, when it is not the case of the plaintiffs that they are not aware the ownership of the suit property by Nagarajan also, the endeavor of the plaintiffs to get the sale agreement only from the first defendant throws a great suspicion on the said document. That apart, it is further found that even on the date of the sale agreement Ex.A1, the plaintiffs have knowledge about the sale agreement marked as Ex.B1 entered into between the first defendant and his brother Nagarajan with the second defendant. In this connection, PW1 examined on behalf of the plaintiffs during the course of cross examination has

admitted that the suit property belonged to the first defendant ancestrally and in the same, both the first defendant and his brother have shares and he does not know where they had partitioned in respect of the suit property and he had not enquired to know as to whether they had effected partition in respect of the suit property and after the sale agreement entered into with the first defendant, he had come to know that the first defendant and his brother had agreed to convey the suit property along with the other lands measuring an extent of 57 cents in favour of the second defendant for a sum of Rs.45,000/- on 21.08.1986. It is therefore found that even as per the admission of PW1, immediately after the execution of Ex.A1 sale agreement, he had been made aware of the sale agreement Ex.B1 in respect of the suit property and other lands between the first defendant and his brother and the second defendant. It is further found that the first defendant in his reply to the legal notice sent by the plaintiffs marked as Ex.A4 had also stated about the above said sale agreement dated 21.08.1986 marked as Ex.B1 and it is thus found that the plaintiffs are well aware about the sale agreement dated 21.08.1986 much prior to the institution of the suit. However, it is seen that the plaintiffs have not whispered anything about the sale agreement dated 21.08.1986 viz.,Ex.B1 in their plaint and it is thus found that as rightly determined by the trial Court, inasmuch as

Ex.B1 had come into existence as put forth by the defendants on 21.08.1986 itself and the plaintiffs are also aware of the same much in advance even prior to their sale agreement marked as Ex.A1 and accordingly, it is seen that they have not thrown any specific challenge to Ex.B1 in their plaint as having been created by the defendants for defeating their rights. That apart, it is only seen that despite the plaintiffs having knowledge about the joint ownership of the first defendant and his brother Nagarajan in respect of the suit property, they have chosen to obtain the sale agreement only from the first defendant. It is seen that as rightly found, the plaintiffs having knowledge about the ownership of Nagarajan also in respect of the suit property and also having knowledge about the sale agreement Ex.B1 at the time of Ex.A1, with a view to defeat the rights of the second defendant is found to have entered into the sale agreement only with the first defendant in respect of the suit property, knowing fully well that he has no absolute title to convey the suit property in its entirety to them as there is no material placed to the knowledge of the plaintiffs that prior to Ex.A1, the first defendant and his brother had effected the partition in respect of the suit property. Therefore, it is seen that inasmuch as the sale agreement Ex.B1 has not been specifically challenged by the plaintiffs in any manner in the plaint, despite having knowledge about the

same, even prior to Ex.A1 as well as even prior to the institution of the suit and so viewed, as rightly determined by the trial Court, it is seen that the first defendant is not a competent person to convey the suit property in its entirety and therefore, the sale agreement Ex.A1 obtained by the plaintiffs only from the first defendant would not clothe them with any right to obtain the equitable relief of specific performance in respect of the suit property from the first defendant alone. However, it is contended by the plaintiffs' counsel that inasmuch as the first appellate Court has held that the sale agreement Ex.A1 is to be a true document, the Courts below should have at least directed the relief of specific performance in respect of the share of the first defendant in the suit property and accordingly, partly granted the relief of specific performance as against the first defendant with reference to his share in the suit property. However, it is found that the first appellate Court has erred in upholding the sale agreement Ex.A1, when the materials placed on record point out clearly that even prior to Ex.A1, the sale agreement Ex.B1 has come into existence as put forth by the defendants and when pursuant to Ex.B1, the owners of the suit property had received a part of the sale consideration from the second defendant and when it is further found that the plaintiffs have knowledge about Ex.B1 prior to Ex.A1 as could be gathered from the evidence of PW1 and when Ex.B1 has not been

seriously impugned in any manner as an invalid document and when it is further found that Ex.B1 has been executed by all the owners of the suit property, it is found that Ex.B1 will have precedence over Ex.A1 and as Ex.B1, being anterior to Ex.A1, it is seen that the plaintiffs cannot be granted any relief as such under Ex.A1 even assuming the same to be a true document. When the first defendant had already covenanted to convey his share in the suit property to the second defendant under Ex.B1, which is much anterior to Ex.A1, the contention of the plaintiffs' counsel that the Courts below should have at least granted the relief of specific performance as against the first defendant, directing him to convey his share of the suit property to them under Ex.A1 cannot be countenanced in any manner in the light of the above said factual position and materials placed on record. In such view of the matter, it is found that the Courts below have rightly held that the plaintiffs as such cannot be granted the relief of specific performance pursuant to the sale agreement dated Ex.A1.

13. As far as the truth and validity of the sale deed marked as Ex.B4, it is found that Ex.B4 has come to be executed by the first defendant and his brother Nagarajan in favour of the second defendant in respect of the suit property pursuant to the sale agreement Ex.B1. Ex.B1 has been entered into between the

concerned parties as put forth by the defendants, it is seen that in deference to the same, the second defendant had discharged the debt due to one Thimma Naicker, on account of the document executed on 17.10.1985 in favour of the Thimma Naicker marked as Ex.B2 and accordingly, it is further seen that the second defendant had discharged the debt due to Thimma Naicker and taken necessary receipt from him, which has come to be marked as Ex.B3. Thus, it is found that the first defendant and his brother had accordingly conveyed the suit property in favour of the second defendant under Ex.B4 on 15.09.1988. However, it is seen that the sale deed marked as Ex.B4 has come to be registered only on 10.10.1988 and this fact is projected by the plaintiffs to contend that the sale deed has been antedated on 15.09.1988 only for the purpose of defeating his rights pursuant to Ex.A1 and therefore, the mere fact that the sale deed had come to be registered on 10.06.1988 would go to show that the above said transaction is not a true and valid one. However, the above argument put forth by the plaintiffs cannot be accepted as such. As rightly determined by the Courts below, it is found that on a perusal of the document marked as Ex.B4, it is seen that the same had been engrossed on the stamp papers purchased by the second defendant on 14.09.1988 itself, it is therefore found that with a view to obtain the sale deed from the first defendant and his brother, the second

defendant had obtained the stamp papers on 14.09.1988 and accordingly, the sale deed has come to be engrossed on the stamp papers on 15.09.1988 as put forth by the defendants. No doubts, the stamp papers of Ex.B4 had come to be purchased from the stamp vendors at Madurai and Erode. In this connection, the argument is put forth by the plaintiffs that there is suspicion in the second defendant obtaining the stamp papers from the stamp vendor at Madurai and therefore, inasmuch as the defendants had not placed any material to dispel the suspicion, their case based upon the sale deed Ex.B4 should be rejected. However, as determined by the Courts below, it is seen that on a cursory look of Ex.B4, it is found that the same had been prepared in the normal course of events by the parties concerned, the plaintiffs throwing the challenge to the same, it is for the plaintiffs to establish their case with reference to the same by placing necessary materials and when no material has been placed by the plaintiffs with reference to their stand, it is seen that as determined by the Courts below, the document Ex.B4 can be accepted as such and accordingly, it is found that there is no infirmity or error in the findings of the Courts below in accepting Ex.B4 as such to be a true and valid document. No doubt, Ex.B4 has come to be registered on 10.06.1988. However, the fact remains that the said document has come to be registered within the time stipulated under law. The

reasons given by the defendants for the delay in registration is that on account of the illness of the parties and due to the advent of Purattasi month, the document had not been registered immediately and hence, it had come to be registered on 10.10.1988 found acceptance by the Courts below and I do not find any valid reason to interfere with the same sitting in the second appellate court for taking a different view on the above said facts, when the reasonings and conclusions of the Courts below for accepting the same are found to be reliable and convincing. In this connection, it is also to be seen that the defendants have examined the attesor of Ex.B3 to show that the first defendant and his brother had received the balance sale consideration from the second defendant and accordingly, executed the sale deed in favour of the second defendant conveying the suit property and other lands and DW3 had attested the said transaction by being a witness to the event and in such view of the matter, it is seen that the defendants have clearly established that Ex.B4 had come into existence based upon Ex.B1 and accordingly, it is seen that when Exs.B1 and B4 had been taken by the second defendant from the true owners of the properties, it is seen that it is only the second defendant, who would be the absolute owner of the suit property and hence, the plaintiffs cannot obtain the relief sought for in the plaint.

14. In the light of the above discussions, it is found that the findings of the lower appellate Court that the sale agreement Ex.A1 is a true and valid document as such cannot be accepted and for the reasons afore stated, it is found that inasmuch as Ex.B1 has come into existence much prior to Ex.A1 to the knowledge of the plaintiffs and when Ex.B1 has been obtained from all the owners of the suit property and when it is further found that Ex.A1 has not been obtained from all the owners of the suit property and when the first defendant had already agreed to convey his share in the suit property to the second defendant under Ex.B1, it is found that he would not be entitled, as per law, to convey his share of the suit property in favour of the plaintiffs. Even assuming Ex.A1 to be true document, accordingly, it is found that the argument put forth by the plaintiffs' counsel that the plaintiffs should be granted the relief of specific performance at least in respect of the share of the first defendant in the suit property , as such, cannot be countenanced. In the light of the above position, it is seen that the Courts below are perfect in order in upholding the defence projected by the defendants and also upholding Ex.B4 sale deed and also right in declining the specific performance sought for by the plaintiffs. Accordingly, the substantial questions of law formulated in this second appeal are answered against the plaintiffs and in favour of the defendants.

15. In the light of the above position, the decision of this Court relied upon by the plaintiffs' counsel ***dated 08.02.2001 passed in S.A.No.1150 of 1997 (Govindasamy Gounder Vs. Annamalai and another)*** as such would not be applicable to the case at hand.

16. In conclusion, the second appeal fails and is, accordingly, dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

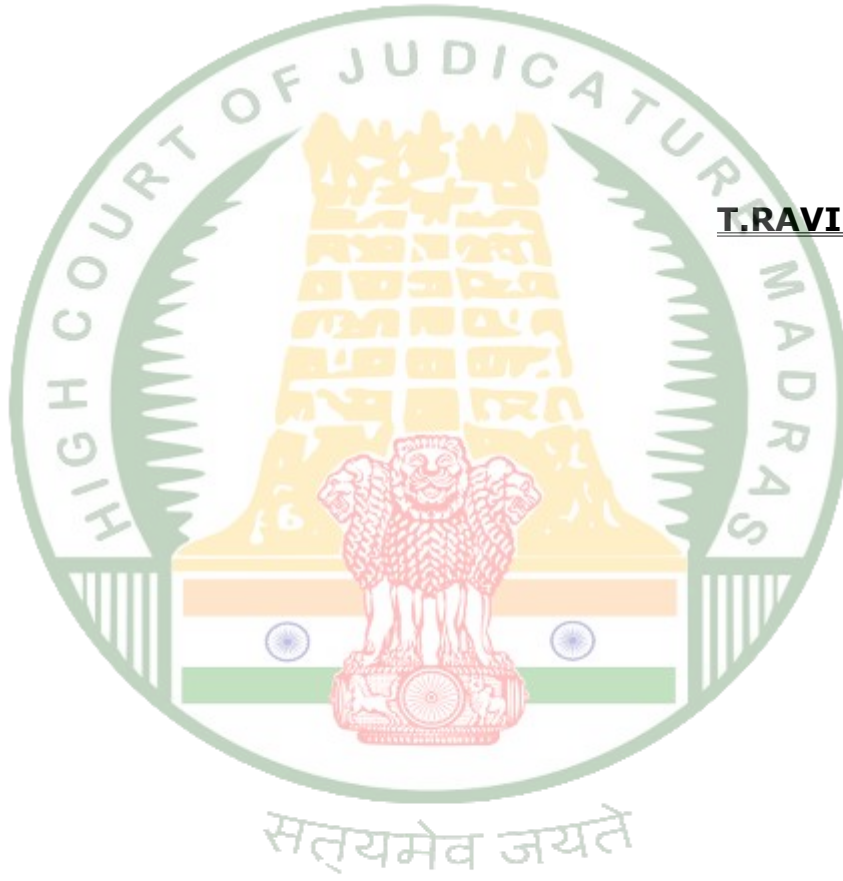
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To

1. The Subordinate Court, Gobichettipalayam.
2. The District Munsif Court, Gobichettipalayam.

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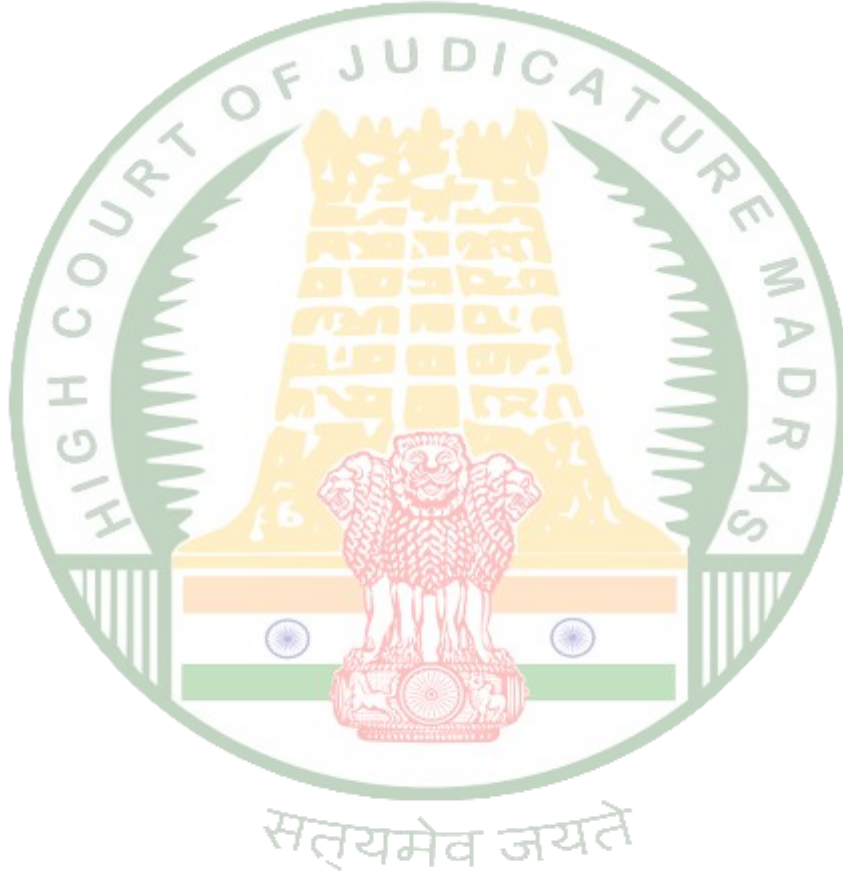


T.RAVINDRAN,J.

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Pre-delivery order in
S. A.No.45 of 2001

06.11.2017



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